

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1212

September Term, 2008

---

DWAYNE EDMONDS

v.

STATE OF MARYLAND

---

Eyler, Deborah S.,  
Matricciani,  
Rodowsky, Lawrence F.,  
(Retired, Specially Assigned),

JJ.

---

Opinion by Matricciani, J.

---

Filed: April 2, 2010

A jury sitting in the Circuit Court for Baltimore City convicted Appellant, Dwayne Edmonds, of distribution of cocaine, possession with intent to distribute cocaine, and possession of cocaine. The sentencing court imposed a 20-year term of incarceration, all but seven years suspended, and five years supervised probation upon release, for the distribution conviction; imposed the same sentence, to run concurrently, for the possession with intent to distribute conviction; and imposed a concurrent four year term of incarceration for simple possession.

Appellant presents three questions for our review:

1. Did the suppression court err in denying the motion to suppress?
2. Did the trial court abuse its discretion in allowing Appellant to be impeached with a prior conviction for distribution of a controlled dangerous substance, when Appellant was on trial for distribution of a controlled dangerous substance?
3. Did the trial court err in failing to merge the conviction for possession with intent to distribute into the conviction for distribution and the conviction for possession of a controlled dangerous substance into the conviction for possession with intent to distribute?

For the reasons which follow, we shall answer “yes” to question one and, therefore, reverse the judgments and remand the case to the circuit court for a new trial.<sup>1</sup>

---

<sup>1</sup> As to question 2, at sentencing, the prosecutor advised the court that, although it had impeached Appellant at trial with a prior distribution conviction (and admitted a true test copy of that conviction at trial), Appellant in fact had been previously convicted of conspiracy to distribute drugs. As such, there is no need for us to address question 2 for guidance purposes in the event of a retrial.

As to question 3, the State concedes in its appellate brief that, because all of the  
(continued...)

## MOTION TO SUPPRESS

At a suppression hearing held on June 25, 2008, Lieutenant Darryl DeSousa, a 20-year veteran of the Baltimore City Police Department, was accepted as an expert in the “field of narcotics identification, packaging and street level distribution, as well as in the drug trade in Baltimore City.” Lieutenant DeSousa, the State’s sole witness at the hearing, testified that on the afternoon of August 7, 2007, he and other officers were working a drug “initiative” which involved “undercover [officers] making [drug] buys within the southeast district.” Lieutenant DeSousa explained that pursuant to this initiative, which lasted several weeks, undercover agents would purchase drugs on the street and then radio a description of the seller and his location to a nearby “identification team.” The identification team would then immediately respond to the area, detain the suspect in order to obtain his or her identity, and recover any “buy money” or narcotics in their possession. The suspect, and any items seized, would also be photographed. The suspect, however, would not be arrested at that time. Rather, after the undercover operation ended, all the cases would be presented to the grand jury and if indictments rendered, all the suspects would be arrested in a single swoop.

Lieutenant DeSousa defined “buy money” as currency, obtained from the Police Department, which is recorded by serial number and photocopied, and used by the undercover officers to make drug buys. The identification team uses the photocopy of the

---

<sup>1</sup>(...continued)

offenses stemmed from the same transaction, the lesser convictions should have merged and Appellant should have been sentenced on the single count of distribution of cocaine.

buy money to determine whether money in a particular suspect's possession is "buy money."

At approximately 3:15p.m. on August 7, 2007, undercover officers Agent Charles Manners and Officer Carter-Watson went to the area of Port and Fayette Streets to make an undercover drug purchase. The undercover officers, who were on foot, were "wired" and in "constant communication" with the identification team, which included Lieutenant DeSousa. The undercover officers made a "controlled purchase" from Appellant at the corner of Port and Fayette Streets. Lieutenant DeSousa testified that, after the purchase, the undercover officers provided the identification team with Appellant's description and "within minutes when we pulled into the 200 block of Port Street I saw that Mr. Edmonds had walked into a dwelling which was later identified as 231 North Port." Lieutenant DeSousa and Officer Tremel Sanhaja, another member of the identification team that afternoon, then approached the dwelling and knocked on the door. Although in plain clothes, Lieutenant DeSousa testified that he was wearing "a vest that says police on it" and to which his badge was affixed, making it obvious that he was a police officer. Neither Lieutenant DeSousa nor Officer Sanhaja had their guns drawn or "yelled anything" when they knocked on the door. Appellant opened the door in response to the knock. Lieutenant DeSousa's testimony continued as follows:

[PROSECUTOR]: When [Appellant] opened the door, what did you say to him, what, if anything did you say to him?

DESOUSA: I told him I was here for the purpose of a robbery investigation.

[PROSECUTOR]: What was your tone of voice like?

DESOUSA: Like it is now the usual.

[PROSECUTOR]: And why did you tell him that?

DESOUSA: To safeguard the investigation and to protect the undercovers. I didn't want to tell him that he just, you know, he just sold drugs to an undercover cop, so I told him that we were here for the purpose of a robbery investigation, just to protect the integrity of the entire case because we were still going to make buys in that area that day and at least for a couple of days after that.

