Circuit Court for Howard County
Case No. C-13-CR-19-000521

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 816

September Term, 2020

LUIS FELEPE HUGGINS

v.

STATE OF MARYLAND

Arthur,
Friedman,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 26, 2023

Following a two-day trial, a Howard County jury convicted appellant Luis Felepe Huggins of first-degree assault, use of a firearm during the commission of a crime of violence, possession of a regulated firearm after a disqualifying conviction, possession of ammunition after a disqualifying conviction, and carrying a loaded handgun. The court sentenced Huggins to a total of 11 years of incarceration: five years for using a firearm in the commission of a crime of violence; six years for first-degree assault, to be served consecutively to the sentence for using a firearm in the commission of a crime of violence; and a total of six years, to be served concurrently with the other sentences, for the two possession offenses. At sentencing, the State dismissed the charge of carrying a loaded handgun.

Huggins appealed, arguing in part that the circuit court erred in denying his pretrial motion to suppress evidence of a firearm and ammunition. In an unreported opinion, this Court, on its own motion, considered whether Huggins had waived that argument because his attorney affirmatively stated at trial that she had "no objection" to the evidence.

Following controlling authority from this Court,[1] we determined that a waiver had occurred. *Huggins v. State*, 2021 WL 4893362 (Md. App. Oct. 21, 2021), at *2-3. Consequently, we did not address whether the circuit court had erred in denying Huggins's motion to suppress. *Id.*

[1] *Jackson v. State*, 52 Md. App. 327 (1982); *Erman v. State*, 49 Md. App. 605 (1981).

Huggins raised three other issues – a challenge to the sufficiency of the evidence to support the convictions for first-degree assault and using a firearm in the commission of a crime of violence; an assertion that the circuit court had erred in admitting "other crimes" evidence; and a contention that the court had erred in imposing a consecutive sentence for the use of a firearm in the commission of a crime of violence. We held that the evidence was sufficient to support the convictions (*id.* at *4-5) and that Huggins had waived his objection to "other crimes" evidence (*id.* at *5-6), but we remanded for a new sentencing hearing. *Id.* at *6-8.

Huggins filed a petition for a writ of certiorari, which was granted by the Court of Appeals (now known as the Supreme Court of Maryland). Huggins presented two questions in his petition, which we have quoted verbatim:

1. Did the Court of Special Appeals[2] err by raising and deciding, on its own initiative, that Petitioner waived his objection to the denial of his motion to suppress where the State did not argue waiver on appeal?

2. If a pretrial motion to suppress is heard and denied and at trial when the evidence is offered by the State defense counsel says "no objection," does counsel's statement constitute a waiver, so that the issue is not preserved for review?

The Court held that Huggins did not waive his right to appeal the suppression ruling (*Huggins v. State*, 479 Md. 433, 450-51 (2022)) and rejected the analysis in this Court's earlier decisions. *Id.* at 451-52. Accordingly, the Court vacated the judgment of this Court and remanded the case for consideration of Huggins's appeal on the merits.

[2] At the time of the petition, this Court's name was the Maryland Court of Special Appeals. As a result of a constitutional amendment that took effect on December 14, 2022, this Court is now known as the Appellate Court of Maryland.

We have already decided three of the four questions that Huggins raised. We reaffirm our decision that the evidence introduced at trial was sufficient to support the convictions for first-degree assault and using a firearm in the commission of a crime of violence, and we incorporate Part II of our prior opinion as the grounds for that decision. We also reaffirm our decision that Huggins waived his objection to "other crimes" evidence, and we incorporate Part III of our prior opinion as the grounds for that decision. Huggins's fourth question, concerning defects at sentencing, is moot in light of our decision below that the court erred in denying his motion to suppress.

We now consider Huggins's first question, which we had previously declined to address: "Did the circuit court err in denying [Huggins's] motion to suppress?"

For the reasons stated below, we shall hold that the court erred in denying the motion to suppress. Accordingly, we shall vacate the convictions and remand the case for further proceedings.

