Circuit Court for Baltimore City
Case No. 118122005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 435

September Term, 2019

BAXTER MITCHELL

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: April 30, 2020

Baxter Mitchell, appellant, was arrested and charged with multiple gun-related offenses after several firearms were discovered in the trunk of a vehicle owned by another individual. Prior to trial, appellant moved to suppress the evidence seized from the trunk. That motion was denied on the grounds that appellant lacked standing to challenge the search. A jury in the Circuit Court for Baltimore City ultimately convicted appellant of possession of a firearm by a disqualified person; wearing, carrying, or transporting a handgun in a vehicle; conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle; and illegal possession of ammunition. The court sentenced appellant to a total term of thirteen years' imprisonment, with all but six years suspended. In this appeal, appellant presents five questions for our review, which we have consolidated and rephrased as:

1. Was the evidence adduced at trial sufficient to support the convictions of wearing, carrying, or transporting a handgun in a vehicle and conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle, where the State presented no evidence that the vehicle had "traveled" while the handguns were inside the trunk?

2. Did the trial court commit plain error in instructing the jury on the crime of wearing, carrying, or transporting a handgun on the person, where that charge was not submitted to the jury for consideration?

3. Did the suppression court err in finding that appellant lacked standing to challenge the search of the vehicle?

4. Did the trial court err in admitting a recording of a telephone call appellant made from jail following his arrest?

We hold that appellant failed to preserve the first question for our review. As to the second question, we decline appellant's request for plain error review. For question three,

we hold that the suppression court did not err in finding that appellant lacked standing to challenge the search of the vehicle. Finally, we hold that the trial court did not err in admitting the recording of appellant's jail call. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

On April 1, 2018, retired Baltimore City Police Detective Kerry Councill was working with City Watch, a series of cameras operated by the Baltimore City Police Department, that were set up to monitor criminal activity in the city in real-time. While working that day, Detective Councill received information over the police radio that there were two armed men in the area of 400 East Baltimore Street. Upon manipulating a nearby City Watch camera to view that area, Detective Councill observed three individuals walk northbound toward 400 East Baltimore Street. The individuals then stopped at a parked vehicle, where one of the individuals, later identified as David Crowder, opened the vehicle's trunk and placed one or more firearms inside. Another individual, later identified as appellant, also placed one or more firearms inside the trunk. Mr. Crowder then closed the trunk, and the three individuals walked away together.

Following those events, Detective Councill contacted "officers on the street" to report his observations. Shortly thereafter, Baltimore City Police Detective David Burch responded to the scene and encountered Crowder, who was ultimately arrested at the scene. Detective Burch then investigated the vehicle where the two individuals were observed placing firearms. Upon searching the vehicle's trunk, Detective Burch recovered three firearms: a loaded Taurus PT2222 long rifle pistol; a loaded Smith & Wesson 9-millimeter

handgun; and a loaded Bryco Arms .25 caliber handgun. The officers did not apprehend appellant at that time.

A few days later, appellant was located and arrested. Appellant was ultimately charged with multiple offenses, including: possession of a firearm by a disqualified person; wearing, carrying, or transporting a handgun in a vehicle; wearing, carrying, or transporting a handgun on or about the person; conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle; conspiracy to commit the crime of wearing, carrying, or transporting a handgun on or about the person; and illegal possession of ammunition.

Motion to Suppress

Prior to trial, appellant moved to suppress the evidence seized from the vehicle's trunk, arguing that the search violated his Fourth Amendment rights. At the hearing on that motion, appellant testified that, on the night in question, he had stored "certain items" in a "lockbox" located in "Mr. Crowder's trunk." Appellant testified that he then went inside of a local club and that, when he exited the club sometime later, he observed that Mr. Crowder "needed an attorney." Appellant stated that he did not approach Mr. Crowder because the police told him "to stay back."

On cross-examination, the State played video footage from the City Watch cameras, which depicted appellant approaching Mr. Crowder's vehicle, placing something in the trunk, and then walking away. Appellant testified that he had not been in the vehicle prior to placing the item or items in the vehicle's trunk.