THE COURT: And you were not there for the purposes of robbery investigation?

DESOUSA: No, I was not.

\* \* \*

[PROSECUTOR]: And what did [Appellant] say to you when you told him that?

DESOUSA: He didn't say anything. Then I said to him that in reference to the robbery investigation money was taken from a victim and I asked him, do you have any money on you, and his comments he stated to me that no, my money is there on the table and he pointed to a table that was in the, I guess like a living room area, a kitchen area, and there was an amount of money that was on the table.

[PROSECUTOR]: Could you see the table from where you were standing?

DESOUSA: Yes.

THE COURT: And were you in the doorway of the house [?]

DESOUSA: Yeah, I was standing right outside the doorway.

\* \* \*

[PROSECUTOR]: Now, what happened after [Appellant] told you that his money was on the table?

DESOUSA: I walked over and took control of it.

[PROSECUTOR]: Did [Appellant] tell you not to come into the house?

DESOUSA: No.

THE COURT: Did he invite you in?

[APPELLANT]: No.

DESOUSA: No.

THE COURT: So he pointed to it and you just went in.

DESOUSA: Yes.

Lieutenant DeSousa testified that neither he nor Officer Sanhadja had their guns drawn when they entered the house or made any threatening statements to Appellant. When asked by the prosecutor whether the money was “in plain view” such that he could see it from the door, Lieutenant DeSousa replied “yes it was.” He admitted, however, that although he could plainly see a “stack” of money from where he stood outside the doorway, he could not determine whether it included any of the previously recorded buy money. Once inside the house, the officers seized the money and, at that point, determined that it comprised \$180, including a twenty dollar bill that was part of that day’s buy money.

When asked by the prosecutor whether Appellant ever told the officers to leave the house, Lieutenant DeSousa replied “no.” The court also questioned Lieutenant DeSousa

about his entry into the house:

THE COURT: I am assuming, and this is - - there was no warrant in this case, either arrest warrant or search warrant?

DESOUSA: No.

THE COURT: In your mind, what gave you the right to go in the house?

DESOUSA: Well, the money was in plain sight.

THE COURT: That you thought was drug, you know, evidence of the crime and you went in and got it.

DESOUSA: Yeah.

Lieutenant DeSousa testified that Appellant was not arrested that day because the undercover drug operation was still on-going and the intention was to arrest all the suspects at the same time once the grand jury had reviewed the cases and issued indictments. When asked whether “throughout the events on August 7<sup>th</sup> dealing with [Appellant], did you have the intention of eventually charging him with distribution,” Lieutenant DeSousa replied “yes.”

On cross-examination, Lieutenant DeSousa admitted that he did not witness Appellant selling drugs to the undercover officer. When asked whether, when approaching the residence, there was an “emergency existing,” Lieutenant DeSousa testified: “I was trying to recover evidence as it pertains to the crime . . . [a]s quickly as I could . . . [w]ithout it being destroyed.” When asked whether Appellant knew the police were coming to the house, Lieutenant DeSousa replied: “It was probably a complete surprise to him.” Lieutenant

DeSousa admitted that the police “would have had the opportunity” to surround the house and “secure the back.” He further stated: “I don’t believe [Appellant] knew what was going on.” When defense counsel suggested that the police had time to get a warrant, Lieutenant DeSousa simply replied: “Not necessarily.”

With regard to the seizure of the money, defense counsel asked: “And at no time did [Appellant] give you permission to take his money, correct.” Lieutenant DeSousa responded: “No, he didn’t give his permission, no.”

On re-direct, Lieutenant DeSousa clarified his reasons for seizing the money:

[PROSECUTOR]: Lieutenant DeSousa, based on what you had - - were told from Agent Manners, did you have reason to believe that a felony was committed by [Appellant]?

DESOUSA: Yes.

[PROSECUTOR]: And twenty years as a police officer, sergeant, and now lieutenant, in that time had you had instances where money or other evidence was destroyed?

DESOUSA: Yes, ma’am.

[PROSECUTOR]: And money in particular, in your experience has there been an occasion where money is - - with seconds disappears?

DESOUSA: Yes, ma’am.

\* \* \*

[PROSECUTOR]: Did you have reason to believe that the money that was on the table was drug proceeds?

DESOUSA: Yes, ma’am.

[PROSECUTOR]: Is that the reason why you seized the money?

DESOUSA: Yes, ma'am.

[PROSECUTOR]: And how is it that you knew or thought that that was drug proceeds?

DESOUSA: Well, Agent Manners gave us a description of Mr. Edmonds. Mr. Edmonds was seen in the block by myself. Mr. Edmonds walked into the house. I knew that Mr. Edmonds had sold narcotics.

\* \* \*

DESOUSA: Based on the description that Agent Manners gave us we knew that Mr. Edmonds had sold drugs to Agent Manners. We knocked on the door. We knew that we could have arrested Mr. Edmonds at the time. We - - I asked - -

THE COURT: You were not going to do that by design, and you knew that at that time, right?

DESOUSA: Yes, your Honor.

