Circuit Court for Frederick County
Case No. C-10-CR-21-000752

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 536

September Term, 2022

OTAGWYN SENGBE KAMBON

v.

STATE OF MARYLAND

Reed,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 12, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

On November 5, 2021, a Frederick County grand jury indicted Otagwyn Sengbe Kambon ("Appellant") on the following ten charges: (1) two counts of use of a firearm in relation to a drug trafficking crime; (2) two counts of illegal possession of a regulated firearm; (3) two counts of wearing, carrying, or transporting a handgun; (4) use of a magazine with a capacity exceeding ten rounds in the commission of a felony; (5) illegal possession of ammunition; (6) possession of a controlled dangerous substance ("CDS"); and (7) possession with intent to distribute CDS. These charges arose from a traffic stop and subsequent search of Appellant's vehicle, which revealed a loaded handgun and CDS. Appellant moved to suppress that physical evidence, arguing that the stop was unlawful. Following a hearing, the Circuit Court for Frederick County denied Appellant's motion. Thereafter, Appellant pled not guilty and proceeded on an agreed upon statement of facts. Although the State nolle prossed one count of use of a firearm in relation to a drug trafficking crime and the charge for use of a magazine with a capacity exceeding ten rounds, the court convicted Appellant of the remaining eight counts. The court then sentenced him to an aggregate term of 35 years' incarceration, with all but 20 years suspended, and five years' post-release probation.

Appellant presents two issues for our review, which we have rephrased slightly as follows:[1]

[1] In his brief, Appellant articulated the issues as follows:

1. Did the trial court err in denying Mr. Kambon's motion to suppress?

1. Did the court err in denying Appellant's motion to suppress evidence seized during the warrantless search of his automobile?

2. Did the court err by failing to merge Appellant's conviction for possession of a regulated firearm after having been convicted of a disqualifying crime under Maryland Code (2003, 2018 Repl. Vol.), § 5–133(b) of the Public Safety Article ("PS") with his conviction for possession of a regulated firearm after having been convicted for possession of a regulated firearm after having been convicted of a violent crime under PS § 5–133(c)?

We answer Appellant's first question in the negative and his second in the affirmative. We will, therefore, vacate Appellant's conviction under PS § 5–133(b) and otherwise affirm the judgments of the circuit court.

BACKGROUND

The Suppression Hearing

On April 11, 2022, the circuit court held a hearing on Appellant's motion to suppress. We present the evidence adduced at that hearing and the inferences reasonably drawn therefrom in the light most favorable to the State as the prevailing party. *See Barnes v. State*, 437 Md. 375, 389 (2014).

Shortly after 10:00 p.m. on the evening of Friday, October 15, 2021, Frederick County Sheriff's Deputy Sean Vanderwall parked his unmarked dark gray Dodge Charger

2. Where Mr. Kambom possessed a single firearm, must his second conviction for firearm possession under Pub. Safety § 5–133 be vacated?

next to a gas pump at the Sheetz store located at 8408 Woodsboro Pike.[2] Deputy Vanderwall described the weather conditions that evening as having been "fairly clear," by which he meant that it was not raining. When he exited his vehicle to pump gas, Deputy Vanderwall noticed a silver Mitsubishi with "damage to the right side as well as a doughnut tire" parked approximately 15 to 20 yards away. Deputy Vanderwall observed two occupants in the vehicle, both of whom were reclined in their respective seats.[3]

After entering Sheetz to procure a beverage, Deputy Vanderwall returned to his vehicle and surveilled the Mitsubishi through his rearview mirror. Deputy Vanderwall testified that his suspicions were aroused because the Mitsubishi was parked in a high crime area with its engine off notwithstanding the cold weather. Deputy Vanderwall prepared to exit his vehicle, approach the Mitsubishi, and speak with its occupants "to see if they were okay." Before he could do so, however, the Mitsubishi exited the Sheetz parking lot, turning right onto Woodsboro Pike ("the Road").[4]

[2] Although not stated in the transcript of the suppression hearing, we take judicial notice that October 15, 2021, fell on a Friday. *See State v. Greenstreet*, 162 Md. App. 418, 436 (2005) ("[I]t is well established that a court may take judicial notice of the day of the week on which a particular date fell."), *rev'd on other grounds, Greenstreet v. State*, 392 Md. 652 (2006).

