Circuit Court for Washington County
Case No. C-21-CR-19-000289

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2126

September Term, 2019

CHAUNCEY PURNELL RANDOLPH, SR.

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 25, 2021

Appellant Chauncey Purnell Randolph was convicted by a jury in the Circuit Court for Washington County of possession of cocaine, possession of PCP, possession of a firearm, and possession of ammunition. Appellant presents the following questions for our review:

> "1. Did the lower court err in denying the motion to suppress on the basis that the police were justified to enter Mr. Randolph's home over Mr. Randolph's objections in response to a call from Mr. Randolph's housemate indicating Mr. Randolph needed medical attention?
>
> 2. Did the lower court err and violate Rule 4-215(e) in failing to conduct a hearing after Mr. Randolph filed a motion to dismiss counsel and requested a postponement of his upcoming trial date?"

The State concedes that the circuit court violated Rule 4-215(e) and that we should reverse but asks that we affirm the motion court's denial of the motion to supress the evidence. We shall reverse the judgments of conviction and remand for proceedings consistent with this opinion. We agree with appellant that the Fourth Amendment requires suppression of the evidence seized at his home and, therefore, we shall reverse the Order of the circuit court on the motion to suppress the drugs, gun, and ammunition.

I.

Appellant was indicted by the Grand Jury for Washington County on charges of possession of cocaine, possession of PCP, illegal possession of a firearm, and illegal

possession of ammunition.[1] The jury convicted him of all charges. The court sentenced appellant to a term of incarceration of four years.

On the afternoon of August 21, 2018, appellant was in his home and was recuperating from injuries suffered in a car accident earlier in the week when he heard the doorbell ring. His uncle and co-tenant, Perry Proctor, had attempted to call an ambulance for appellant, and Hagerstown police officers responded with a "wellness check." The doorbell rang, appellant calmly went to the door with Mr. Proctor and they opened it, and appellant then saw Officer Dean. Officer Dean walked immediately into the house. About seventy-five seconds later, Officer Anderson arrived and entered the house.

Appellant asked why the officers were there, and he requested that they leave. Around two minutes after Officer Dean's entry, appellant repeatedly told the officers to leave his home and that they were not welcome there. He asked the police to "please leave my house," he asked them to leave him alone, he told them goodbye, and he gestured toward the door and told them to come on—making twenty-one such statements. The officers refused to leave. They repeatedly asked what was "going on" with appellant.[2] Appellant replied that there was nothing going on.

After nearly five minutes of attempts to send the police out of his home, appellant threw up his hands and walked further into his home to sit on his couch. About ninety

[1] Possession of cocaine and PCP were charged as separate counts of possession of a controlled dangerous substance other than marijuana. *See* Md. Code Crim. § 5-601 *et seq.*
[2] At one point, the officers asked Mr. Proctor if he wanted them to leave, and Mr. Proctor then contradicted appellant and told the officers that he wanted them to stay.

seconds later, the officers entered the living room where appellant was sitting with the television on. Officer Anderson asked appellant if he could call an ambulance for him. Appellant replied that he did not want an ambulance and did not need one.

When the police spoke with appellant in his living room, Officer Dean observed a handgun between the sofa cushions. The officers determined that appellant was disqualified from possessing the gun. They seized the gun, handcuffed appellant, and took him outside and placed him in their squad car. While appellant sat in the police vehicle, Officer Dean re-entered the house and went to the kitchen to conduct a search. In the kitchen, appellant's uncle (Mr. Proctor) showed the officer some pills. Mr. Proctor rummaged through the kitchen cabinets and pulled down and handed Officer Dean a closed plastic container with a substance that Officer Dean supposed was PCP.

Thirty-four minutes after Officer Dean arrived at the scene for the wellness check, he called for an ambulance for appellant. An ambulance arrived and took appellant to the hospital. The officers then returned into the house and continued to search the premises, discovering a pipe and spoon on a coffee table in the living room.