Defense counsel moved to suppress the money seized at Appellant's residence, as well as the "identification information" obtained ("name and address and all of that information") and a photo that was taken of Appellant while the officers were at the house.<sup>2</sup> The suppression court engaged in a discussion with counsel making it clear that it did not believe that Appellant had consented to the search of the residence. Relying on this Court's opinion

---

<sup>2</sup> At the suppression hearing, Lieutenant DeSousa did not testify specifically that Appellant was photographed, although he testified generally that photographing a suspect was part of the protocol of this initiative. At trial, however, Lieutenant DeSousa testified that a polaroid photograph was taken of Appellant at the time the money was seized.

in *Gorman v. State*, 168 Md. App. 412 (2006), the court, nonetheless, denied Appellant's motion to suppress, finding that exigent circumstances justified the warrantless search. The court explained:

[Y]ou always need a warrant to go in the house unless there's a consent and then [the Court of Special Appeals in *Gorman*] say the exception to the requirement for exigent circumstances is narrow and it says exigent circumstances include an emergency that requires immediate response, hot pursuit of a fleeing felon, and imminent destruction or removal of evidence and that's exactly what we have here.

\* \* \*

Certain factors must be considered in the determination of whether exigent circumstances are present. The gravity of the underlying offense - - well it's drug distribution. It's a serious matter, the risk of danger to the police and the community, the ready destructibility of the evidence, and the reasonable belief that the contraband was - - well it's not contraband here, maybe it is. I don't know if it's money. It's not drugs obviously, is about to be removed.

Also relevant is the opportunity of the police to have obtained a warrant. It would seem to me, and I know you can make the argument that, you know, they could have done - - they could have arrested him at the doorway and they could have done that, but when the officer sees the money and he has real good reason to believe this young man is selling drugs, the fact that that money could be destroyed or spent or given away or given in change for the next transaction I think is very strong and it's sitting right there.

So I think the State comes under the exigent circumstances in *Gorman*.

\* \* \*

The part that bothers me a little bit . . . this very honest lieutenant did say in response to my question that he probably wouldn't have noticed the money without the defendant saying my money is on the table, and he said that in response to the question do you have any money on you as part of the robbery. So it was pretext.

\* \* \*

I don't see how I get around *Gorman*.

\* \* \*

I'm saying on the day of the crime. They could have arrested him - - and they could have arrested him. They could have taken his photograph and gotten his booking information. They choose not to [to] protect the investigation, right?

So I think clearly they could have arrested him here. So I'm going to deny the motion to suppress as to - - as I understand it as to the photograph taken [of] him, as to biographical data or identification information obtained from him and as to the dollar bills.

## **DISCUSSION**

### **I.**

#### **Motion to Suppress**

Appellant contends that “there was no consent and there were no exigent circumstances to justify the police officers warrantless entry into Appellant’s home [and] for this reason, the suppression court erred in denying Appellant’s motion to suppress.” Appellant points out that Lieutenant DeSousa testified that Appellant did not invite him into the house and that Appellant was “probably surprised by the arrival of police officers at his front door.” He claims that “there was ample time for Lieutenant DeSousa, or another police officer, to obtain a warrant.” Appellant also asserts that, *if* they existed, any “exigent circumstances” were created by the police when Lieutenant DeSousa knocked on Appellant’s door and alerted him to the police presence and to their search for money. Appellant relies

on *Dunnuck v. State*, 367 Md. 198 (2001), for the proposition that a warrantless search cannot be justified by exigent circumstances created by the police.

The State counters that the suppression court properly concluded that exigent circumstances existed in this case to justify the warrantless entry. The State points to the testimony of Lieutenant DeSousa that he seized the money because he “was trying to recover evidence as it pertains to the crime . . . as quickly as I could . . . [w]ithout it being destroyed.”

The State also points to the suppression court’s findings that drug distribution is a “serious matter, the risk of danger to the police and the community, the ready destructibility of the evidence, and the reasonable belief that the contraband . . . is about to be removed.” The State further notes that the suppression court “also found that the police did not have an opportunity to get a warrant because the evidence could have been ‘destroyed or spent or given away in the next transaction.’” The State does not argue that Appellant consented to the warrantless entry into the house, that the police were in hot pursuit of a fleeing felon, or that the evidence was permissibly seized incident to a lawful arrest.

### ***Standard of Review***

When we review a trial court’s ruling on a motion to suppress, we look only to the record of the suppression hearing. *Owens v. State*, 399 Md. 388, 403 (2007). “Thus, we refrain from engaging in *de novo* fact-finding and looking at the trial record for supplemental information.” *Paulino v. State*, 399 Md. 341, 348 (2007) (quoting *Carter v. State*, 367 Md. 447, 457 (2002)), *cert. denied*, 552 U.S. 1071, 128 S.Ct. 709 (2007). “We extend great

deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous.” *Brown v. State*, 397 Md. 89, 98 (2007). In addition, “we view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion . . . .” *Owens*, 399 Md. at 403 (quoting *State v. Rucker*, 374 Md. 199, 207 (2003)). “Nevertheless, in resolving the ultimate question of whether [a] detention and attendant search of an individual’s person or property violates the Fourth Amendment, we ‘make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.’” *Crosby v. State*, 408 Md. 490, 505 (2009) (quoting *Williams v. State*, 401 Md. 676, 678 (2007)).