[3] Deputy Vanderwall testified that he was unable to ascertain the race or gender of the vehicle's occupants.

[4] At the motions hearing, Deputy Vanderwall testified that Woodsboro Pike merged with Liberty Road "at [Route] 26 and [Route] 194," and that "194 turns into 26[.]" For the sake of simplicity, we will simply refer to the stretch of highway on which the Mitsubishi traveled as "the Road."

The Road began as an undivided two-lane, two-way highway. As Deputy Vanderwall followed the Mitsubishi, however, it became a four-lane, two-way divided highway with a grassy median. When it reached the divide, the Mitsubishi traveled in the left passing or "fast lane." After crossing a bridge, the Mitsubishi approached an intersection. Prior to that intersection, the Road widened to four southbound traffic lanes, one of which was a left turn lane, which was separated from the passing lane by a dotted white line followed by a solid white line.[5] Before entering the intersection, the Mitsubishi's left two tires crossed the solid white line into the turn lane. The vehicle then "correct[ed]," returning to the middle of the passing lane.

After the intersection, the Road consisted of three southbound lanes, with a solid yellow line separating the leftmost passing lane from the median shoulder.[6] As the Mitsubishi continued southbound in the passing lane, its driver's side tires crossed the solid yellow edge line onto the left median shoulder before again "correct[ing] itself."

When the Mitsubishi was in the vicinity of Monocacy Boulevard, Deputy Vanderwall activated his emergency equipment and initiated a traffic stop. Deputy Vanderwall testified that he had tailed the vehicle for a total of approximately two miles

[5] In addition to those traffic lanes, a photograph entered into evidence by the State depicts what appears to be a bicycle lane.

[6] Although Deputy Vanderwall testified that the Road consisted of two southbound lanes, the State admitted into evidence a photograph of the location where Appellant crossed the left edge, which clearly demonstrates that it consisted of three southbound lanes. When making its factual findings, moreover, the court found that "[t]here were three lanes of travel and the vehicle was still in the leftmost travel lane."

before doing so. Deputy Vanderwall paced the Mitsubishi from between six and eight car lengths behind and determined that it was traveling at a speed of between 40 and 45 miles per hour—five to ten miles per hour below the posted speed limit.

Deputy Vanderwall identified the driver as Kayla Scott and the passenger as Appellant. He issued Ms. Scott a citation for driving without her license and gave her a warning for failure to obey a traffic control device. Deputy Vanderwall testified that he pulled over the Mitsubishi, in part, because, based on his training and experience, he believed that the vehicle's slow rate of speed suggested that its driver may have been "under the influence of narcotics or alcohol."

Based on the foregoing facts, the circuit court denied Appellant's motion to suppress, ruling:

> With regards to the first crossing of the solid line in this case, I note and I think it is important factually it was into another lane of travel, a . . . turn lane in which a [vehicle] could well have been located. With regard to the second crossing, it was over a solid yellow line. In both instances, there were lanes of travel coming from the opposite side, although separated by a grass median. The Court finds that . . . based upon the totality of circumstances . . . the State has met its burden.
>
> And I include in this analysis the deputy's testimony. The location and nature of the crossings one over a solid white line into another lane of travel and over into a yellow solid -- over a yellow solid line. There was probable cause in this case to believe that there was a traffic violation committed at a minimum for the failure to obey a traffic control device for which Deputy Vanderwall testified that he gave the driver a warning[.]

The Agreed-Upon Statement of Facts

Although unnecessary to the resolution of this appeal, we set forth the following agreed-upon facts to provide context for our discussion of the issues presented.