Appellant moved to suppress the gun, ammunition, and drugs as fruits of an unconstitutional search. The circuit court denied the motion, ruling that the community caretaking exception to the warrant requirement was applicable. The court reasoned that the officers acted reasonably because: (1) Officer Anderson knew appellant from other encounters and recognized that there was "something different" about appellant's behavior on the day of the search; (2) Mr. Proctor indicated to the officers that appellant's behavior

was abnormal; and (3) the judge observed that appellant's courtroom demeanor and comportment was different than appellant appeared in the body-camera footage (in which he was fidgety, sweating, and zoned out). The judge explained as follows:

> "Alright, so *Wilson* says that under the community caretaking function, 'Once the officer is assured the citizen is no longer in need of assistance or that the peril has been mitigated, the officer's caretaking function is over and complete. Further contact must be supported by a warrant.' What we're all, what you all are disagreeing upon is when the peril was over, when the caretaking function was complete. Um, you've mentioned several times about calling an ambulance. My understanding is that Mr. Proctor himself called the ambulance. The ambulance would have been on its way, for how ever long it took. You said it took a long time, but you know it took a long time. Um, but the testimony was, I believe, that he called the ambulance and then I think the officers were dispatched there. I think one of the officers didn't remember who had called the police, but Mr. Proctor is pretty clear, he called an ambulance. He did not call the police. So, then the question becomes what was reasonable under that community caretaking function and what was the peril and when was it mitigated….
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> [Discussion followed of the factors described above—Officer Anderson's observation of appellant's behavior, Mr. Proctor's comment upon appellant's abnormal behavior, and the judge's observation of appellant.]
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> "Now the question becomes…could they have handled it differently such that it was less intrusive? And I'm—I will hearken back in terms of the intrusiveness. *This is not a consent to search case*, and that is a very different track of analysis than this is. Um, so there was a point at which they—the officers should have done something different to be less intrusive to Mr. Randolph? And was there a point at which there was no further concern and they should have gotten the heck out of there?
>
> "So let's talk about was there another alternative. I understand from—from Mr. Randolph's standpoint, he would have preferred not to have the intrusion further in his home than it was. And I understand as well that there's a suggestion raised that the officers could have asked somebody to step outside. I tend to agree with [the prosecutor], it seemed—it seemed unlikely that Mr. Randolph would have liked that idea of the police sort of dragging him out of his home, even if it was a question, um, you know, the officers, I don't know if they're in a position to say, 'Trying to protect your Fourth Amendment rights here, will you come out on your porch to

have this conversation?' I don't know that that's, uh, realistic. Again, when they are there for this community caretaking function for a safety issue, there—there is not, um, they have to function reasonably within that question. Um, if he's—If they see him behaving oddly and sweating profusely and he clearly is agitated, um, I have a concern that in terms of the, whether it was a medical concern or something else, if they had asked him to step out into the August heat, I don't know that that would have been great in terms of Mr. Randolph's well-being had there been certain medical conditions he was suffering from. I don't know. It's not clear that that was—that would have been a good idea. And I think for there to be this less restrictive means of carrying out the caretaking function, there has to be something that definitely would have caused no further harm and would have made sense in the context of what was happening. I just don't see them asking anybody to step outside. I don't see that it would have helped particularly.

"The main concern that you have is that then, you know, the police are in another area of the house, but I have to note they did not wander about that house when Mr. Randolph was sitting in the foyer, foyer or the front hallway. They were in the front hallway with him, addressing him and—and asking questions and such. The only reason the officer went further into the home is because Mr. Randolph went further into the home. And my perspective on the body-cam and what I saw of the officer's intention and interaction, before the gun was spotted, was I think that officer knew the ambulance was about to show up, I think the officer knew that Mr. Randolph had no desire probably to even talk to the ambulance but they thought he needed to be checked out, and I think the officer was kind of trying to calm him down to say, 'Hey, let's just check you out and make sure you're okay,' because he didn't want the ambulance people to have a problem when they got here. That's what it appeared to me to be. It appeared to be an entirely reasonable thing for the officers to continue to interact to try to allow for him to be checked out medically. And based upon what I saw in the video and what was described from Mr. Proctor and described from the officers, I think their concern of a medical problem, whether it was caused by him ingesting substances or otherwise, I think a very valid concern. The fact that Mr. Randolph, I mean I—I guess it goes to show that Mr. Randolph, who clearly is bright and articulate…if he had been able to coherently conduct himself and if he had cognitively been as aware as he's certainly capable of, I doubt he would have—wouldn't have gone down or I don't think, when the police were in the house, he would have gone over and plunked down next to the loaded gun. Uh, it was just a set of circumstances. But that's where he did go and plunk down and the officers, um, trying to, uh, cajole him into having medical attention