Baltimore City Police Detective Joshua Rutzen testified that he spoke with appellant on the day of his arrest and that the two talked about "the car that was found [on] April

2nd." According to Detective Rutzen, appellant claimed that "it wasn't his car' and that he "wasn't in the car."

The suppression court ultimately denied appellant's suppression motion, finding that appellant lacked standing to challenge the search:

> This is somebody else's car. [Appellant is] not in it. He doesn't have any kind of passenger relationship. He hasn't hailed and he doesn't -- it's not any kind of public transportation relationship. He has no interest in this whatsoever. It's a friend's car that -- and whether there was probable cause or not to open the trunk, that's somebody else's fight, not Mr. Mitchell's, and so I don't think -- I'm not persuaded that he has standing in this case.
>
> He didn't -- certainly didn't say anything when he had the opportunity to, according to his original testimony, and so given the lack of standing, we don't need to get into the Fourth Amendment issues.

Trial

At trial, retired Detective Councill testified as to his observations while working with City Watch on April 1, 2018. Detective Burch also testified about the events that night. During that testimony, the State played the video from the City Watch cameras, which depicted two individuals placing firearms in the trunk of a vehicle on the night in question. Detective Burch identified appellant as the second individual seen in the video "placing firearms in that vehicle." Detective Burch also testified that Mr. Crowder, the other individual seen placing firearms in the vehicle, was arrested at the scene.

At the conclusion of the evidence, defense counsel moved for judgment of acquittal as to the charge of wearing, carrying, or transporting a handgun in a vehicle. Defense counsel argued that the evidence was insufficient because the State had failed to establish that the vehicle in which the guns were found had been parked in a place used by the public.

The trial court denied the motion, finding that there was sufficient evidence for the jury "to determine that this was a vehicle on a public street."

Defense counsel also moved for judgment of acquittal as to the charge of conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle. Defense counsel argued that there was no evidence to show that appellant and Mr. Crowder had agreed "to carry a gun." The trial court denied the motion on the grounds that "a jury could determine that there was conspiracy to store their guns in the trunk of the car."

As stated above, appellant was ultimately convicted of possession of a firearm by a disqualified person; wearing, carrying, or transporting a handgun in a vehicle; conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle; and illegal possession of ammunition. Additional facts will be supplied below.

DISCUSSION

I.

Appellant first contends that the evidence was insufficient to sustain his convictions of wearing, carrying, or transporting a handgun in a vehicle and conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle. Appellant maintains that the crime of wearing, carrying, or transporting a handgun in a vehicle requires a showing that the vehicle was "traveling" on a road or parking lot generally used by the public.[1] Appellant contends that no juror could have reasonably concluded that the

[1] Md. Code (2002, 2012 Repl. Vol., 2019 Supp.), § 4-203(a)(1)(ii) of the Criminal Law Article states, in pertinent part, that "a person may not . . . wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State[.]"

"traveling" requirement was satisfied because there was no evidence that the vehicle in which the guns were found had been moved after the guns were placed in the trunk.

We hold that appellant's argument is unpreserved. "Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion." *Whiting v. State*, 160 Md. App. 285, 308 (2004). "The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal." *Id.* (citations omitted). "Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal." *Jones v. State*, 213 Md. App. 208, 215 (2013) (citing *Graham v. State*, 325 Md. 398, 417 (1992)).

When appellant moved for judgment of acquittal at trial, he argued that the evidence was insufficient because the State failed to establish that the suspect vehicle had been parked in a place used by the public, and because there was no evidence to show that he and Mr. Crowder agreed to carry a gun. Appellant did not argue, as he does on appeal, that the evidence was insufficient because the State failed prove the "traveling" element of the charged crimes.[2] Accordingly, that issue is not preserved for our review.

[2] We note that in arguing the motion for judgment of acquittal, defense counsel stated, "No transportation in vehicle. It's either transportation [or] parked in a public parking area." Although counsel noted "[n]o transportation," the colloquy between the court and counsel focused on whether the vehicle was parked on a public street, and the court specifically ruled on that issue without further comment by defense counsel.

