

Circuit Court for Frederick County  
Case No. C-10-CR-19-000467

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2364

September Term, 2019

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TAVARES BOHANNON BOWIE

v.

STATE OF MARYLAND

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Fader, C.J.,  
Wells,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, J.

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Filed: March 11, 2021

\*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.

Tavares Bowie, appellant, was arrested and charged, in the Circuit Court for Frederick County, with conspiracy to possess cocaine with intent to distribute. Prior to trial, Mr. Bowie filed a motion to suppress the cocaine. That motion was later denied following a hearing. Mr. Bowie thereafter waived his right to a jury trial and pleaded not guilty pursuant to an agreed statement of facts. The court subsequently found Mr. Bowie guilty of conspiracy to possess cocaine with intent to distribute and sentenced him to a term of 20 years' imprisonment, with all but ten years suspended. In this appeal, Mr. Bowie presents a single question:

Did the circuit court err in denying the motion to suppress?

For reasons to follow, we hold that the circuit court erred in denying Mr. Bowie's suppression motion. Accordingly, we reverse the court's judgment.

### **SUPPRESSION HEARING**

At the hearing on Mr. Bowie's suppression motion, Frederick Police Officer Nicole Hamilton testified that, at approximately 2:00 a.m. on November 20, 2018, she responded to an apartment building at 16 West 7th Street for "a 911 disconnect." Officer Hamilton testified that dispatch had "advised they heard a female on the line and a male voice saying, are you on the phone."

The State then played a recording of the 911 call. During the call, the 911 operator can be heard asking the caller for the address of the emergency, and a female voice responds by providing the address, 16 West 7th Street. When the 911 operator asks the caller to repeat the address, a male voice says, "Are you on the phone?" Immediately thereafter, the call ends. The 911 operator then calls back twice, but no one answers.

Officer Hamilton testified that, upon arriving in front of the apartment building, she “immediately could hear a female voice screaming out for help, sounding as though she was in immediate distress and danger.” Officer Hamilton also heard a male voice screaming, “fuck you, bitch.” After identifying the apartment from which she heard the screaming, Officer Hamilton entered.

Officer Hamilton testified that, upon entering the apartment, which was “unlocked and unsecured,” she observed a male, later identified as Mr. Bowie, and a female, Attliah Al-Haqq, standing in the living room. According to Officer Hamilton, when she first came into contact with Mr. Bowie and Ms. Al-Haqq, Mr. Bowie “yelled to the [Ms. Al-Haqq], you called the cops.” Mr. Bowie then “began to back towards the back hallway keeping his right hand in his front waistband the entire time.” After Officer Hamilton “gave Mr. Bowie numerous orders to come out,” he eventually returned to the living room. Officer Hamilton testified that Mr. Bowie was gone for “maybe like a minute” and that she “later found out he went to the bathroom.” Officer Hamilton also testified that individuals commonly keep “guns, drugs” in their waistband.

Officer Hamilton testified that after Mr. Bowie returned to the living room, she took him to the apartment building’s lobby and waited for other officers to arrive on the scene. When they did, the officers stayed with Mr. Bowie while Officer Hamilton returned to the apartment. Officer Hamilton testified that, based on what she had heard, she “thought there was an assault that occurred, so [she] began to ask [Ms. Al-Haqq] questions in regard to that.” During that conversation, Ms. Al-Haqq stated that she had had “another male friend

over” and that Mr. Bowie “was irate.” Ms. Al-Haqq also stated “that there was no physical assault.” Officer Hamilton testified that she did not see any apparent injuries on Ms. Al-Haqq’s person.

Officer Hamilton testified that, during her conversation with Ms. Al-Haqq, another officer, Officer Constantine, entered the apartment. At some point, Ms. Al-Haqq stated that “she had her children in the apartment.” Officer Hamilton testified that Officer Constantine then “did a protective sweep for officer safety, checked the welfare of the children, made sure there was no other individuals inside of the apartment that [the officers] didn’t know about.” Sometime later, Officer Constantine returned to the living room and advised Officer Hamilton that “he located CDS in plain view.” Officer Hamilton testified that two minor children, ages 7 and 12, were also found in the apartment.