### ***The Fourth Amendment & Exigent Circumstances***

The Fourth Amendment to the U.S. Constitution, applicable to the states through the Fourteenth Amendment, protects “[t]he right of people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures . . . .” U.S. CONST. amend. IV. “The Fourth Amendment, however, is not ‘a guarantee against *all* searches and seizures, but only against unreasonable searches and seizures.’” *Williamson v. State*, 398 Md. 489, 501-02 (2007) (quoting *United States v. Sharpe*, 470 U.S. 675, 682 (1985)) (emphasis in the original). Unless there is consent to enter, however, “‘searches and seizures inside a home without a warrant are presumptively unreasonable.’” *Payton v. New York*, 445 U.S. 573, 586 (1980).

The Supreme Court has made it clear that “the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Id.* at 590. That is so because “the ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.’” *Id.* at 585-86 (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)). The Fourth Amendment protections against intrusions into one’s home “apply equally to seizures of property and to seizures of persons.” *Id.*

As 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.” *Williams v. State*, 372 Md. 386, 402-03 (2002) (citations omitted). “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.” *Paulino v. State*, 399 Md. 341, 351 (2007) (quoting *Stackhouse v. State*, 298 Md. 203, 219-20 (1983)). “Exigent circumstances include ‘an emergency that requires immediate response; hot pursuit of a fleeing felon; and imminent destruction or removal of evidence.’” *Gorman, supra*, 168 Md. App. at 422 (quoting *Bellamy v. State*, 111 Md. App. 529, 534, *cert. denied*, 344 Md. 116 (1996)).

In other words, “[e]xigent circumstances exist 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.” *Williams*, 372 Md. at 402.

Stated still differently, “whenever a ‘compelling need for official action and no time to secure a warrant’ converge, exigent circumstances exist.” *Dunnuck, supra*, 367 Md. at 205.

In an exigent circumstances analysis we consider “the gravity of the underlying offense, the risk of danger to police and the community, the ready destructibility of the evidence, and the reasonable belief that contraband is about to be removed.” *Williams*, 372 Md. at 403 (citations omitted). Those factors, of course, must be considered in light of the opportunity for the police to obtain a warrant. *Dunnuck*, 367 Md. at 205-06 (citations omitted).

“When,” as in the case *sub judice*, “the threatened emergency is the destruction of evidence, the government must show that the police, at the time of the entry, had a reasonable basis for concluding that the destruction of evidence was imminent.” *Williams*, 372 Md. at 403-04 (citations omitted). The Court of Appeals in *Williams* elaborated:

The circumstances ‘must present a specific threat to known evidence.’ The police must reasonably believe that there was an immediate, urgent and compelling need for police action. The need must be ‘immediate and compelling’ and not justified by ‘an inference about a future possibility.’

*Id.* at 404 (citations omitted).

Moreover, “to satisfy its heavy burden, the State must demonstrate ‘specific and articulable facts to justify the finding of exigent circumstances.’” *Id.* at 407 (quoting *United States v. Shephard*, 21 F.3d 933, 938 (9<sup>th</sup> Cir. 1994)). We consider the facts as they appeared to the police officers at the time of the warrantless entry. *Id.* at 403. The State’s burden “may not be satisfied ‘by leading a court to speculate about what may or might have been the

circumstances.” *Id.* at 407 (quoting *United States v. Driver*, 776 F.2d 807, 810 (9<sup>th</sup> Cir. 1985)).

In *Williams* the Court of Appeals acknowledged that “in a given case, there may be sufficient exigency to justify a warrantless entry by police officers into a home.” *Id.* at 408. The Court cautioned however, that “[i]n establishing exigency [] *it is not enough to show that probable cause exists to believe that contraband is contained within.*” *Id.* (emphasis added). “In addition,” the Court emphasized, “the State must demonstrate that the destruction or removal of that evidence was imminent.” *Id.*<sup>3</sup>

The Appellant relies on *Dunnuck, supra*, for the proposition that the police cannot create an exigency to justify a warrantless entry into a home. In that case, the police observed what they believed to be a marijuana plant in a birdcage sitting in the window of a residence. 367 Md. at 209. After knocking on the door and receiving no response, the officers parked a short distance away and called for back-up units. *Id.* at 209-10. About an hour later, Ms. Dunnuck arrived home. *Id.* Thereafter, the officers approached the house, knocked on the door, and identified themselves as “Queen Anne’s County Drug Task Force.” *Id.* at 210-11. Ms. Dunnuck failed to immediately open the door and the officers observed

---

<sup>3</sup> The Court of Appeals in *Williams v. State*, 372 Md. 386 (2002) held that a warrantless entry into a suspect’s motel room was not justified by exigent circumstances where the police, while another officer applied for a search and seizure warrant based on probable cause that the suspect was distributing illegal drugs, knocked on the suspect’s door and entered the room when the suspect opened the curtain, but not the door, and the police heard him “running away from the door.” *Id.* at 395; 408. The Court stated that “[t]he mere possibility or suspicion that a person might destroy evidence does not create an exigency.” *Id.* at 408.