II.

Appellant's next contention concerns instructions given by the trial court to the jury regarding the elements of the charged crimes. Relevant here, appellant was charged with wearing, carrying, or transporting a handgun in a vehicle and conspiracy to commit that crime. In addition, appellant was charged with wearing, carrying, or transporting a handgun on or about the person and conspiracy to commit that crime.

At trial, following the conclusion of the evidence, the parties discussed with the court how the charged crimes would be submitted to the jury. During that discussion, the court indicated that it wanted to "simplify matters" and asked the parties if they wanted the two "wear, carry, transport" charges to be submitted "as two separate things" or as one offense. The State ultimately agreed that the jury should consider only the charge of wearing, carrying, or transporting a handgun in a vehicle and should not consider the charge as it pertained to the person. The court then posed the same question regarding the conspiracy charges. Again, the State agreed that the jury should consider only the charge of conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle and not the charge as it pertained to the person.

Later, the trial court instructed the jury as follows:

> The Defendant is charged with wearing, carrying, or transporting a handgun, conspiring to wear, carry, or transport a handgun, illegally possessing . . . ammunition after a disqualifying conviction, and . . . possessing a handgun after a prior qualifying conviction. You must consider each charge separately and return a separate verdict for each charge.
>
> * * *

> The Defendant is charged with the crime of carrying a handgun. In order to convict the Defendant the State must prove that the Defendant wore, carried, or transported a handgun that was within his reach and available for his immediate use.
>
> * * *
>
> The Defendant is charged with the crime of carrying or transporting a handgun in a vehicle. In order to convict the Defendant, the State must prove that the Defendant wore, carried, or knowingly transported a handgun in a vehicle.
>
> * * *
>
> Lastly, the Defendant is charged with the crime of conspiracy to commit the crimes of carrying a handgun and wearing, carrying, or transporting a handgun in a vehicle. . . . In order to convict the Defendant of conspiracy, the [S]tate must prove that the Defendant agreed with at least one other person to commit the crime of carrying a handgun concealed or openly or the crime of wearing, carrying, or transporting a handgun in a vehicle and (2) that the Defendant entered into the agreement with the intent that the crime of carrying a handgun or the crime of wearing, carrying, or transporting a handgun in the vehicle be committed.

At the conclusion of its instructions to the jury, the trial court asked if the parties had "any corrections." Defense counsel responded, "No, Your Honor." The trial court thereafter provided the jury with a verdict sheet, which identified the following charges for consideration: (1) Possessing a Taurus firearm after a prior disqualifying conviction; (2) Wearing, carrying, or transporting a Taurus handgun in a vehicle; (3) Conspiracy to commit the crime of wearing, carrying, or transporting a handgun in a vehicle; (4) Illegally possessing ammunition. The jury found appellant guilty of the four charges outlined in the verdict sheet.

Appellant now claims that the trial court erred in instructing the jury on the charges of wearing, carrying, or transporting a handgun on the person and conspiracy to commit

that crime. Appellant maintains that the instructions were erroneous because those crimes were not submitted to the jury for its consideration. Conceding that he failed to preserve the issue for our review, appellant asks that we exercise our discretion to review the issue for "plain error."

Maryland Rule 4-325(e) provides, in relevant part, that "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury[.]" The Rule also provides that an appellate court may "take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object." *Id.* As the Court of Appeals has recognized, "[t]he appellate courts of this State have often recognized error in the trial judge's instructions, even when there has been no objection, if the error was likely to unduly influence the jury and thereby deprive the defendant of a fair trial." *State v. Brady*, 393 Md. 502, 507 (2006) (quoting *State v. Hutchinson*, 287 Md. 198, 204 (1980)).

Nevertheless, "in order for an appellate court to exercise plain error review, there must be an 'error,' it must be 'plain,' and it must be 'material to the rights of the defendant.'" *Id.* (quoting Md. Rule 4-325(e)). Moreover, plain error review "is a discretion that appellate courts should rarely exercise, as considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court." *Chaney v. State*, 397 Md. 460, 468 (2007).