Frederick Police Officer Joseph Constantine testified that, at approximately 2:00 a.m. on November 20, 2018, he was on duty when he received a call from Officer Hamilton regarding “a female screaming.” Officer Constantine responded to the apartment at 16 West 7th Street, where he met Officer Hamilton, who was inside of the apartment speaking to Ms. Al-Haqq. According to Officer Constantine, Ms. Al-Haqq informed the officers “that there was a verbal altercation between [Mr. Bowie] and another male who was at her apartment with her when [Mr. Bowie] came to the apartment.” Ms. Al-Haqq also stated that there had been “a physical altercation” between her and Mr. Bowie, that she had “thrown something” at him, and that her children were in the apartment. When asked if there was anyone else in the apartment at that time, Ms. Al-Haqq responded in the negative.

Officer Constantine testified that, “based on everything that happened,” he decided to conduct “a protective sweep of the apartment.” He explained that he conducted the sweep “to ensure that there was, in fact, nobody else in the apartment, and that the children were okay in there, in their bedroom.” Officer Constantine also stated that he conducted the sweep “for officer safety, since I knew we were going to be there for a little bit of time.”

Officer Constantine testified that, while conducting the sweep, he walked to the back of the apartment and checked “all the rooms,” including the bathroom. Upon entering the bathroom, Officer Constantine “pulled back the shower curtain” and discovered “a plastic bag” of “suspected crack cocaine” located “in plain view, between where the shower curtain was and the toilet seat.” Officer Constantine testified that he pulled back the shower curtain “because that’s a spot where somebody could be hiding inside the bathtub.”

The State also introduced an audio/video recording of the incident that had been taken from Officer Hamilton’s body-worn camera. In the recording, Officer Hamilton can be heard telling Mr. Bowie multiple times not to “go back in there” and to “get out here now.” After telling Mr. Bowie to “just stand right there,” Officer Hamilton asks Ms. Al-Haqq “what happened,” and Ms. Al-Haqq responds that “he’s upset because he came in, I had another male friend” in the apartment. Officer Hamilton asks Ms. Al-Haqq if Mr. Bowie had hit or pushed her, and Ms. Al-Haqq responds that he had not but that she “thought that he was going to.” Officer Hamilton then asks about Ms. Al-Haqq’s “male friend,” and Ms. Al-Haqq states that “he left.” Officer Hamilton also asks about Ms. Al-Haqq’s children, and Ms. Al-Haqq states that they are asleep in one of the back rooms.

When Officer Hamilton asks why Mr. Bowie was “going back there,” Ms. Al-Haqq responds, “I don’t know.” Following that exchange, Officer Hamilton states: “I think you’re hiding something from me. I think there was more to the story than what you’re leading on. I think something did get physical and I think you’re covering up for him for whatever reason.” Ms. Al-Haqq responds, “No, he didn’t hit me.” Shortly thereafter, Ms. Al-Haqq appears to inquire as to why Officer Constantine is looking in the bathroom. Officer Constantine states that he is “trying to make sure there’s nobody else in here. Officer Constantine then states that “there’re drugs in here.”

At the conclusion of the evidence, defense counsel raised two primary arguments in favor of the motion to suppress: first, that Officer Hamilton’s initial entry into the apartment without a warrant was unreasonable; and second, that there was no legal basis for Officer Constantine’s “protective sweep” that led to the discovery of the drugs in the bathroom.

Ultimately, the circuit court denied the motion. Regarding defense counsel’s first argument, the court found that Officer Hamilton’s initial entry into the apartment was reasonable based on the 911 call and the subsequent screaming that the officer heard upon responding to the apartment building. As to the second argument, the court found that the totality of the circumstances supported Officer Constantine’s inspection of the apartment that led to the discovery of the drugs:

The most, the point of the body cam that caught the court’s attention most was Mr. Bowie not staying in the room, but instead, walking down the hallway and, albeit, for a short period of time, disregarding the officer’s

orders. Where are you going? Come back up here. Get back up here. She's hollering at him to get back up here. She doesn't know if he's got a weapon.

