Circuit Court for Baltimore City
Case No. 117061024

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1108

September Term, 2018

MARCO HOLMES

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Wells,

JJ.

Opinion by Nazarian, J.

Filed: December 2, 2020

Marco Holmes was convicted in the Circuit Court for Baltimore City of second-degree murder, use of a firearm in the commission of a felony or crime of violence, and wearing, carrying, and transporting a handgun on his person. On appeal, Mr. Holmes argues that the circuit court erred in refusing to ask certain *voir dire* questions and in finding that he lacked standing to challenge a search he claims was illegal. Two recent opinions—the Court of Appeals's in *Kazadi v. State*, 467 Md. 1 (2020), and ours in *Foster v. State*, 247 Md. App. 642 (2020), resolve the first issue definitively in Mr. Holmes's favor and require us to reverse his convictions and remand for further proceedings. We also address his other issue and hold that the court did not err in denying the motion to suppress.

I. BACKGROUND

Mr. Holmes was in a relationship with Tonja Chadwick, who lived at 4701 Parkside Gardens Drive, Apartment G, in the Parkside Gardens Apartment complex in Baltimore. On January 28, 2017, Mr. Holmes was seen having an argument with Ms. Chadwick at a laundromat located near her apartment. The following day, Ms. Chadwick was reported missing.

On January 30, a Baltimore City police officer went to Ms. Chadwick's apartment and discovered a "wet stain on the carpet." The following day, officers returned to Ms. Chadwick's apartment and discovered additional stains, one of which was later determined to be Ms. Chadwick's blood. Later that day, the police obtained and executed a search warrant at Ms. Chadwick's apartment and recovered various pieces of evidence.

On February 2, Ms. Chadwick's body was discovered inside a blanket in a wooded area in Baltimore. She had been shot to death. Mr. Holmes was arrested, charged, and

ultimately convicted of Ms. Chadwick's murder and noted a timely appeal. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Mr. Holmes identifies two errors.[1] He contends *first* that the circuit court erred in denying his request to ask prospective jurors during *voir dire* whether they would be unable or unwilling to abide by the rule of law that a defendant is presumed innocent and that the State must prove a defendant's guilt beyond a reasonable doubt. *Second*, he contends that the circuit court erred in denying his motion to suppress evidence seized by the police from Ms. Chadwick's apartment after she had been reported missing. The first of these issues resolves the appeal in Mr. Holmes's favor, but we consider as well and affirm the circuit court's decision to deny his motion to suppress for lack of standing.

A. The Circuit Court Erred In Refusing To Ask Mr. Holmes's Requested *Voir Dire* Questions About The Presumption Of Innocence And The State's Burden Of Proof.

Before trial, Mr. Holmes asked the circuit court to pose the following question during *voir dire*: "Is there any member of the jury panel who is unable or unwilling to uphold and abide by the rule of law that states that a person is presumed innocent and the

[1] Mr. Holmes phrased his Questions Presented as follows:

> 1. Did the trial court abuse its discretion in refusing the defense request to ask prospective jurors during *voir dire* whether they would be "unable or unwilling to uphold and abide by the rule of law that states that a person is presumed innocent and the State must prove beyond a reasonable doubt the person's guilt?
>
> 2. Did the trial court err in denying the motion to suppress evidence on standing grounds?

State must prove beyond a reasonable doubt the person's guilt?" During *voir dire*, the court declined to pose Mr. Holmes's requested question. At the conclusion of *voir dire*, defense counsel objected to the court's refusal to propound his question. The court noted the objection and overruled it. Mr. Holmes now claims that the circuit court erred in refusing to ask his requested *voir dire* question, and we agree.

"*Voir dire*, the process by which prospective jurors are examined to determine whether cause for disqualification exists, is the mechanism whereby the right to a fair and impartial jury, guaranteed by Art. 21 of the Maryland Declaration of Rights, is given substance." *Dingle v. State*, 361 Md. 1, 9 (2000) (footnote omitted). In Maryland, "the sole purpose of *voir dire* 'is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]'" *Pearson v. State*, 437 Md. 350, 356 (2014) (alterations in original) (*quoting Washington v. State*, 425 Md. 306, 312 (2012)). "There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a 'collateral matter [is] reasonably liable to have undue influence over' a prospective juror." *Id.* at 357 (alteration in original) (*quoting Washington*, 425 Md. at 313). Generally, the scope and form of the questions presented during *voir dire* rest solely within the discretion of the trial court. *Washington*, 425 Md. at 313. But if a party requests a question and that question "is 'directed to a specific cause for disqualification' then the question must be asked and failure to do so is an 'abuse of discretion.'" *Smith v. State*, 218 Md. App. 689, 699 (2014) (*quoting Moore v. State*, 412 Md. 635, 654 (2010)).