In *State v. Rich*, 415 Md. 567 (2010), the Court of Appeals set forth the following four-prong test regarding plain error review of a trial court's jury instructions:

> First, there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the court proceedings. Fourth and finally, if the above three prongs are satisfied, the [appellate court] has the discretion to remedy the error—discretion which ought to be exercised only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

Id. at 578-79 (citations and quotations omitted) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

Against that backdrop, we decline appellant's request for plain error review. Although the trial court did instruct the jury on the charge of wearing, carrying, or transporting a handgun on the person and the charge of conspiracy to commit that crime despite the fact that those charges were not actually submitted to the jury for consideration, we cannot say that the instructions were erroneous. Appellant was, in fact, charged with those crimes, and the court's instruction for each of those charges was a correct statement of the law and was supported by the evidence. *See Stabb v. State*, 423 Md. 454, 465 (2011) (noting that, when deciding whether a trial court erred in giving or failing to give an instruction, we consider "whether the requested instruction was a correct statement of law" and "whether it was applicable under the facts of the case" (citing *Gunning v. State*, 347 Md. 332, 348 (1997))). As the State correctly notes, the only reason those charges were not submitted to the jury is because the prosecutor agreed to the court's request to "simplify matters" and limit the charges submitted. Despite that agreement, the State never dismissed the charges, and the court did not grant a judgment of acquittal on either charge. At most,

the court's instructions on the unsubmitted offenses were superfluous, but not erroneous. *See Perry v. State*, 150 Md. App. 403, 424 (2002) (noting that Maryland Rule 4-325(c), which governs jury instructions in a criminal case, "does not even deal with unnecessary, gratuitous, or irrelevant instructions" and that, under the Rule, "[i]t is error to do too little, … [not] too much").

Moreover, even if the trial court erred in giving those instructions, the error did not affect appellant's substantial rights. The court's instruction on the charge of wearing, carrying, and transporting a handgun on the person was separate and distinct from its instruction on the charge of wearing, carrying, and transporting a handgun in a vehicle, and there was nothing erroneous about the court's instruction as to the latter charge.[3] In addition, when the charges were ultimately submitted to the jury, the verdict sheet expressly limited the wearing, carrying, or transporting charge to the "in a vehicle" modality and did not reference the "on the person" modality. We find it highly unlikely that the jury reasonably believed that it could convict appellant of wearing, carrying, or transporting a handgun in a vehicle based on either modality, where it was clear from the verdict sheet that the jury was to consider only the "in a vehicle" modality of the crime.

As to the conspiracy charges, the trial court did meld the two charges into one instruction, stating that the jury could convict appellant of conspiracy if it found that he had conspired with "one other person to commit the crime of carrying a handgun concealed or openly or the crime of wearing, carrying, or transporting a handgun in a vehicle." Thus,

[3] Appellant concedes that the trial court correctly instructed the jury about that offense.

unlike the wearing, carrying, or transporting charges, the court's instructions as to the conspiracy charges were not separated into two clearly distinct crimes. Nevertheless, we are not persuaded that the court's instruction affected appellant's substantial rights. As with the other charges, the verdict sheet made clear that the jury was to consider only whether appellant had conspired to commit the crime of wearing, carrying, or transporting a handgun "in a vehicle" (and not whether he conspired to commit the "on the person" modality of the crime). In conclusion, we cannot say that the court's "error" in giving superfluous instructions seriously affected the fairness, integrity or public reputation of the proceedings such that plain error review would be warranted.

III.

Appellant next claims that the suppression court erred in finding that he did not have standing to challenge the search of the trunk of Mr. Crowder's vehicle. Appellant asserts that he did have standing to challenge the search because he had a subjective expectation of privacy in the trunk and because that expectation of privacy was objectively reasonable.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State*, 172 Md. App. 75, 87 (2006) (citing *Ferris v. State*, 355 Md. 356, 368 (1999)). 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) (citing *Bailey v. State*, 412 Md. 349, 363 (2010)). "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) (quoting *Norman v. State*, 452 Md. 373, 386 (2017)). "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 (quoting *Grant v. State*, 449 Md. 1, 15 (2016)).