Then she starts questioning the alleged victim who, I have to tell you, my observation, if I'm employing a reasonable analysis here of an objective, this lady's very evasive with her. I think she's evasive with her. She did admit to her, though, she was afraid that he was going to hit her, which gives her opportunity to stay and keep asking questions. I think she was evasive.

Somebody else there? They were having a fight, but he's gone. Under these circumstances, I'm not sure I would have believed that. I find it perfectly reasonable that Officer Constantine goes back to see, make sure nobody else is going on, especially after Mr. Bowie had been walking back there, down the hallway. Something's going on back there.

And again, we hear the children are there. We have possible domestic violence. We've got children in a home, in the middle of the night, at 2 o'clock in the morning, where people are screaming at each other. What a shame for those children. Perfectly reasonable for him to go and see if anybody else is in this apartment. Could these children be in danger?

It's perfectly reasonable to look behind a shower curtain in a bathroom. The standard is reasonableness under the totality of the circumstances. It's 2 o'clock in the morning, somebody calls 911 for help - we all know why you call 911, it's for help - then she hangs up, then she doesn't answer when they try to call back.

Then the officer hears screaming from outside the building; then the officer hears somebody hollering for help. What in the world was she supposed to do? What's she supposed to do? Ignore it and say, oh, somebody might have drugs in there and I might get in a jam. No. She's supposed to take care of the community, community caretaker function.

I have no difficulty finding, under the totality of the circumstances, that the behavior of both of the officers who testified today, the behavior was reasonable on both of their parts.

## **DISCUSSION**

### ***Parties' Contentions***

Mr. Bowie contends that the circuit court erred in denying his motion to suppress. He asserts that Officer Hamilton’s decision to enter the apartment “without a warrant and without knocking was unreasonable.” He further contends that, even if Officer Hamilton’s warrantless entry into the apartment was justified under one of the exceptions to the warrant requirement, those exceptions ceased to apply prior to the search of the bathroom. Mr. Bowie contends that the search of the bathroom was illegal for the additional reason that he was not under arrest at the time.

The State counters that the totality of the circumstances supported both the warrantless entry into the apartment and the subsequent “protective sweep” that led to the discovery of the drugs. Regarding the entry into the apartment, the State contends that the circumstances of the 911 call and Officer Hamilton’s observations of a woman screaming for help inside the apartment generated “an objectively reasonable belief in the need for immediate entry” without a warrant. The State further contends that those circumstances, when considered in conjunction with the additional circumstances observed by the officers upon entering the apartment, supported a reasonable belief that a cursory inspection of the home was warranted. Those additional circumstances, according to the State, included Mr. Bowie’s suspicious behavior upon Officer Hamilton’s entry into the apartment; Ms. Al-Haqq’s report that a male visitor had been at the apartment prior to her altercation with Mr. Bowie; and the fact that Ms. Al-Haqq’s minor children were in the back area of the apartment. Finally, the State argues that a cursory inspection of the type conducted by Officer Constantine does not require an arrest.



### *Standard of Review*

“Upon reviewing a suppression hearing court’s decision to grant or deny a motion to suppress, we limit ourselves to considering the record of the suppression hearing.” *Small v. State*, 464 Md. 68, 88 (2019). In so doing, “we view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party.” *Davis v. State*, 426 Md. 211, 219 (2012). “We accept the trial court’s factual findings unless they are clearly erroneous, but we review *de novo* the court’s application of the law to its findings of fact.” *Pacheco v. State*, 465 Md. 311, 319 (2019) (citations and quotations omitted). “When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.” *Id.* at 319-20 (citations and quotations omitted).