the birdcage “shaking back and forth.” *Id.* at 211. Believing that the marijuana plants were about to be destroyed, the police kicked the door and gained entry. *Id.* Their search of the house resulted in the seizure of marijuana plants and paraphernalia used to grow them. *Id.*

The trial court denied Ms. Dunnuck’s motion to suppress the evidence, finding that the police had probable cause to believe that a crime was being committed and had a reasonable belief that evidence was being destroyed. *Id.* at 211-13. Although agreeing that the police had probable cause that a crime was being committed in their presence, the Court of Appeals held that the trial court erred in denying the motion to suppress as there were no exigent circumstances to justify the warrantless entry into the house. *Id.* at 213. The Court noted that the police could have obtained a search and seizure warrant after they first became aware of the marijuana plants, as there was no indication at that time that the evidence was in danger of being destroyed or removed. *Id.* The Court further noted that Ms. Dunnuck became aware of the police presence, and their investigation of her, only when the officers knocked on the door and identified their affiliation with the Drug Task Force. *Id.* at 214. It was the police, therefore, who “created the exigency that they rely upon to justify the warrantless entry into the petitioner’s house and to excuse their failure to obtain a search warrant.” *Id.* at 215.

### ***The Present Case***

Applying the principles set forth above to the facts adduced at the suppression hearing in this case, we are not persuaded that the State met its burden of establishing that exigent

circumstances existed to justify the warrantless entry into Appellant's house. We hold, therefore, that the suppression court erred in denying Appellant's motion to suppress the evidence recovered therein. We explain.

Lieutenant DeSousa testified that he knocked on Appellant's door seeking to recover evidence "as quickly as I could . . . . [w]ithout it being destroyed." The record is devoid of *any* reason, much less "specific and articulable facts," as to why he believed the evidence was in imminent danger of destruction or removal. In fact, according to Lieutenant DeSousa, the police presence at the door "was probably a complete surprise to [Appellant]." As we have seen, Lieutenant DeSousa further testified: "I don't believe he knew what was going on."

In denying the motion to suppress, the suppression court noted "the fact that that money *could* be destroyed or spent or given away or given in change for the next transaction I think is very strong . . . ." (emphasis added) That conclusion, however, appears to have been based, not on facts articulated by Lieutenant DeSousa, but rather on what the court surmised "could" have happened to the money. Speculation "about what may or might have been the circumstances[,]" however, is not sufficient to establish an exigency. *Williams, supra*, 372 Md. at 407. In other words, the mere *possibility* that the money could have been spent or given as change in another drug transaction, does not rise to the level of "a specific threat to known evidence" which would create "an immediate, urgent and compelling need for police action." *Id.* at 403-04.

To be sure, as the suppression court found, Appellant committed a serious crime and probable cause existed to arrest him. Lieutenant DeSousa, however, testified that, although he fully intended to charge Appellant with distribution of a controlled dangerous substance, he had no intention of arresting Appellant *that* day, as he did not want to compromise the integrity of the undercover drug operation. The record of the suppression court establishes that Appellant came to the door of the house in response to the knock by the police. There is no indication whatsoever that Appellant stepped through the doorway and came outside. It is well-settled that, although an arrest may be made based on probable cause without the necessity of first obtaining an arrest warrant, the police cannot enter a home to effectuate a warrantless arrest absent consent or *both* probable cause and exigent circumstances. *Id.* at 402 (“absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment”) (citing *Payton, supra*, 445 U.S. at 583-90).<sup>4</sup>

The record is also devoid of any evidence as to the time it would have taken to get a warrant. When defense counsel suggested that the police had time to get a warrant, Lieutenant DeSousa merely replied: “Not necessarily.” He did not elaborate. Lieutenant DeSousa also admitted that the opportunity to “surround the house” and “secure the back” existed.

---

<sup>4</sup> Although Appellant testified *at trial* that, at the request of the officers who knocked on the door, he stepped outside the house, when reviewing a trial court’s ruling on a motion to suppress we look only to the record of the suppression hearing. *Owens v. State*, 399 Md. 388, 403 (2007). Moreover, even if the police had arrested Appellant outside the house, it is undisputed that the buy money evidence was not on Appellant’s person but inside the house.

Finally, we take cognizance of the fact that the pre-recorded buy money evidence at issue in this case was not the type of contraband that could readily cause danger to the police or the community, such as an illegal weapon, if the police delayed its recovery by first seeking a warrant. Money is facially benign and, when unaware that it is marked by the police, not the type of evidence a criminal would be in a hurry to dispose of. Moreover, the buy money was not the only evidence linking Appellant to the crime.

Rather than breach the entrance to Appellant's home, the police here had several other options. They could have applied for a search and seizure warrant while keeping the house under surveillance. They could have waited for Appellant to come outside to a public place and promptly searched him incident to an arrest.<sup>5</sup> Or, while still standing outside the doorway of the house and in furtherance of their "robbery investigation," they could have asked Appellant for his consent to examine his money.