FACTUAL BACKGROUND

Before trial, Huggins moved to suppress a handgun and ammunition. He contended that the police had seized those items from inside a piece of luggage in his hotel room during a warrantless search that violated the Fourth Amendment's prohibition on unreasonable searches and seizures.

The evidence at the suppression hearing established that on January 20, 2019, the Howard County Police responded to a call alleging that a man, armed with a gun, had assaulted someone in a hotel room. The room had been rented by Chakia Hill.

At the suppression hearing, Hill testified that she and Huggins were the only people staying in the room and that no one else's belongings were in the room. She denied that anyone other than Huggins had a key to the room. In particular, she denied that she had given a key to Warner Smith, the complaining witness, when she had sent him up to the room earlier in the evening, to bring one of her bags down to her car.

Officer Ronald Wetherson testified that, when he arrived at the hotel, he met Warner Smith outside of the building. The desk clerk buzzed Smith and the officer into the hotel.

Officer Wetherson testified that he asked Smith whether he had a key to the hotel room where the assault occurred. According to the officer, Smith gave him the key (more precisely, a key card). Another policeman, Officer Younes Elmaatoui, corroborated Officer Wetherson's testimony that Smith gave Officer Wetherson a room key. Officer Wetherson testified that he was under the impression that Smith had access to the room because Smith had the room key. Similarly, Officer Elmaatoui testified that he assumed that Smith was staying in the room.

Although Officer Wetherson testified that he had gotten a key from Smith, he acknowledged that Smith asked the desk clerk to make another key (or to give him another key card). Officer Wetherson asserted that Smith got the second key because two police teams were going to clear the hotel room (i.e., search it for suspects and weapons). The officer was armed with a long rifle when he asked the clerk for the second key. The court viewed a video that seems to show the clerk giving a key to Smith and Smith giving the key to one of the officers.

At some point, Officer Wetherson learned that an unarmed suspect had been detained. The officer, however, was still concerned about where the gun might be. Although he did not have a gun, the suspect – Huggins – did have a hotel key card.

Officers Wetherson and Elmaatoui went up to the hotel room, with Smith. Officers Wetherson testified that he opened the door to the room using the key card that he had gotten from Smith.

Officer Elmaatoui testified that the officers "cleared the room for any possible subjects" by looking in the closets, under the bed, and anywhere something might be hidden. Smith told the officers that the gun might be behind the television or behind the bed or a dresser, but they found nothing.

Officer Elmaatoui saw a black bag sitting on a counter near the television. On top of the bag were a few pieces of clothing. The officer removed the clothing, reached into the bag, and found a handgun inside.

On the basis of this evidence, the State argued that Smith had apparent authority to consent to a warrantless search of the hotel room. Citing the uncertainty about the whereabouts of the gun, the State also argued that exigent circumstances justified the warrantless search.

Huggins countered that, despite the officers' testimony, Smith did not have a key to the room and could not have consented to the search. He observed that the clerk had to let Smith back into the hotel. He suggested that the clerk had given a key to Smith because he was intimidated by the armed police officers who were telling him to give Smith a key. Finally, he argued that there were no exigent circumstances and that, even

if there were, they would justify a protective sweep of the room, and not a search for evidence.

The court denied the motion to suppress. The court "infer[red]" that Chakia Hill had given Smith a key to the room earlier in the evening, when she asked him to bring a bag down to her in her car. The court seems to have thought that Hill must have given Smith her own key, because it noted that Huggins had the other key in his possession when he was detained. The court took note of the video, which seems to show the clerk giving a key to Smith and Smith giving the key to the officers. The court expressed uncertainty about whether this was a second key, which Officer Wetherson said that he had requested. Without clearly resolving that question, the court observed that, when the police officers saw the clerk giving a key to Smith, they could infer that he was a legitimate occupant of the room and that he had the authority to consent to a search.

The court concluded that Smith consented to a warrantless search of the room and that, from the officers' perspective, Smith had apparent authority to consent to the search. The court did not specifically address whether Smith had apparent authority to consent to a warrantless search of the contents of the bags inside the room; it simply found that the officers found the gun during a search to which Smith consented and had the apparent authority to consent. The court rejected the State's alternative argument, that the warrantless search was justified by exigent circumstances.