After conducting a traffic stop of the Mitsubishi, Deputy Vanderwall approached the passenger side door. Once the passenger's window was rolled down, Deputy Vanderwall "detected the strong odor of marijuana and observed a cloud of burnt marijuana smoke emanat[ing] from the vehicle." Deputy Vanderwall asked Ms. Scott whether the vehicle contained additional marijuana, whereupon she advised him that she had a medical marijuana card and removed a white prescription marijuana container from her purse. The container's seal was broken and some marijuana had been removed therefrom. Appellant—who had been convicted of second-degree assault in 2013 and was the vehicle's registered owner—volunteered to Deputy Vanderwall that Ms. Scott and he had smoked a "blunt." Turning to Appellant, Deputy Vanderwall asked whether he too had a medical marijuana card. When Appellant answered in the negative, Deputy Vanderwall instructed Ms. Scott and him to exit the vehicle and initiated a search thereof.

During the search of the Mitsubishi, Deputy Vanderwall found a marijuana cigarette in the cupholder ashtray. On the floor behind the driver's seat, he also discovered a black garbage bag containing 56 individually packaged Tetrahydrocannabinol ("THC")

"edibles"[7] and a digital scale, as well as "a small black tactical bag" containing a loaded Glock 21 .45-caliber semiautomatic handgun without a serial number.[8]

Deputy Vanderwall read Appellant his *Miranda* rights. Immediately thereafter, Appellant claimed ownership of any contraband in the vehicle. Deputy Vanderwall then asked him whether he had any paperwork pertaining to the firearm. Appellant answered in the negative. Deputy Vanderwall issued Ms. Scott traffic citations and arrested Appellant. During a search incident to that arrest, Deputy Vanderwall recovered a red iPhone from Appellant's person.

Deputy First Class Daniel Schlosser conducted a warranted forensic data extraction of Appellant's phone, which revealed multiple text messages sent by him offering to sell THC edibles. In DFC Schlosser's opinion as an expert in the identification, packaging, and distribution of CDS, Appellant "possessed the [CDS] in a quantity indicative of distribution, rather than personal use, and that [Appellant] was selling THC products at a street level for profit." DFC Schlosser further opined that Appellant "possessed the firearm . . . to protect himself from being robbed of his THC products and/or the profits from selling the THC products."

[7] Subsequent chemical analyses of two samples of the edibles recovered from Appellant's vehicle confirmed that they contained Delta 9 THC—a Schedule I substance.

[8] On October 20, 2021, Deputy Matthews, also of the Frederick County Sheriff's Office, test-fired the handgun and found it to be operable.

DISCUSSION

I.

Appellant contends that the court committed reversible error by denying his motion to suppress, arguing that Deputy Vanderwall "lacked both probable cause to believe a traffic violation occurred and reasonable suspicion that criminal activity was afoot."[9]

"When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party, in this case, the State." *Washington v. State*, 482 Md. 395, 420 (2022). We defer to the motion court's first-level factual findings and will not disturb them unless clearly erroneous. *See Williamson v. State*, 413 Md. 521, 532 (2010) ("We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous."). "The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case." *Belote v. State*, 411 Md. 104, 120 (2009). We may, therefore, affirm the judgment of the circuit court "on any ground adequately shown by the record,

[9] Appellant does not challenge Deputy Vanderwall's testimony that he observed the Mitsubishi cross both the solid white turning lane line or the solid yellow line delineating the left-hand edge of the southbound roadway. Nor does he deny that the odor of marijuana emanating from the vehicle furnished probable cause to support the warrantless search thereof.

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

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. "A traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment." *Heien v. North Carolina*, 574 U.S. 54, 60 (2014). The Supreme Court of Maryland has explained that a traffic stop may be justified by either probable cause or the less demanding standard of reasonable suspicion:

> Where the police have probable cause to believe that a traffic violation has occurred, a traffic stop and the resultant temporary detention may be reasonable. *See Whren v. United States*, 517 U.S. 806, 810 . . . (1996). A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that "criminal activity is afoot." *Terry v. Ohio*, 392 U.S. 1, 30 . . . (1968). Whether probable cause or a reasonable articulable suspicion exists to justify a stop depends on the totality of the circumstances. *See United States v. Cortez*, 449 U.S. 411 . . . (1981).

Rowe v. State, 363 Md. 424, 433 (2001). *See also Smith v. State*, 214 Md. App. 195, 201 (2013) ("To be reasonable, a traffic stop must be supported by 'reasonable articulable suspicion to believe that the car [was] being driven contrary to the laws governing the operation of motor vehicles.'" (Quoting *Lewis v. State*, 398 Md. 349, 362 (2007))), *cert. denied*, 436 Md. 330 (2013).