"The Fourth Amendment of the United States, made applicable to the States by the Fourteenth Amendment, guarantees individuals the right to be secure 'in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *Whiting v. State*, 389 Md. 334, 346 (2005). To invoke Fourth Amendment protection, however, an individual must establish "that he or she maintained a 'legitimate expectation of privacy' in the house, papers, or effects searched or seized." *Id.* (quoting *Katz v. United States*, 389 U.S. 334, 353 (1967)). "Fourth Amendment rights are personal in nature and may only be enforced by the person whose rights were infringed upon." *Jones v. State*, 407 Md. 33, 49 (2008). "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." *State v. Savage*, 170 Md. App. 149, 175 (2006) (emphasis removed) (quoting *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978)).

"[T]o enjoy Fourth Amendment standing, a defendant must have both 1) an actual subjective expectation of privacy and 2) an expectation that is objectively reasonable." *Id.* at 182. "The question that delineates whether a defendant possesses a subjective expectation of privacy is 'whether . . . the individual has shown that he seeks to preserve something as private.'" *Whiting*, 389 Md. at 349 (alteration in original) (quoting *Smith v.*

Maryland, 442 U.S. 735, 740 (1979)). Here, appellant clearly expressed a subjective expectation of privacy in the contents of Mr. Crowder's vehicle. Our discussion, therefore, focuses on the second prong.

As to the second prong of the test—whether an individual's expectation is objectively reasonable—a court must examine whether the defendant possessed a legitimate expectation of privacy in the area searched. *Id.* at 350. Where the place being searched is an automobile owned by a third party, our inquiry "depends upon the relationship of the individual claiming standing to the owner of the vehicle." *Colin v. State*, 101 Md. App. 395, 402 (1994). In that context, a mere passenger, who has neither a property nor possessory interest in the subject vehicle, would ordinarily lack standing to challenge a search of the vehicle, including the vehicle's trunk. *Rakas*, 439 U.S. at 148-49. On the other hand, "an individual who uses an automobile with the permission of the owner normally does have standing." *Colin*, 101 Md. App. at 402.

In *Ford v. State*, 184 Md. App. 535 (2009), this Court held that the defendant had standing to challenge the search of a vehicle owned by his long-time girlfriend, despite the fact that the defendant was not present when the car was searched. *Id.* at 556. In holding that the defendant had standing, we noted that the defendant drove the vehicle regularly with the owner's permission, that he inferentially possessed a key to the vehicle, that he helped pay for the vehicle, and that he lived in the home where the vehicle was kept. *Id.* We concluded that those circumstances were sufficient to carry the defendant's "burden of proving that he had a reasonable expectation of privacy in the vehicle." *Id.*

In *Martin v. State*, 113 Md. App. 190 (1996), by contrast, this Court held that a police officer lacked standing to challenge a search of a police cruiser that he was "authorized to use for on-duty and off-duty purposes." *Id.* at 232-36. In so holding, we first noted that several factors supported the officer's claim of standing, including the officer's authorization to keep the vehicle at his home and to keep personal items in the vehicle. *Id.* at 233. We explained, however, that there were "strong countervailing factors," notably that the officer "had no right to exclude his police superiors from entering or examining the cruiser" and that the cruiser was operated by a single common key, which was available to other officers and which operated other policer cruisers. *Id.* at 234-35. We concluded that, given the broad access afforded other individuals to the officer's cruiser, any perceived expectation of privacy was objectively unreasonable. *Id.* at 236.