DISCUSSION

On appeal, Huggins argues that the court erred in denying his motion because the officers could not have reasonably believed that Smith had apparent authority over the

hotel room. He further argues that even if Smith had apparent authority to consent to a search, his authority would be limited to a search of the common areas of the room and would not extend to the contents of the overnight bags in the room. Lastly, Huggins argues that there were no exigent circumstances to justify the warrantless entry.

The State responds that, under the totality of the circumstances, it was reasonable for the officers to conclude that Smith had apparent authority to consent to a search of the room and its contents, including the overnight bags. In addition, the State argues that, even if Smith did not have the authority to consent to the search, exigent circumstances justified the warrantless search.

Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing. *Trott v. State*, 473 Md. 245, 253-54 (2021). We view the factual record "in the light most favorable to the prevailing party," here, the State. *Greene v. State*, 469 Md. 156, 165 (2020). "We accept the suppression court's factual findings unless they are clearly erroneous, but we review the court's legal conclusions *de novo*." *Id.* We make our own independent constitutional evaluation of a Fourth Amendment challenge to a search or seizure. *See, e.g.*, *Pacheco v. State*, 465 Md. 311, 319 (2019).

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, prohibits "unreasonable searches and seizures." "'[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Williams v. State*, 372 Md. 386, 402 (2002) (quoting *United States v. United States Dist. Court*, 407 U.S. 297, 313 (1972)). Thus, "searches and

seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980).

"A motel room can be protected by the Fourth Amendment as much as a home or an office." *Williams v. State*, 372 Md. at 402 (citing *Hoffa v. United States*, 385 U.S. 293, 301 (1966); *Stoner v. California*, 376 U.S. 483, 490 (1964); *United States v. Jeffers*, 342 U.S. 48, 51-52 (1951)); *accord Bordley v. State*, 205 Md. App. 692, 709 (2012); *see also Gross v. State*, 235 Md. 429, 439 (1964) ("[I]t is well-established law that a person's hotel room is protected against unreasonable searches").

It follows that a warrantless search of a hotel room, like the warrantless search of a private home, is presumptively unreasonable. *See Williams v. State*, 372 Md. at 402. The State has the burden of overcoming the presumption. *Grant v. State*, 449 Md. 1, 17 (2016).

The presumption of unreasonableness is "subject only to a few specifically established and well-delineated exceptions[.]" *Id*.. at 16-17 (citing *Katz v. United States*, 389 U.S. 347, 356-57 (1967)). "A search conducted pursuant to valid consent, *i.e.*, voluntary and with actual or apparent authority to do so, is a recognized exception to the warrant requirement." *Jones v. State*, 407 Md. 33, 51 (2008).

Huggins does not dispute that Smith voluntarily consented to a search of the hotel room and its contents. His objection centers on whether Smith had the authority to consent to the search.

"[I]n the absence of proof that consent to search was given by the defendant," the State "'may show that permission to search was obtained from a third party who

possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.'" *United States v. Waller*, 426 F.3d 838, 845 (6th Cir. 2005) (quoting *United States v. Matlock*, 415 U.S. 164, 171-72 (1974)). "Common authority to consent to a search is not derived 'from the mere property interest a third party has in the property' searched; rather, such authority rests 'on mutual use of the property by persons generally having joint access or control for most purposes.'" *State v. Rowlett*, 159 Md. App. 386, 396 (2004) (quoting *United States v. Matlock*, 415 U.S. at 171 n.7). The circuit court did not find, and the State does not contend, that Smith had "common authority" to search an overnight bag in the hotel room.