The suppression court's reliance on *Gorman, supra*, is misplaced as that case is factually distinct from the present case. In *Gorman* a police officer accompanied a potential witness to a shooting to her apartment, which she shared with the shooting victim and his brother, so that she could retrieve her shoes. 168 Md. App. at 416-17. Upon their arrival at the apartment, the woman knocked on the door after her jingling of the handle indicated it

---

<sup>5</sup> For a discussion regarding the validity of a warrantless search and seizure outside the confines of a contemporaneous custodial arrest, such as in a "buy-walk"/undercover drug operation like the one we have here, see *State v. Evans*, 352 Md. 496 (1999), *cert. denied*, 528 U.S. 833 (1999). See also *Belote v. State*, 411 Md. 104 (2009). Both *Evans* and *Belote* are distinguishable from the present case, however, as those cases addressed a warrantless search of drug suspects in public places, not within the sanctity of their homes.

was locked. *Id.* at 417. A man in the apartment asked the woman to identify herself, and a minute or so later her roommate, Curtis Painter, opened the door. *Id.* Painter appeared to the officer to be very nervous and the officer “smelled the odor of burnt marijuana emanating from the apartment.” *Id.* The police officer began questioning Painter and when he asked him about his nervousness, Painter replied that he had two bags of weed. *Id.* at 418. The officer then entered the apartment, having followed the woman in, and arrested Painter. *Id.*

While walking through the apartment to “secure” it for “officer safety reasons” and because “if you don’t secure [it] evidence could be destroyed,” *id.* at 419, the officer noticed a chair, facing backwards, in an open closet. *Id.* Upon closer inspection, the officer observed that inside the closet “there was an attic that was open and there was the butt of a handgun on the ledge of the attic.” *Id.* Based on those observations, the police obtained a search warrant, pursuant to which they searched the apartment and “seized cocaine, various firearms, walkie-talkie radios, digital scales, and assorted drug paraphernalia . . . most of which were found in the closet.” *Id.* Based on this seizure of goods, Christopher Gorman, the shooting victim and other resident of the apartment, was indicted on various narcotics and firearm possession offenses. *Id.*

Gorman moved to suppress the items seized in his apartment, arguing that the officer “never had legal authority to enter the apartment in the first place” and, therefore, the discovery of the seized items was the fruit of the poisonous tree. *Id.* The suppression court denied the motion, finding that the officer had probable cause to enter the apartment after

smelling burnt marijuana and observing Painter and “the fact that it was a substance that could be so easily disposed of . . . [and] there was exigency . . . .” *Id.* at 420.

On appeal, Gorman argued that the suppression court erred in denying his motion to suppress, claiming that there were no exigent circumstances to justify the initial warrantless entry into his apartment. *Id.* at 423. We disagreed and affirmed the suppression court. In finding that an exigency existed, we noted two significant facts: (1) the officer arrived at the apartment for a “legitimate and uncontrived reason,” and thus did not create the exigency himself; and (2) Painter became aware of the officer’s presence and the likelihood that the officer smelled the burnt marijuana. *Id.* at 429. Under these circumstances, we determined that the officer had no time to obtain a search warrant because, even if the officer could have detained Painter, the officer did not know whether there were other people in the apartment who might destroy any marijuana if he left to get a warrant. *Id.*

In so ruling, we distinguished *Gorman* from those cases where the police learned about the crime “while outside the premises (as opposed to while standing at an open door), and/or the residents were unaware of the police presence or detection of the drugs.” *Id.* at 430. We noted that the police would generally have time to obtain a warrant in those situations, *id.*, which is *precisely* the situation here. The police became aware that Appellant committed the crime while they were outside his house and, according to Lieutenant DeSousa’s own testimony, Appellant was not aware that he had sold drugs to the police nor

was he aware of police presence in the neighborhood until Lieutenant DeSousa knocked on his door.

## **II.**

### **Harmless Error**

The State contends that if the suppression court erred, the error was harmless in this instance. We pause to recall that at the suppression hearing, defense counsel moved to suppress the buy-money seized at the house, Appellant's "identification information" ("name and address and all of that information"), and a polaroid photograph taken of Appellant. We also pause to review pertinent testimony elicited at trial.

### ***Trial Testimony***

At trial, Lieutenant DeSousa testified that on August 7, 2007, he was supervising an undercover drug operation in the southeast district of Baltimore City that he initiated because of "numerous complaints . . . of heavy drug activity along with the violence associated with it." Lieutenant DeSousa formed a "buy walk" detail, which he described as follows:

The buy walk is when you have an undercover officer, hopefully several, that you use to go a specific area based on complaints that we get from the citizens of Baltimore or a specific area due to the violence and we send the undercover officers into that location to make a buy from suspects on the streets. Once they make the buy the walk part comes in is they literally just walk away and members like myself that is called like the arrest team or the identification team just merely comes into the area to the person that the undercover made the buy to and the officers just identify the person, they don't

arrest them. In comparison to the buy bust when the undercover officer makes the buy and as soon as he leaves the area we come in and just arrest the person right on the scene.