Probable cause "is a nontechnical conception of a reasonable ground of a belief of guilt. A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Bailey v. State*, 412 Md. 349, 374–75 (2010) (quotation marks and citation omitted). Although "incapable of precise definition or quantification into percentages . . . . , the substance of all the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized[.]" *Maryland v. Pringle*, 540 U.S. 366, 371 (2003).

Reasonable suspicion is "'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." *Heien*, 574 U.S. at 60 (quoting *Navarette v. California*, 572 U.S. 393, 396 (2014)). This exacting demanding standard "exists somewhere between unparticularized suspicions and probable cause." *Sizer v. State*, 456 Md. 350, 364 (2017). "In assessing whether the articulable reasonable suspicion standard is satisfied, it is well settled that the police have the right to stop and detain the operator of a vehicle when they witness a violation of a traffic law." *Steck v. State*, 239 Md. App. 440, 454 (2018), *cert. denied*, 462 Md. 582 (2019). Moreover, the "'subjective motivations' for conducting a traffic stop are irrelevant for Fourth Amendment purposes." *Darling v. State*, 232 Md. App. 430, 451, *cert. denied*, 454 Md. 655 (2017). Reasonable suspicion may, however, "be based on a law enforcement officer's reasonable mistake of law." *State v. Rovin*, 472 Md. 317, 369 (2021).

"'In determining the existence of reasonable suspicion, a court must consider the totality of the circumstances—the whole picture. [The Court] do[es] not parse an officer's overall concern and base a judgment on whether its individual components, standing alone, will suffice.'" *Ray v. State*, 206 Md. App. 309, 327 (2012) (quoting *McDowell v. State*, 407 Md. 327, 337 (2009)), *aff'd*, 435 Md. 1 (2013). Facts that seem innocent when considered in isolation may, therefore, nevertheless give rise to reasonable suspicion when viewed in aggregate "through the eyes of a reasonable, prudent, police officer." *Sellman v. State*, 449 Md. 526, 542 (2016) (quotation marks and citation omitted). *See also United States v. Arvizu*, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct."); *Trott v. State*, 473 Md. 245, 257 (2021) ("[A] stop may be upheld based on 'a series of acts which could appear naturally innocent if viewed separately' but that 'collectively warrant further investigation[.]'" (Quoting *Cartnail v. State*, 359 Md. 272, 290 (2000))).

In support of his challenge to the constitutionality of the traffic stop at issue, Appellant analogizes this case to *Rowe, supra*, wherein the Supreme Court of Maryland[10] held that contraband discovered in the defendant's vehicle was the fruit of an illegal stop. Appellant's reliance on *Rowe* is misplaced.

[10] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

In *Rowe*, Maryland State Trooper Stephen Jones followed the defendant's van, which was "'the only one in the area,'" for 1.2 miles as it traveled southbound in the far right lane of Interstate 95 at 1:00 a.m. 363 Md. at 427. Trooper Jones observed the defendant's vehicle "'cross[] the white edge line on the right side of the shoulder, about eight inches over that white edge line on to the shoulder,'" "'hit . . . rumble strips,'" and "'swerve[] back into the slow lane.'" *Id*. at 427–28. Upon subsequently seeing the tires of the defendant's vehicle "directly on the white edge line," Trooper Jones conducted a traffic stop for "'failing to drive in a single lane'" in violation of Maryland Code (1977, 1999 Repl. Vol.), § 21–309(b) of the Transportation Article ("TR"). *Id.* at 428, 433. During that stop, the defendant consented to a search of the luggage in the rear of his van. The ensuing search of that luggage revealed approximately 77 pounds of marijuana. The defendant was arrested and charged with, among other things, possession of marijuana with intent to distribute.

The defendant filed a pre-trial motion to suppress the marijuana, arguing that Trooper Jones lacked probable cause to effectuate the stop. The court denied that motion and a jury convicted the defendant. We affirmed in an unreported opinion.