> without being dismissive or combative, I don't think that was an unreasonable carrying out of their caretaking function. And then we have the gun in plain view, which you have the combination of a gun with somebody who seems highly agitated, who does not seem to be cognitively functional, and who seems to, um, whether impaired or whether by some ingestion of substance or whatever, um, I think that that was sufficiently, a sufficient reason, um, for the officers to take further action.
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> "And so I do not think that there is a violation of Mr. Randolph's Fourth Amendment rights here. Um, I think that the officers acted reasonably, and I think that then when they had a—a person who was clearly agitated and who was not coherent, and a loaded gun, I think then taking him into custody at that point was—was entirely reasonable as well."

As the December 2, 2019, trial date approached, appellant requested a postponement of trial because he had lost confidence in his counsel, explaining as follows.

> "Honorable Judge. . . , with respect to the courts, I am writing today to advise you that I am dissatisfied with my current counsel. Respectfully, I am asking the courts to allow me time to obtain appropriate representation. I feel it is in my best interest to postpone the upcoming hearing set for December 2nd. Please grant this request."

The court denied the request without a hearing. On the morning of December 2, before trial and before jury selection, appellant renewed his request to replace counsel. The judge told appellant that the court could not excuse the jury and would not delay trial. Appellant was convicted and sentenced as above, and this timely appeal followed.

II.

Before this Court, appellant argues that the circuit court erred in its determination that the police acted lawfully when conducting the warrantless search of his home.

Appellant first argues that the community caretaking exception does not permit

warrantless searches of a home.[3] Appellant initially pointed to a recent split among state appellate courts, and a corresponding split among the United States Courts of Appeals, on the question of whether the community caretaking exception can ever justify police intrusion into a home (as opposed to an automobile, for example). Indeed, the Supreme Court of the United States only days ago, in *Caniglia*, 141 S. Ct. at 1598, held that the community caretaking exception does not create a stand-alone doctrine that would justify warrantless searches or seizures in the home. Appellant argues that *Caniglia* is dispositive of the instant case.

Appellant further argues that the community caretaking exception, as it recently existed under Maryland law and the United States Court of Appeals for the Fourth Circuit, cannot apply to the facts of the case at bar. Appellant highlights Maryland cases stating that the objective test is whether a prudent and reasonable official would see a *need* to act. Even though *Caniglia* has clarified that the community caretaking exception does not apply to the home, we nevertheless recite appellant's initial arguments because some of them apply to refute the emergency-aid doctrine's applicability to the case at bar.

Appellant emphasizes that the facts of this case do not establish an ongoing emergency, that the officers had choices available other than entering his home, and that the circuit court did not properly apply the rule that the police must employ the least intrusive means available to engage in the community caretaking function, as set out in

[3] At the time of the motion below, the United States Supreme Court had not granted certiorari in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), and at the time of briefing in this case the Court had not issued the *Caniglia* opinion.

Wilson v. State, 409 Md. 415, 425 (2009). Appellant further argues that the officers exceeded the scope of any purported community caretaking function that they could have had, and that this was evident by the time appellant explained to the officers five times that he was okay in response to their eleven inquiries, and by the time appellant asked the officers to leave, which he did twenty-one times. In addition, appellant argues that the circuit court erred in finding that the officers followed appellant into the living room to assist him and the medics who would arrive, an assessment undermined by the fact that the officers had not called for an ambulance and did not do so until thirty-four minutes after their arrival, long after appellant was handcuffed and removed from the house, and well after the officers' search of the house in appellant's absence.