In *Twining v. State*, 234 Md. 97 (1964), the Court of Appeals held that *voir dire* questions regarding certain rules of law, such as the presumption of innocence and the

burden of proof, were inappropriate. *Id.* at 100. But in *Kazadi v. State*, the Court overturned that holding and concluded that in a criminal case three rights—the State's burden of proof, the presumption of innocence, and a defendant's right not to testify—were so critical to a fair jury trial that a defendant should be entitled to *voir dire* questions aimed at uncovering biases regarding those rights because those questions could elicit responses that would uncover a specific cause for disqualification. *See Kazadi*, 467 Md. at 46–47. The Court held, therefore, that "on request, during *voir dire*, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." *Id.* at 9. This holding applies "to this case and any other cases that are pending on direct appeal when this opinion is filed, where the relevant question has been preserved for appellate review." *Id.* at 47.

Mr. Holmes requested, and the circuit court declined to ask, whether prospective jurors would be unwilling or unable to comply with the principles of the presumption of innocence and the State's burden of proof. That question fell within the ambit of questions *Kazadi* requires a trial court must ask. And when the circuit court refused to ask that question, defense counsel objected and preserved the issue for appellate review. *See Smith*, 218 Md. App. at 700–01 ("An appellant preserves the issue of omitted *voir dire* questions . . . by telling the trial court that he or she objects to his or her proposed questions not being asked."). *Kazadi* applies to this case, and its holding requires us to reverse Mr. Holmes's convictions.

The State argues that Mr. Holmes waived his *Kazadi* objection by accepting the jury without qualification at the conclusion of jury selection. We considered and rejected that argument in *Foster v. State*, No. 462-2019, slip op. at 3–8 (Md. App. Sept. 30, 2020) (holding that objection to trial court's refusal to ask a requested *voir dire* question was sufficient to preserve the issue, where defendant later accepted empaneled jury without qualification). *Foster* was issued not only after the trial in this case but after the briefs were submitted in this appeal, but it too applies to this case and resolves the State's preservation argument in Mr. Holmes's favor. And because the issue was preserved, *Kazadi* compels us to reverse the judgments and remand for further proceedings consistent with this opinion.

B. The Circuit Court Did Not Err In Denying Mr. Holmes's Motion to Suppress.

Because the evidentiary fruits of the police's searches will be relevant at a new trial, we need to address Mr. Holmes's contention that the circuit court erred in denying his motion to suppress. Before trial, Mr. Holmes challenged the lawfulness of the police's warrantless entry into Ms. Chadwick's Parkside Gardens apartment on January 30 and January 31, 2017. The State filed an answer challenging Mr. Holmes's standing to contest the search.

At the suppression hearing that followed, Mr. Holmes called Baltimore County Police Detective Frank Miller, the lead investigator into Ms. Chadwick's death. Detective Miller testified that during his investigation he visited Apartment G at the Parkside Gardens Apartment complex in Baltimore. During that visit, Detective Miller discovered "two or three pieces of clothing" that "could" have belonged to a man; "a couple toothbrushes in

the bathroom"; and two loofas hanging in the shower. Detective Miller later interviewed Mr. Holmes, who told the detective that he was "essentially" Ms. Chadwick's "live-in boyfriend" and that he stayed at the Parkside Gardens apartment "just about every night." Detective Miller testified that one of Ms. Chadwick's relatives told him that Mr. Holmes "sometimes" stayed at the Parkside Gardens apartment. Detective Miller also acknowledged that according to a violation of probation order for Mr. Holmes, submitted on February 1, 2017, "a home visit was conducted at 703 North Edgewood Street," and a "female respondent reported that Mr. Holmes did not live there."

On cross-examination, Detective Miller testified that he interviewed Mr. Holmes on February 8, 2017, and that Mr. Holmes provided 703 Edgewood Street as his home address. The State then introduced a copy of a lease agreement for the Parkside Gardens apartment that listed Ms. Chadwick as the lessee of the apartment. Mr. Holmes was not named on the lease.

Detective Miller testified that during his investigation, he learned that Mr. Holmes had moved out of the Parkside Gardens apartment before Ms. Chadwick disappeared and that Mr. Holmes's cousin had helped Mr. Holmes get a hotel room. Around the same time, the boyfriend of Mr. Holmes's cousin helped Mr. Holmes move "all of his personal property" out of the Parkside Gardens apartment.

As for Mr. Holmes's statements about being Ms. Chadwick's "live-in boyfriend," Detective Miller testified that all of Mr. Holmes's responses referred to the period before Ms. Chadwick's disappearance. Detective Miller added that Mr. Holmes stated multiple times during their interview that he did not go back to the apartment after January 28, 2017.

Detective Miller testified that Mr. Holmes was arrested on February 8, 2017 at a house "near Belair and Moravia Road" (not the Parkside Gardens apartment).