The Supreme Court of Maryland reversed. The Court's holding rested upon its interpretation of TR § 21–309(b), which provides: "A vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from that lane . . . until the driver has determined that it is safe to do so." Looking to the plain language of the statute, the Court observed:

> [T]o be in compliance, a vehicle must be driven as much as possible in a single lane and movement into that lane from the shoulder or from that lane to another one cannot be made until the driver has determined that it can be done safely. Thus, more than the integrity of the lane markings, the purpose of the statute is to promote safety on laned roadways.

Id. 434. The Court concluded "that the petitioner's momentary crossing of the edge line of the roadway and later touching of that line did not amount to an unsafe lane change or unsafe entry onto the roadway, conduct prohibited by § 21–309, and, thus, cannot support the traffic stop in this case." *Id.* at 441.

This Court has since distinguished *Rowe* in several cases and held that the particular facts presented therein provided the police probable cause to conduct a traffic stop of the appellants for violating TR § 21–309(b). *See Blasi v. State*, 167 Md. App. 483, 499 (holding that the police had probable cause to conduct a traffic stop of a vehicle traveling in the slow lane after its wheels crossed the solid line onto the shoulder and the dotted line into the passing lane while traveling at speeds eight to ten miles per hour above and below the posted speed limit), *cert. denied*, 393 Md. 245 (2006); *Dowdy v. State*, 144 Md. App. 325 (2002) (holding that the police had probable cause to conduct a traffic stop of a vehicle that twice crossed the broken lane line into the passing lane); *Edwards v. State*, 143 Md. App. 155, 171 (2002) ("[T]he circuit court properly determined that . . . crossing the center line of an undivided, two lane road by as much as a foot, on at least one occasion, provided a legally sufficient basis to justify the traffic stop.").

The facts in the instant case are likewise distinguishable from *Rowe*. Critically, the van in *Rowe* crossed the fog line onto the *right shoulder*.[11] As this Court noted in *Dowdy* and reiterated in *Blasi*, there was, therefore, "no lane change, unsafe or otherwise[.]" 167 Md. App. at 498. While crossing an edge line into the right shoulder poses little or no danger of a traffic collision, crossing into another lane of traffic creates "a '*potential danger to anyone who may have been proceeding lawfully in the . . . lane*.'" *Id.* (quoting *Dowdy*, 144 Md. App. at 330) (emphasis added in *Blasi*). *See also United States v. Gregory*, 79 F.3d 973, 978 (10th Cir. 1996) ("Since the movement of the vehicle occurred toward the right shoulder, other traffic was in no danger of collision."), *cited with approval in Rowe*, 363 Md. at 439. Indeed, the trial court in this case found it "important factually" that Appellant's vehicle was driven "into another lane of travel, . . . a turn lane in which a [vehicle] could well have been located." Moreover, while the defendant in *Rowe* crossed the fog line only once, the vehicle in this case crossed two lane lines on two separate occasions, indicating more erratic driving than that at issue in *Rowe*. Considering the totality of the circumstances, we are persuaded that Deputy Vanderwall had at least a reasonable suspicion that the Mitsubishi's driver violated TR § 21-309(b), and the traffic stop did not, therefore, offend the Fourth Amendment.

[11] "The term 'fog line' generally refers to 'the white line on the right-hand side of the highway that separates the driving lane from the shoulder.'" *United States v. Diaz*, 802 F.3d 234, 238 n.8 (2d Cir. 2015) (citation omitted). *See also United States v. Pulliam*, 265 F.3d 736, 738 (8th Cir. 2001) (defining a "fog line" as "the solid white line that separates the shoulder from the highway").

Alternatively, the traffic stop in this case was justified by a reasonable suspicion that the driver was operating the vehicle while under the influence of alcohol or drugs in violation of TR § 21–902. At the outset, we note that the traffic stop occurred in a high-crime area shortly after 10:00 p.m. on a Friday evening. Although these facts do not give rise to a reasonable suspicion that criminal activity was afoot, they nevertheless inform our totality of the circumstances analysis. *Compare Cox v. State*, 161 Md. App. 654, 671 (2005) (identifying a person's presence in a high crime area as a factor relevant to whether reasonable suspicion existed to justify a traffic stop), *with United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) ("The lateness of the hour is another fact that may raise the level of suspicion."), *and Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010) ("In light of the time of night, the location, [the officer's] training and experience, and [the defendant's] aggressive driving, it was rational for [the officer] to have inferred that appellant may have been intoxicated[.]"), *and State v. Lange*, 766 N.W.2d 551, 557 (Wis. 2009) ("It is a matter of common knowledge that people tend to drink during the weekend when they do not have to go to work the following morning.").