As to appellant's argument regarding discharge of counsel, he maintains that the circuit court erred when it denied his request to discharge counsel and for postponement of trial, by doing so without a hearing, in violation of Rule 4-215(e) (establishing procedure for discharge of counsel). Appellant points to the circuit court's obligation under the Rule to hold a hearing to "permit the defendant to explain the reasons for the request" to discharge counsel, and to case law indicating that the requirements of Rule 4-215(e) require strict compliance and are not subject to harmless-error analysis.

The State concedes that the circuit court violated Rule 4-215(e) by failing to conduct a hearing on appellant's motion to dismiss counsel. The State asks this Court to reverse the judgments of conviction and remand for a new trial because of the Rule 4-215(e) violation.

The State, however, asks this Court to affirm the Order of the circuit court denying the motion to suppress. The State argues that the lower court properly denied the motion to suppress based on the community caretaking exception, because the police were called to the home for a wellness check requested by a resident of the home, Mr. Proctor. The State maintains that the circuit court found correctly that the officers acted reasonably, in light of their observation of appellant and Mr. Proctor's suggestions of appellant's abnormal behavior.

In addition, the State argues that the police acted properly under the emergency aid doctrine, an exception to the warrant requirement. The State asserts that the instant case is one of "a potentially ill individual menacing another within a home[.]"

Further, the State argues that the search was permissible and reasonable under the Fourth Amendment because the officers entered the property with the express consent of one of its residents. The State points to the facts that the officers were ushered into the home by Mr. Proctor, a co-leaseholder and co-resident of the home, who was afraid because appellant was acting strangely. In addition, Mr. Proctor expressed concern to the officers that appellant might have ingested fentanyl.

Appellant replies that the State's argument that the search was valid based on consent of a co-occupant is not properly before this Court because the State did not make it below, and because the circuit court ruled expressly: "This is not a consent to search case[.]" As to the merits of the State's consent argument, appellant responds that even if the State had made and preserved the argument, and even if Mr. Proctor did consent, then

that consent would have been overridden by appellant's explicit and repeated requests that the officers leave his home. *Georgia v. Randolph*, 547 U.S. 103, 115 (2006), stands for the proposition that when one tenant consents to a search and another tenant who is physically present refuses, the latter controls.

III.

This case is unusual for at least two reasons. First, the parties both ask us to reverse the judgments of conviction based on their congruent analysis of the question presented about discharge of counsel. Second, the very recent Supreme Court opinion in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), issued two weeks before oral arguments in the instant case, allows us to truncate our analysis of the community caretaking exception.

The Fourth Amendment to the United States Constitution, in pertinent part, protects the "right of the people to be secure in their…houses…against unreasonable searches and seizures[.]" It is a *basic principle* of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980).

The warrant requirement nevertheless is subject to certain exceptions, as for example when authorities might enter private property to fight a fire and investigate its cause, or to prevent the imminent destruction of evidence, or to engage in hot pursuit of a fleeing suspect. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (citing cases for each of these examples). Exigent circumstances might make the needs of law enforcement

so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. *Mincey v. Arizona*, 437 U.S. 385, 393–94 (1978) (holding that the warrantless search of a homicide scene was unreasonable and unconstitutional). Yet the Supreme Court has declined repeatedly to expand the scope of exceptions to the warrant requirement to permit warrantless entry into the home. *Collins v. Virginia*, 138 S. Ct. 1663, 1672 (2018).

Fourth Amendment rights may be waived, and voluntary consent to search of a home would be a waiver of Fourth Amendment protections. A physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant. *Georgia v. Randolph*, 547 U.S. 103, 123 (2006).

In the case at bar, the State on appeal has offered various rationales to justify the entry into appellant's home and the repeated searches of that home. We discuss each rationale below.