In the absence of common authority, "the consent of a third party may still be sufficient to validate a warrantless search if that party has 'apparent authority.'" *Id.* (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 187 (1990)) (further citation omitted). "[I]f the facts available to the officer at the time of the search would 'warrant a [person] of reasonable caution' to believe that 'the consenting party had authority over the premises,' then the consenting party has apparent authority over the premises and may lawfully consent to a search of it." *Id.* (quoting *Illinois v. Rodriguez*, 497 U.S. at 188) (further citation and quotation marks omitted). If, however, "the circumstances presented would cause a person of reasonable caution to question whether the third party has mutual use of the property, 'warrantless entry without further inquiry is unlawful.'" *United States v. Waller*, 426 F.3d at 846 (quoting *Illinois v. Rodriguez*, 497 U.S. at 188-89). The State "bears the burden of establishing the effectiveness of a third party's consent." *Id*. at 845 (citing *Illinois v. Rodriguez*, 497 U.S. at 181).

In this case, the circuit court concluded that Smith had apparent authority to consent to a search of the room. In support of that conclusion, the court credited Officer Wetherson's testimony that Smith had a key to the room and that he gave the key to the officer. Although the video showed Smith obtaining a key from the desk clerk (after the clerk had buzzed him and Officer Wetherson into the building), the court apparently credited the officer's testimony that Smith was obtaining a second key for the use of a second group of officers. In addition, the court found that Smith's ability to obtain a key from the clerk (albeit when Smith had an armed officer at his side) would lead a reasonable person to conclude that he had authority to consent to a search of the room.

Huggins challenges the court's conclusion. He argues that because Smith had to be buzzed into the hotel and then requested a room key from the clerk, no reasonable officer could have concluded that he had apparent authority to consent to a search of the room.

Although the court's conclusion is debatable, the applicable standard of review compels us to uphold the finding that Smith had apparent authority to consent to the search of the room. The court believed Officer Wetherson when he testified that Smith already had a key when they entered the hotel and that Smith obtained the second key so that a second group of officers would have access to the room. There certainly were reasons not to credit that testimony, and Huggins has enumerated them. It is, however, not our province to second-guess the circuit court's credibility determinations. *See Gonzalez v. State*, 429 Md. 632, 652 (2012). The court did not err in concluding that Smith had apparent authority to consent to a search of the hotel room.

But our inquiry does not end here. To say that Smith had apparent authority to consent to a search of the hotel room is not to say that he had apparent authority to consent to a search of the luggage within the room. *See Owens v. State*, 322 Md. 616, 633 (1991); *see also United States v. Rodriguez*, 888 F.2d 519, 523 (7th Cir. 1989) ("[t]o say that [the defendant's wife] consented to a search of the janitors' room," where her husband stored his belongings, "is not necessarily to say that she consented to a search of the items it contained"). "[A] resident's consent to search [the resident's] home is not necessarily consent to search a closed object in the home." *United States v. Waller*, 426 F.3d at 845.

"A traveler's personal luggage is clearly an 'effect' protected by the Amendment." *Bond v. United States*, 529 U.S. 334, 336 (2000). Thus, courts have long recognized that a person may have a legitimate expectation of privacy in luggage and other containers in a public space (*see, e.g.*, *id.* at 338-39 (bag placed in overhead compartment of bus); *United States v. Chadwick*, 433 U.S. 1, 11 (1977) (double-locked footlocker on Amtrak train)) or in another person's residence. *See, e.g.*, *Owens v. State*, 322 Md. at 630 (zippered nylon bag stored in acquaintance's apartment); *United States v. Waller*, 426 F.3d at 844 (zipped luggage bag stored in friend's apartment); *see also United States v. Taylor*, 600 F.3d 678, 682 (6th Cir. 2010) (closed shoebox labeled for men's shoes underneath men's clothes in a spare bedroom closet of a woman's apartment). In view of these authorities, the question becomes whether Smith had apparent authority to consent to a search of the luggage in the hotel room.