Lieutenant DeSousa testified that a “buy walk” is generally more effective in combating the drug trade than a “buy bust” because it is designed “to take down a whole drug network at one time or the people involved in drug activity at one time.” He explained:

[With a buy bust] you can go and make a lock up. You can arrest a suspect for drugs one day and it’s so easy for someone else to replace him. If you make X amount of these buy[] [walks] in a thirty day period you get twenty to forty suspects and you go back in on an assigned day after you get the indictment warrants, you go back in at one time, you arrest all of them at one time, it really wipes out the whole drug organization at one time. In theory it does.

On August 7, 2007, Agent Charles Manners, a ten-year veteran of the Baltimore Police Department, was working undercover, making drug buys as part of Lieutenant DeSousa’s buy walk detail. Agent Manners testified that he had \$40 in “buy money,” a twenty dollar bill with the serial number EG37294 and two ten dollar bills. Agent Manner was dressed in plain clothes and “wired” so that he could communicate with the identification team. About 3:15p.m., he walked northbound on North Port Street (near its intersection with Fayette Street) where he observed a “male wearing a white tank top, black shorts . . . sitting on the steps on the east side of the street.” At trial, Agent Manners identified the male as Appellant. Agent Manners testified that after making eye contact with Appellant, Appellant made an “overhand waving” motion, which indicated to him that Appellant was “selling illegal narcotics.” Agent Manners testified that when he approached

Appellant, Appellant said: “how many do you want[?]” When Agent Manners replied “two,” Appellant “reached into his right pants pocket and brought out a sandwich bag, a clear sandwich bag that clearly had numerous smaller ziplock bags reddish in color.” Appellant handed Agent Manners two ziplock bags containing what Agent Manners “believed to be cocaine” and in return Agent Manners gave Appellant a twenty dollar bill from the previously recorded buy money. A subsequent chemical analysis of the substance purchased by Agent Manners determined that it was, in fact, cocaine. After making the purchase, Agent Manners testified that he walked southbound on Port Street toward Fayette and at the same time transmitted Appellant’s description, “the only individual in that area,” to the identification team.

Lieutenant DeSousa testified that, within minutes after hearing from Agent Manners that the purchase had been made and receiving a description of the suspect and his location, he drove to the area and observed Appellant enter a residence at 213 North Port Street. After parking his vehicle, Lieutenant DeSousa, accompanied by Officer Tremel Sanhadja, knocked on the door of 213 North Port Street.

Lieutenant DeSousa’s trial testimony as to what happened next is essentially the same as his testimony at the suppression hearing. In sum, Lieutenant DeSousa testified that he told Appellant he was investigating a robbery in order not to compromise the undercover drug operation; he asked Appellant whether he had any money; Appellant pointed to a table inside the home, upon which Lieutenant DeSousa could see a “a roll of U.S. currency that was just

folded over”; and Lieutenant DeSousa and Officer Sanhadja then entered the premises and seized the money which included the twenty dollar buy money Agent Manners gave to Appellant in exchange for drugs.

Officer Dominic Barnes also arrived on the scene. Officer Barnes took a polaroid photograph of Appellant, which he then took to Agent Manners who “positively identified” the person in the photo as the person who had just sold him drugs. Officer Barnes took possession of the ziplock bags containing “rock substance” which Agent Manners had purchased from Appellant and after photographing it, he submitted it to Evidence Control.

Lieutenant DeSousa testified that the police did not have a search warrant and they did not search Appellant’s person or the premises. Appellant was not arrested that day, but rather several weeks later pursuant to an indictment issued by a grand jury sitting in the Circuit Court for Baltimore City.

Appellant took the stand in his own defense. His testimony on direct-examination included the following:

[DEFENSE COUNSEL]: Directing your attention to August the 7<sup>th</sup> of 2007 did you on that day give or sell drugs to Agent Manners, the officer that was just testifying a few minutes ago?

APPELLANT: No.

[DEFENSE COUNSEL]: Did Agent Manners give you that twenty dollar buy money?

\* \* \*

APPELLANT: No, sir.

[DEFENSE COUNSEL]: Did he give you any money at all?

APPELLANT: No, sir.

\* \* \*

[DEFENSE COUNSEL]: Now, sir, do you ever recall seeing Agent Manners on August 7<sup>th</sup> of 2007?

APPELLANT: Never seen him before in my life.

Appellant's testimony was in direct contrast to that of Agent Manners who testified at trial that he was "a hundred percent sure" that Appellant was the individual from whom he had purchased drugs on the afternoon of August 7, 2007.