Turning back to the instant case, we hold that appellant did not have an objectively reasonable expectation of privacy in the trunk of Mr. Crowder's vehicle. Appellant had no proprietary or possessory interest in Mr. Crowder's vehicle and was not even present at the time of the search. In fact, appellant fled the scene when the search was conducted and then, upon being arrested, disavowed having any interest in the vehicle. Moreover, aside from the evidence showing that Mr. Crowder allowed appellant to place certain items in the vehicle's trunk just prior to the search, there was no evidence that appellant had accessed the vehicle, or even permission to access the vehicle, at any point in time prior to or following the search. *See Rawlings v. Kentucky*, 448 U.S. 98, 104-06 (1980) (holding that defendant lacked reasonable expectation of privacy in drugs he placed inside a friend's

purse, where the defendant "had never sought or received access to [the] purse prior to that sudden bailment").

Importantly, appellant presented no evidence that he had a right to exclude others from using Mr. Crowder's trunk or that he even had the ability to access the trunk after placing his items inside. *See United States v. Givens*, 733 F.2d 339, 342 (4th Cir. 1984) ("[T]he right to exclude others affords a significant indicator of whether one has a legitimate expectation of privacy in an area." (citing *Rakas*, 439 U.S. at 144 n.12)). Rather, the evidence established that Mr. Crowder retained continued control over the trunk. We fail to see how appellant's subjective expectation of privacy was objectively reasonable given that Mr. Crowder, as the owner of the vehicle, had unfettered access to the trunk and could grant anyone, including the police, the right to access it. *See United States v. Santillan*, 902 F.3d 49, 62-63 (2nd Cir. 2018) (holding that defendant, as a passenger in a vehicle he did not own, did not have standing to challenge a search of the vehicle "because he had no right to exclude others from it and he assumed the risk that its owner would grant consent for the search").

Appellant, relying on *Owens v. State*, 322 Md. 616 (1991), argues that the circumstances under which he left his items in Mr. Crowder's trunk can be likened to a "gratuitous bailment" because he "sought to maintain the security and privacy of his effects in a place he regarded as a safe place for storage." Appellant argues that when he "entrusted his items to Mr. Crowder by placing them in the trunk of the latter's vehicle," he "was objectively entitled to believe that the trunk would remain closed, and that his items would remain private."

Appellant's reliance on *Owens v. State* is misplaced. There, the defendant, Lenard Owens, left a closed nylon bag, inside of which he had secreted contraband, in a friend's apartment with the friend's permission. *Owens*, 322 Md. at 618-19. The nylon bag was later opened and searched by the police after the friend granted the police consent to search her apartment. *Id.* at 620-21. After the police discovered the contraband and Owens was arrested, he filed a motion challenging the search. *Id.* at 618. The motion was ultimately denied on the grounds that Owens lacked standing. *Id.* at 623-24.

On appeal, the Court of Appeals held that, although Owens did not have standing to challenge the search of the apartment, he did have standing to challenge the search of the bag. *Id.* at 630-31. The Court explained that Owens had an objectively reasonable expectation of privacy in the bag because he left the bag in the apartment under circumstances suggesting that he "sought to maintain the security and privacy of his effects in a place he regarded as a safe place for storage." *Id.* at 630. The Court further reasoned that Owens's expectation of privacy in the bag was objectively reasonable because "luggage is a common repository for one's personal effects, and, therefore, is inevitably associated with the expectation of privacy[;]" the bag "was zippered closed, and its contents were not exposed to public view[;]" and the bag had a tag bearing Owens's name and address, "making known that it was his private property." *Id.* at 631.

Appellant's case is distinguishable from *Owens*. In that case, there were two distinct "places" searched—the apartment and the bag—and each had its own reasonable expectation of privacy that was independent of the other. The defendant in that case had a reasonable expectation of privacy in the bag, which he clearly owned and intended to keep

private, and that expectation of privacy was not defeated simply because he left the bag in his friend's apartment. Consequently, the friend's consent to search the apartment did not extend to the bag.