### *Analysis*

“The Fourth Amendment to the United States Constitution protects persons and places from unreasonable intrusions by the government.” *Wilson v. State*, 409 Md. 415, 427 (2009) (footnote omitted). “It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.” *Peters v. State*, 224 Md. App. 306, 325 (2015) (citing *Payton v. New York*, 445 U.S. 573, 586 (1980)). “Thus, in general a home may not be searched without a warrant notwithstanding probable cause.” *Olson v. State*, 208 Md. App. 309, 336 (2012) (citations and quotations omitted) (cleaned up).

There are, however, exceptions. “The leading exception to the warrant requirement for home invasions to execute a search or seizure is the presence of ‘exigent circumstances.’” *Id.* at 336. “‘Exigent circumstances’ are those in which ‘the police are confronted with an emergency - circumstances so imminent that they present an urgent and compelling need for police action.’” *McGurk v. State*, 201 Md. App. 23, 47 (2011) (citing *Paulino v. State*, 399 Md. 341, 351 (2007)). “Exigent circumstances include an emergency that requires immediate response; hot pursuit of a fleeing felon; and imminent destruction or removal of evidence.” *Id.* at 47-48 (citations and quotations omitted). “Because the exigent circumstances exception to the warrant requirement ‘is a narrow one, a heavy burden falls on the government to demonstrate exigent circumstances that overcome the presumptive unreasonableness of warrantless home entries.’” *Id.* at 47 (citing *Williams v. State*, 372 Md. 386, 402-03 (2002)) (cleaned up).

“Courts, including Maryland Courts, have also carved out an exception to the Fourth Amendment’s prohibition against warrantless searches based on the so-called community caretaking functions of police officers.” *Olson*, 208 Md. App. at 338-39 (citations and quotations omitted) (cleaned up). “Community caretaking is ‘an umbrella that encompasses at least three other doctrines:’ (1) the emergency aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the public welfare doctrine.” *Dehn Motor Sales, LLC v. Schultz*, 212 Md. App. 374, 390 (2013) (citing *Wilson*, 409 Md. at 430).

The emergency aid doctrine states that “law enforcement officers should be able to act without a warrant when they reasonably believe a person needs immediate attention.” *Wilson*, 409 Md. at 432. “The doctrine embraces an open-ended variety of police duties and obligations that are not directly involved with the investigation of a crime[.]” *Olson*, 208 Md. App. at 340 (citations and quotations omitted) (cleaned up). Those duties and obligations include, but are not limited to, entering a home “to respond to what appears to be a fight within [] or to check out an occupant’s hysterical telephone call to the police, screams in the dead of the night, or an inexplicably interrupted telephone call from the premises.” *State v. Alexander*, 124 Md. App. 258, 270 (1998) (citations omitted). Such an intrusion “is justified because the motivation for the intrusion is to preserve life rather than to search for evidence to be used in a criminal investigation.” *Dehn Motor Sales*, 212 Md. App. at 391 (citing *Strawberry v. State*, 343 Md. 720, 742-43 (1996)). As the United States Supreme Court has recognized, “the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” *Mincey v. Arizona*, 437 U.S. 385, 392 (1978).

Similarly, “the public welfare component of the community caretaking function of the police encompasses a non-investigative, non-criminal role to ensure the safety and welfare of our citizens[.]” *Wilson*, 409 Md. at 437 (citations and quotations omitted). “It may be invoked ‘[w]hen the police act to protect the public in a manner outside their normal law enforcement function.’” *Dehn Motor Sales*, 212 Md. App. at 391 (citing *Wilson*, 409

Md. at 435. “The emergency aid doctrine and the public welfare doctrine often overlap as both invoke the role officers in promoting and securing the safety of citizens.” *Id.*

“When the police cross a threshold not in their criminal investigatory capacity but as part of their community caretaking function, it is clear that the standard for assessing the Fourth Amendment propriety of such conduct is whether they possessed a reasonable basis for doing what they did.” *Alexander*, 124 Md. App. at 276-77 (footnote omitted). “Even when the person subjected to a Fourth Amendment intrusion is the actual target of the inquiry, if the purpose is not *per se* to discover evidence of a crime but is intended to serve some ‘special need beyond the investigative norm,’ what is constitutionally required is simply general reasonableness or articulable suspicion.” *Id.* at 278.