Appellant's version of what happened when Lieutenant DeSousa and Officer Sanhadja knocked on the door also differed from the testimony given by the police. Appellant testified as follows:

When they came there they knocked on the door and my friend['s] baby's mother answered the door and they said they was looking for someone who just - - a suspect of a robbery and they said, they asked her was anyone in the house and she said yeah and they said can you bring him to the door. So I came to the door. When I came to the door they asked me to step outside. When I stepped outside they began to search me and they had nothing - - and I ain't have nothing on me. So they came back to her talking about they had a search warrant to get in her house. So they get in there, they supposed to be looking for a weapon. When they came in there, I don't know what happened but they came in. The went - - they supposed - - they had came back out like they had found some money. They say tell me whose money is it or everybody in the house will be arrested. That's when they brought me back in the house and they asked me whose money was it. I told them it was my money. That's when they took my picture . . . . They put me in handcuffs. They had me in

handcuffs already. They let me off my handcuff. They wrote me a receipt and told me come to the State's Attorney's Office tomorrow to pick my money back up if the witness - - I mean if the - - if the victim - - they told me to come back to the State's Attorney's Office if the victim don't pick me out of a photo lineup and I can get my money back.

Appellant admitted on cross-examination that he had been convicted of distribution of a controlled dangerous substance on May 15, 2007. The jury convicted Appellant of all charges: distribution of cocaine, possession with intent to distribute cocaine, and possession of cocaine.

Additional facts will be presented as necessary for a discussion of the issue.

### ***Discussion***

The State contends that, “[t]o the extent this Court finds that the motions court erred in granting the motion to suppress, such error was harmless in light of the other evidence presented that overwhelmingly demonstrates Edmonds guilt beyond a reasonable doubt.” The State points to the testimony of Agent Manners and Lieutenant DeSousa summarized above and asserts that “the admission of the recovery of the pre-recorded buy money would not have affected the verdict.” The State does not address the other items subject to the motion to suppress: the polaroid photograph taken of Appellant and his “identification information.”

In *Dorsey v. State*, 276 Md. 638, 659 (1976), the Court of Appeals adopted the following test for harmless error in criminal cases:

When an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to

declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed ‘harmless’ and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of - whether erroneously admitted or excluded - may have contributed to the rendition of the guilty verdict.

The standard announced in *Dorsey* “remains unchanged today.” *Washington v. State*, 406 Md. 642, 656 (2008). The Court of Appeals expounded on the application of the harmless error test in *Bellamy v. State*, 403 Md. 308, 332-33 (2008):

In performing a harmless error analysis, we are not to find facts or weigh evidence. Instead, ‘what evidence to believe, what weight to be given it, and what facts flow from that evidence are for the jury . . . to determine.’ ‘Once it has been determined that error was committed, reversal is required unless the error did not influence the verdict; the error is harmless only if it did not play any role in the jury’s verdict. The reviewing court must exclude that possibility beyond a reasonable doubt.’ ‘To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.’ The ‘harmless error rule . . . has been and should be carefully circumscribed.’ Harmless error review is the standard of review most favorable to the defendant short of an automatic reversal.

(Internal citations omitted.)

Here, the erroneous admission of the buy-money into evidence was significant as Appellant’s testimony at trial directly conflicted with that of both Agent Manners and Lieutenant DeSousa. To be sure, it was for the jury to assess the credibility of the witnesses and to determine the weight to be given to each. The buy-money evidence was significant as it was introduced to corroborate Agent Manners’ testimony that he purchased drugs from Appellant and its admission was prejudicial to Appellant.

Moreover, in both opening and closing statements the prosecutor referred to the buy-money. In her opening remarks, the prosecutor stated that Agent Manners would testify that, before going out on the street to make controlled buys, he recorded the serial numbers of the money he would use to make the purchases. She then stated that Agent Manners “will tell you that the twenty dollar bill that he handed to the defendant on that day had a certain serial number.” After explaining the role of the identification team, the prosecutor stated that “Lieutenant DeSousa walked in, grabbed the money and what did he find? He found the twenty dollar bill that Agent Manners had handed moments earlier to the defendant.”

Likewise, in closing statements the prosecutor again highlighted the buy-money evidence when she stated:

First we have Agent Manners going into the block with the pre-recorded buy money that he showed you, this photocopy of it. He had on him the twenty dollar bill, . . . . He handed the defendant the twenty dollar bill. What did he get in exchange? The two ziplocks of cocaine.

\* \* \*

He distributed the two ziplocks of cocaine to Agent Manners for the twenty dollars pre-recorded buy money, serial number ending 248.

\* \* \*

Now let’s tie up the loose ends here, ladies and gentlemen. Let’s remember how we got the twenty dollars back. The arrest team who is waiting nearby is alerted of the description of the defendant . . . . They knocked on the door. He answered. They told him they were investigating a robbery. He pointed them to the money which they saw right there. They grabbed the money and what did they find in the money? The twenty dollars pre-recorded buy money with the serial number ending in 248. You heard the defendant testify. He said that was his money.

We cannot say beyond a reasonable doubt that the buy-money evidence did not influence, contribute to, or play any role in the jury's verdict. Accordingly, we hold that the suppression court's erroneous denial of the motion to suppress was not harmless and, therefore, reversal is mandated.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY REVERSED AND  
CASE REMANDED FOR A NEW TRIAL.**

**COSTS TO BE PAID BY APPELLEE.**