At the conclusion of the suppression hearing, the circuit court ruled that Mr. Holmes did not have standing to challenge the search at the Parkside Gardens apartment:

> The testimony from the detective before the Court, Detective Miller, gave me nothing more than what would cause me to speculate wildly as to somebody else other than the victim in this case living at that residence. The testimony was that, at some point, Mr. Holmes had been a live-in person at the property, but that on the 28th he moved out with [his] clothing and property in bags.
>
> I'm unmoved by the existence of the two loofas in the shower or two toothbrushes and a couple of items of clothing. There is nothing before the Court that's been presented through testimony that would lead me to conclude that one of those two loofas belonged to the Defendant, that one of the two toothbrushes belonged to him. It's an equally reasonable assumption that a person might have two of those items.
>
> Also, with respect to the clothing, if you look at the actual exhibit showing the closet, which Defense didn't put into evidence, but the State did, at 3I, there's a lot of clothing piled up in the laundry basket and on the floor. The detective said that it was all women's clothing.
>
> In the closet, and I'm looking at the exhibit on the left-hand side of the photograph. It looks like there's maybe two or three items of clothing and there's nothing, again, to identify it as belonging to Mr. Holmes. No testimony that anything that was found in a pocket with his name on it, a piece of paper with his address on it, nothing - or rather identifying it as his.
>
> The State's Exhibit 5, at the time that the detective interviewed the Defendant, Mr. Holmes, he was asked for his address. He provided 703 Edgewood Street as his address. He did not provide the subject property that's the subject of the motion to suppress as his address.

> And I know defense counsel argued that it's not relevant or important, because this was after the fact on February the 8th. I disagree, it corroborates the narrative that, he in fact, had moved out and was not using [the Parkside Gardens apartment] as his apartment.
>
> Furthermore, he stated to the detective during the interview on multiple occasions that he had left, he had never been back. When he was arrested, he was found . . . at another location, and the burden of the Defense in establishing standing is that he needs to show significant and current interest at the time of the search.
>
> So he may have had an interest at the beginning of January, in the middle of January, but when he abandoned the property, he lost that standing, so the motion to suppress is denied.

Mr. Holmes now claims that the circuit court erred in finding that he lacked standing to challenge the search at the Parkside Gardens apartment. He contends that he had a legitimate expectation of privacy in the apartment. As he told Detective Miller, he contends that he was Ms. Chadwick's "live-in boyfriend" and that he stayed at the apartment "just about every night." Mr. Holmes also notes that when Detective Miller entered the apartment, he discovered "two or three pieces of male clothing, along with two adult toothbrushes and two loofas." "[T]he reasonable inference," he argues, was that he possessed those items.

"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). In so doing, "we view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v.*

State, 426 Md. 211, 219 (2012). "We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the 'court's application of the law to its findings of fact.'" *Pacheco v. State*, 465 Md. 311, 319 (2019) (*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 . . . 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) (*first quoting United States v. Stevenson*, 396 F.3d 538, 545 (4th Cir. 2005); *then citing State v. Nieves*, 383 Md. 573, 583 (2004); *and then citing Laney v. State*, 379 Md. 522, 545 (2004)). 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.* "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, 49–50 (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).

Before we even get to those questions, though, Mr. Holmes needs standing to raise them. "[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. As to the first prong, "[t]he question that delineates whether a defendant possesses a subjective expectation privacy is 'whether . . . the individual has shown that he seeks to preserve something as private.'" *Whiting*, 389 Md. at 349 (*citing Smith v. Maryland*, 442 U.S. 735, 740 (1979)). And "[a]s to the second prong of the test, whether an individual's expectation is objectively reasonable, inquiry must be made into the substance of the defendant's claim that he or she possessed a legitimate expectation of privacy in the area searched." *Id.* at 350. Put another way, the "question is whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable (whether the individual's expectation, viewed objectively, is justifiable under the circumstances)." *Ricks v. State*, 312 Md. 11, 27 (1988), *disapproved on other grounds in Ragland v. State*, 385 Md. 706, 719 (2005).

We agree with the circuit court that Mr. Holmes failed to establish a reasonable expectation of privacy in the Parkside Gardens apartment. Viewed in a light most favorable to the State, the circuit court's factual findings readily support the inference that Mr. Holmes had abandoned the apartment by January 28, 2017, well before the police's warrantless entry on January 30. *See Modecki v. State*, 138 Md. App. 372, 376 (2001) ("It is well settled that, when a defendant intentionally 'abandons' his rights in or to property or a specific area, the constitutional protection against unreasonable searches and seizures does not apply."). All of Mr. Holmes's statements to Detective Miller about his status as Ms. Chadwick's "live-in boyfriend" covered time periods before January 28. Moreover, Mr. Holmes told Detective Miller several times that he had moved out of the apartment and had not been back since January 28. Mr. Holmes even provided Detective Miller with

a different address, 703 Edgewood Street, as his home address. No identification or other items belonging to Mr. Holmes were found in the Parkside Gardens apartment, and nothing linked Mr. Holmes to the clothing, toothbrushes, and loofas that were found. Detective Miller testified that the boyfriend of Mr. Holmes's cousin had helped Mr. Holmes move "all of his personal property" out of the Parkside Gardens apartment before January 30. And finally, Mr. Holmes had no proprietary interest in the apartment and was not listed on the lease.

In light of those factual findings, which were not clearly erroneous, we hold that Mr. Holmes lacked standing to challenge the lawfulness of the search at the Parkside Gardens apartment and that the circuit court did not err in denying Mr. Holmes's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.