The Mitsubishi's slow rate of speed in the "fast lane"—even when traveling in a passing lane in clear weather and on a dry road—is also not, without more, sufficient to establish a reasonable suspicion that its driver is intoxicated. In a vacuum, a vehicle's crossing two solid lane lines—one of which separated the passing lane from a designated left-turn lane—over the course of two miles may not, moreover, support such a suspicion. When viewed *in aggregate* "through the eyes of a reasonable, prudent, police officer,"

Sellman, 449 Md. at 542, however, these facts were sufficient to support a reasonable suspicion that the driver was operating the vehicle while under the influence of alcohol or drugs and, therefore, justified the traffic stop. *See United States v. Sanchez-Pena*, 336 F.3d 431, 437 (5th Cir. 2003) (affirming the district court's determination that the arresting officer's "testimony that the low speed at which [defendant] was driving, sixteen miles under the speed limit, coupled with the vehicle's encroachment onto the shoulder of the lane, raised a reasonable suspicion in his mind as to [defendant's] sobriety"); *United States v. Botero-Ospina*, 71 F.3d 783, 788 (10th Cir. 1995) (holding that officer's observations that defendant's vehicle "was traveling well below the posted speed limit and straddling the lane as it traveled" gave rise to reasonable suspicion that defendant was driving under the influence).

II.

Appellant also asserts that the court erred by entering two convictions for illegal possession of a single regulated firearm pursuant to PS § 5–133. The State agrees, as do we.

PS § 5–133 prohibits persons convicted of certain crimes from possessing a regulated firearm.[12] Appellant was previously convicted of second-degree assault, which

[12] PS § 5–133 provides, in pertinent part:

> (b) Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if the person:
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> (1) has been convicted of a disqualifying crime[.]

both constitutes a "disqualifying crime" for purposes of PS § 5–133(b)(1), *see* PS § 5–101(g) (defining a "disqualifying crime" as either "a crime of violence," "a violation classified as a felony in the State," or "a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years."), and a "crime of violence" under PS § 5–133(c)(1). *See* PS § 5–101(c)(3) (providing that a "crime of violence" includes "assault in the first or second degree[.]"). The unit of prosecution under PS § 5–133, however, is "the prohibited act of illegal possession of a firearm and . . . the statute does not support multiple convictions based on several prior qualifying offenses where there is only a single act of possession." *Melton v. State*, 379 Md. 471, 486 (2004). *See also Wimbish v. State*, 201 Md. App. 239, 272 (2011) ("[W]hen appellant possessed a single regulated firearm, which was illegal under § 5–133 for two reasons (his age and his prior conviction for a crime of violence), he committed only one violation of that section."), *cert. denied*, 424 Md. 293 (2012).

As Appellant unlawfully possessed a single regulated firearm, he committed only one crime under the statute. In circumstances such as this, the proper remedy is to vacate the conviction with the lesser sentence. *See id.* at 272 ("[W]e shall affirm the conviction

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* * *

> (c)(1) A person may not possess a regulated firearm if the person was previously convicted of:
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> (i) a crime of violence[.]

for the offense with the greater penalty, that is, possession by a person previously convicted of a crime of violence and reverse the conviction for the offense with the lesser penalty[.]"). Accordingly, we vacate Appellant's conviction for illegal possession of a regulated firearm by a person convicted of a disqualifying crime pursuant to PS § 5–133(b)(1).

CONVICTION FOR POSSESSION OF A REGULATED FIREARM BY A PERSON CONVICTED OF A DISQUALIFYING CRIME PURSUANT TO PUBLIC SAFETY ARTICLE § 5–133(b)(1) VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY FREDERICK COUNTY.