A. Community Caretaking

As the Supreme Court explained last month, police perform non-criminal community caretaking functions, such as providing aid to motorists, but community caretaking is not a stand-alone doctrine justifying warrantless search or seizure in the home. *Caniglia*, 141 S. Ct. at 1598, 1600. It may well be the case that the community caretaking function as it recently existed under Maryland law, *see Alexander v. State*, 124 Md. App. 258, 262–63 (1998), would not have been sufficient to justify the home search in the case

at bar. Nonetheless, after *Caniglia*, there is *no question* that the community caretaking function is not a justification for the search here. Law enforcement may not enter a home, absent exigent circumstances, without a warrant, under the guise of community caretaking. *Caniglia*, 141 S. Ct at 1599–1600.

B. Emergency Aid

The Maryland Court of Appeals has discussed the emergency aid doctrine as a community caretaking function. *Wilson*, 409 Md. at 431–32 (noting that "[t]he so-called doctrine 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"). Many federal cases discuss emergency aid as a doctrine distinct from community caretaking, a trend that will no doubt continue in light of *Caniglia*. *See Caniglia*, 141 S. Ct. at 1600 (Roberts, C.J., concurring) (noting that nothing in *Caniglia* is contrary to the continued existence of the emergency-aid doctrine). Whereas community caretaking as initially described was "totally divorced from the detection, investigation, or acquisition of [criminal] evidence," *Cady v. Dombrowski*, 431 U.S. 433, 441 (1973), emergency assistance to an injured occupant or to protect an occupant from imminent injury could prospectively tie into criminal investigation, s*ee Brigham City*, 547 U.S. at 403, 406.

In *Brigham City*, the Supreme Court held that entry into a house was objectively reasonable where police responded to a noise complaint and then witnessed a violent

altercation through windows and a screen door. There, four adults were attempting to restrain a juvenile, who broke free and punched one of the adults. The officers witnessed the blow, witnessed the injured man spitting blood, and saw the brawl continuing by the time they entered and announced their presence.

In the case at bar, there was no emergency similar to the violence in the *Brigham City* case. Appellant told the police officers that he was okay, and, more importantly, that he did not want their help and that they were not welcome in his home. Furthermore, there was no active altercation between appellant and Mr. Proctor. Under these circumstances, the emergency aid doctrine cannot justify the warrantless search that the officers subsequently performed.

C. Consent

The consent argument is not properly before us because it was not raised below, and the motions judge made no findings of fact as to that issue other than to reject expressly that consent could apply. The issue is not preserved. Even assuming *arguendo* that the issue had been preserved, the argument would not prevail.

The pertinent rule here is that a physically present inhabitant's express refusal of consent to a police search is dispositive as to that person, regardless of the consent of a fellow occupant. *Georgia v. Randolph*, 547 U.S. at 123. "Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police

officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all." *Id.* at 114.

The 2006 *Randolph* Supreme Court case involved police reporting to a marital residence based on a complaint of a domestic dispute. A wife invited the police in and complained that her husband was a drug abuser, before the husband then complained about his wife and made clear that he did not consent to police entry into the home or search of the home. The holding of that case is fatal for the State's argument in the instant case, in which appellant, coincidentally also named Randolph, made clear to the police that he was asking them to leave and that they were never welcome to enter his home. The Fourth Amendment requires that all the evidence seized from the search of appellant's home should have been suppressed.

In sum, we hold that the trial court violated Md. Rule 4-215(e) in failing to conduct a hearing on appellant's motion to dismiss counsel. We reverse the judgments of convictions. As to the motion court's suppression Order, we reverse the Order of the circuit court denying the motion to suppress the evidence.

JUDGMENTS OF CONVICTION OF THE CIRCUIT COURT FOR WASHINGTON COUNTY REVERSED; ORDER OF THE CIRCUIT COURT DENYING THE MOTION TO SUPPRESS REVERSED. COSTS TO BE PAID BY WASHINGTON COUNTY.