In *Wilson v. State*, a case in which an individual found lying in the street was detained by a police officer pursuant to the community caretaking doctrine, the Court of Appeals set forth the following test:

To enable a police officer to stop a citizen in order to investigate whether that person is in apparent peril, distress or in need of aid, the officer must have objective, specific articulable facts to support his or her concern. If the citizen is in need of aid, the officer may take reasonable and appropriate steps to provide assistance or to mitigate the peril. Once the officer is assured that the citizen is no longer in need of assistance, or that the peril has been mitigated, the officer’s caretaking function is complete and over. Further contact must be supported by a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement. The officer’s aid to the citizen must be reasonable. In assessing whether law enforcement’s actions were reasonable, we consider the availability, feasibility and effectiveness of alternatives to the type of intrusion effected by the officer.

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Just as an intrusion conducted pursuant to the community caretaking doctrine must be limited in scope to the extent necessary to carry out the caretaking function, so too must a seizure conducted to provide emergency aid. This does not mean that the method of intrusion must be the least intrusive one available, but the intrusion must be reasonably related in scope to the circumstances which justified the interference in the first place.

*Wilson*, 409 Md. at 439, 442 (internal citations, quotations, and footnote omitted).

Against that backdrop, we hold that Officer Hamilton acted reasonably in entering Ms. Al-Haqq’s apartment pursuant to the police’s community caretaking function. Officer Hamilton initially responded to the apartment after a woman called 911, informed the operator that there was an emergency at the apartment building, and then disconnected before the operator could get any more information. Prior to the caller disconnecting, a male voice could be heard stating, “Are you on the phone?” When the 911 operator tried to call back, no one answered. Shortly thereafter, Officer Hamilton arrived at the apartment building and heard screaming coming from Ms. Al-Haqq’s apartment. Specifically, Officer Hamilton heard “a female voice screaming out for help, sounding as though she was in immediate distress and danger” and a male voice screaming, “fuck you, bitch.” Based on those facts, Officer Hamilton reasonably believed that the woman inside of the apartment needed immediate attention. Thus, Officer Hamilton was justified in entering the apartment without a warrant.

That said, we hold that the subsequent search of the apartment, which led to the discovery of the drugs, was unreasonable and thus violated the Fourth Amendment. As stated, Officer Hamilton was justified in entering Ms. Al-Haqq’s apartment because she reasonably believed that a woman inside of the apartment was the victim of an assault and

needed immediate attention. Officer Hamilton soon discovered, however, that Ms. Al-Haqq was not in peril and that she had not been assaulted. Officer Hamilton also learned that the source of the dispute, Ms. Al-Haqq’s male friend, was no longer in the apartment. Therefore, once Officer Hamilton removed Mr. Bowie from the apartment, which she did prior to the search, the officer’s caretaking function was “complete and over,” and any subsequent intrusion, including Officer Constantine’s search of the bathroom, required “a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement.” None of those additional factors were present here.<sup>1</sup>

Officer Constantine’s “search” of the apartment was not wholly unjustified. Based on the totality of the circumstances, Officer Hamilton may have harbored valid concerns for the safety of the children. That concern would arguably justify her checking on the children in the bedroom. However, when she found the children asleep and safe, any further community caretaking concerns ended.

In sum, Officer Constantine’s search pursuant to his community caretaker function was unreasonable, as it was not “reasonably related in scope to the circumstances which justified the interference in the first place.” Accordingly, the circuit court erred in denying Mr. Bowie’s motion to suppress.

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<sup>1</sup> We note that the State did not argue at the suppression hearing that there was reasonable articulable suspicion to justify a protective sweep, nor did the State put on evidence to support such an argument. Consequently, the issue is not before us.

**JUDGMENT OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY REVERSED;  
COSTS TO BE PAID BY FREDERICK  
COUNTY.**