Here, by contrast, appellant had no objectively reasonable expectation of privacy in Mr. Crowder's trunk, given appellant's lack of a right to exclude others and Mr. Crowder's right to grant others access to the trunk. Moreover, appellant's subjective expectation of privacy in the trunk did not become objectively reasonable simply because he "entrusted" certain items to Mr. Crowder and believed that the items would remain private. Again, the *Owens* Court did not hold that the defendant had an expectation of privacy in his bag because he "entrusted" the bag to his friend; rather, the Court held that the defendant had a reasonable expectation of privacy in his "zippered closed" personal bag. *Id.* We have no doubt that the *Owens* Court would have rejected any reasonable expectation of privacy in the bag had Owens and his friend shared the bag to store their respective personal items. Accordingly, appellant's argument that he had a reasonable expectation of privacy in Mr. Crowder's trunk—an area where both appellant and Mr. Crowder stored items—is unpersuasive.[4]

[4] Because the suppression court denied appellant's motion to suppress based on his lack of standing, we confine our holding to that issue. Nevertheless, we note the facial persuasiveness of the State's argument that the police had probable cause to search the vehicle's trunk without a warrant because two individuals were seen placing guns in the trunk. Indeed, one of those individuals, Mr. Crowder, was arrested at the scene.

IV.

Appellant's final contention concerns an audio recording of a telephone call he made from jail to his girlfriend following his arrest, which the State played at trial, over his objection. In that recording, appellant made several references to Mr. Crowder, who went by the nickname "Slinky":

> [M]y Co-Defendant Slinky was just up here. He left. He went upstairs today. . . . [H]e was like they don't got -- they got no probable cause to do anything. They should have never ever stopped me to do anything. So if I beat this -- like, so we go to court on the 31st. Roland Bryant[, his] lawyer came up here to see him today. He was like they had no probable cause . . . and if they saying they saw us with guns beforehand we're supposed to get stopped beforehand. They didn't get no warrant to search the car. And then they lied talking about something they smelled marijuana [in] Slinky's car. I knew they was lying because Slinky don't even smoke weed. . . . Slinky . . . at first I thought like he's probably going to set me up. Slinky told me cut my dreads too.

Appellant now claims that the trial court erred in admitting the recording because the evidence was irrelevant and prejudicial.

Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Evidence that is relevant is generally admissible; evidence that is not relevant is not admissible. Md. Rule 5-402. Establishing relevancy "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). We review the court's determination of relevancy under a *de novo* standard. *State v. Simms,* 420 Md. 705, 725 (2011).

Even if legally relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "We

determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the [fact-finder's] evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). In so doing, "[w]hat must be balanced against 'probative value' is not 'prejudice' but, as expressly stated by Rule 5-403, only 'unfair prejudice.'" *Newman v. State*, 236 Md. App. 533, 549 (2018). Moreover, "the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in [Maryland] Rule 5-403." *Ford v. State*, 462 Md. 3, 58-59 (2018) (alteration in original) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). Evidence may be unfairly prejudicial "if it might influence the jury to disregard the evidence or lack of evidence" regarding the crimes charged. *Odum*, 412 Md. at 615 (quoting *Lynn McLain, Maryland Evidence State and Federal*, § 403:1(b) (2009 Supp.)). "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003) (citing *Martin v. State*, 364 Md. 692, 705 (2001)).

We hold that the jail call was relevant. Appellant made several statements during the call referring to the events surrounding the discovery of the handguns in Mr. Crowder's trunk, and those statements were relevant in establishing appellant as one of the individuals seen on the City Watch video placing items in the trunk. Appellant also made several statements alluding to conversations he and Mr. Crowder ("Slinky") had regarding the crime, including a conversation in which Mr. Crowder told appellant to "cut his dreads," all of which were relevant in establishing that the two men were engaged in a criminal conspiracy pertaining to the handguns.

We also hold that the significant probative value of the evidence here was not substantially outweighed by the danger of unfair prejudice. *See generally Newman*, 236 Md. App. at 550 ("Probative value is outweighed by the danger of '*unfair*' prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case." (quoting *Joseph F. Murphy, Jr., Evidence Handbook*, § 506(B) (3d ed., 1999))). Accordingly, the trial court did not abuse its discretion in admitting the recording.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.