The Court's decision in *Owens v. State* controls our analysis. In that case, Owens had traveled to Maryland with his luggage, a nylon bag with a zipper closure. *Owens v. State*, 322 Md. at 618. His friend, Marla Gardin, allowed him to leave his bag at her apartment. *Id.* at 619. Owens did not give Gardin permission to open the bag. *Id.* While Owens was away from the apartment, the police arrived and asked Gardin whether they could search it. *Id.* at 620. With Gardin's permission, the police searched both the apartment and Owens's bag, which was still closed. *Id.* Inside of a pair of socks that were stuck inside of a pair of shoes that were packed in the bag, the police found 325 grams of crack cocaine and a large sum of cash. *Id.* at 621. The circuit court denied Owens's motion to suppress the drugs and money (*id.* at 624), and a jury convicted him of possession with intent to distribute cocaine. *Id.* at 619.

Maryland highest court reversed, holding that "Owens had an expectation of privacy in the bag which society is prepared to recognize as reasonable." *Id.* at 630 (citation and quotation marks omitted). The Court reasoned that "the circumstances under which Owens left the bag in the apartment may be likened to a gratuitous bailment." *Id.* Owens had an expectation of privacy because he "sought to maintain the security and privacy of his effects in a place he regarded as a safe place for storage." *Id.* "[L]uggage," the Court added, "is a common repository for one's personal effects, and, therefore, is inevitably associated with the expectation of privacy." *Id.* at 631.

The Court acknowledged that Gardin, the tenant, could consent to a search of her apartment. *Id.* at 631. Gardin, however, did not "possess common authority over Owens's bag and had no other sufficient relationship to its contents to validate any

consent by her to search the bag." *Id.* at 633. In those circumstances, the Court held that "the warrantless search of Owens's luggage was unreasonable and, therefore, violated his Fourth Amendment rights." *Id.*

Here, as in *Owens*, Smith may have had the apparent authority to consent to a search of the room generally, but he did not have the authority to consent to the search of the overnight bag. Huggins had a reasonable expectation of privacy in a bag that contained his personal effects, and nothing in the record indicates that Smith had permission to open the bag or to look inside it. Furthermore, there is no reason to believe that the officers looked into the bag because they believed that it belonged to Smith; rather, they looked into because they believed that it might contain the gun that Smith's assailant had allegedly used. *See United States v. Waller*, 426 F.3d at 849.

In these circumstances, we hold that the warrantless search of the overnight bag violated Huggins's Fourth Amendment rights. *Owens v. State*, 322 Md. at 633. It follows that the circuit court erred in denying Huggins's motion to suppress the contents of the bag. Because the State does not argue (and could not plausibly argue) that the error was harmless beyond a reasonable doubt, we must vacate the convictions and remand the case to the circuit court for further proceedings.

As an alternate ground to uphold the denial of the motion to suppress, the State asserts that the exigent circumstances exception to the warrant requirement also permitted the warrantless search and seizure of the gun. The circuit court did not rely on exigent circumstances when denying the motion to suppress, but we may affirm the judgment of

the court "on any ground adequately shown by the record, even though the ground was not relied upon by the trial court." *Temoney v. State*, 290 Md. 251, 261 (1981)

"Exigent 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 v. State*, 372 Md. 386, 402 (2002). "The exception for exigent circumstances is a narrow one." *Id.* at 403. *See Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (ongoing fire); *United States v. Santana*, 427 U.S. 38, 42-43 (1976) (hot pursuit of a fleeing felon); *Dunnuck v. State*, 367 Md. 198, 206 (2001) (destruction of evidence); *Carroll v. State*, 335 Md. 723, 734 (1994) (suspected burglary).

We agree with the circuit court that there were no exigent circumstances here to permit a warrantless search or seizure. Although the officers had not located the weapon that the assailant allegedly used, no one was in imminent danger. The room had been secured, and there was "not the slightest chance that the contents of the bag could be removed before a warrant was obtained." *Owens v. State*, 332 Md. at 632.

In summary, the court erred in denying the motion to suppress, because Smith did not have apparent authority to consent to a search of the luggage in which the gun and ammunition were found. The warrantless search cannot be upheld under the exigent circumstances exception to the warrant requirement, the only other exception that the State invoked. Consequently, we must vacate the convictions and remand the case for further proceedings.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HOWARD COUNTY.