IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL RODRIGUEZ,	)
	) No. 25, 2013
Defendant Below,	)
Appellant,	) Court Below: Superior Court
	) of the State of Delaware in
v.	) and for New Castle County
	)
STATE OF DELAWARE	) Cr. ID No. 0903019123A
	)
Plaintiff Below,	)
Appellee.	)

Submitted: August 28, 2013
Decided: September 30, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

O R D E R

This 30th day of September 2013, it appears to the Court that:

1. Defendant-Appellant Michael Rodriguez appeals the Superior Court's Order dated December 28, 2012, denying his motion for postconviction relief.

2. On March 17, 2009, Rodriguez was shot. Surgeons at Christiana Hospital recovered a bullet from him after he presented himself for medical treatment. Christiana Hospital staff later turned it over to the police. The bullet was used as evidence against Rodriguez in a trial for the burglary of Lamont Johnson's home. Rodriguez's trial counsel failed to move to suppress the bullet as evidence obtained in violation of the Fourth Amendment.

3. On March 15, 2010, Rodriguez was convicted of Assault Second Degree, Conspiracy Second Degree, Possession of a Firearm During the Commission of a Felony, Burglary First Degree, Aggravated Menacing, and Reckless Endangering First Degree.

4. During the trial, the clerk mistakenly told the jury that Rodriguez was charged with Possession of a Deadly Weapon by a Person Prohibited. Rodriguez motioned to strike the jury panel, but the Superior Court refused, giving prompt curative instructions. Rodriguez appealed his conviction to this Court, arguing the Superior Court should have struck the jury, but his appeal failed.

5. Rodriguez then filed a motion for postconviction relief in the Superior Court under Rule 61 of the Superior Court Rules of Criminal Procedure, alleging that his trial counsel was ineffective because he failed to object to the seizure and testing of the bullet recovered during surgery. Rodriguez argues this seizure violated his rights under the Fourth Amendment to the United States Constitution, and Article 1, § 6 of the Delaware Constitution. The Superior Court denied his motion on December 28, 2012. Rodriguez appeals this denial.

6. Before this court, Rodriguez argues that his Fourth Amendment rights have been violated because (1) he had a property right in the bullet which was used as evidence against him; (2) he did not abandon the bullet for the purpose of the Fourth Amendment; (3) Christiana Hospital was acting as an agent for the police,

rather than in its private capacity; and (4) he did not consent for Christiana Hospital to deliver the bullet to the police.

7. In general, we review a Superior Court judge's decision to deny postconviction relief for an abuse of discretion. When legal or constitutional questions are involved, we review them *de novo*.[1]

8. In order to raise a Fourth Amendment claim, a defendant must have a reasonable expectation of privacy,[2] or property rights which are infringed.[3] Rodriguez did not have property rights in the bullet sufficient to raise a Fourth Amendment claim. Someone must take possession of personal property to acquire title to it,[4] which involves intent to control it.[5] Rodriguez did not intend to be shot. Nor did he manifest a sufficient intent to control the bullet when he presented himself for medical treatment. He did not care what happened to the bullet, and only wanted relief from his wounds. It defies common sense to conclude that a gunshot victim intended to control a bullet after its involuntary entry into his body.

9. Rodriguez also clearly abandoned any right to privacy in relation to the bullet under the Fourth Amendment. One abandons property under the Fourth

---

[1] *Zebrowski v. State*, 12 A.3d 1115, 1119 (Del. 2010).

[2] *Katz v. United States*, 389 U.S. 347, 361 (1967).

[3] *United States v. Jones*, 132 S. Ct. 945, 951 (2012).

[4] *Clark v. Maloney*, 3 Del. 68 (Del. Sup. Ct. 1840)

[5] *Keron v. Cashman*, 33 A. 1055 (N.J. Ch. 1896)

Amendment if he relinquishes his reasonable expectation of privacy in relation to the property.[6] Rodriguez relinquished his reasonable expectation of privacy in relation to the bullet by presenting himself to Christiana Hospital for medical treatment. Those who come forward as victims of shootings can expect to be objects of public and media attention. What is more, the strong public interest in the prevention of gun crime demands that those who seek treatment for gun wounds relinquish their expectation of privacy. This result is also prescribed by statute which compels hospitals to report to the police if they have treated shooting victims.[7] Finally, this decision is consistent with the law in other states.[8]

10. Federal case law mandating that patients have a reasonable expectation of privacy in bodily fluids which hospitals collect for diagnostic testing can be distinguished.[9] Diagnostic tests reveal personal information about a patient's medical history which can reasonably be expected to remain confidential. In contrast, the bullet shot into Rodriguez's body does not reveal anything confidential about his medical history. Moreover, our General Assembly has, by

---

[6] *United States v. Thomas*, 864 F.2d 843, 845 (D.C. Cir. 1989).

[7] 24 *Del. C.* § 1762(a).

[8] *Com. v. Storella*, 6 Mass. App. Ct. 310, 316 (1978); *Craft v. Com.*, 221 Va. 258, 263 (1980).

[9] *See e.g. Ferguson v. City of Charleston*, 532 U.S. 67 (2001).

statute, dictated that Rodriguez relinquish his reasonable expectation of privacy,[10] as does the public interest in preventing gun crime.

11. As a result of the foregoing, Rodriguez's Fourth Amendment rights were not infringed by Christiana Hospital's decision to hand over the bullet recovered from him to the police. There is no need to address Rodriguez's other arguments.

12. Because Rodriguez's Fourth Amendment rights were not infringed, he did not suffer prejudice by his trial counsel's failure to object to the production of the bullet at trial. Therefore, his trial counsel was not ineffective under the test laid out in *Strickland v. Washington*.[11]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

---

[10] 24 *Del. C.* § 1762(a).

[11] *Strickland v. Washington*, 466 U.S. 668, 687 (1984).