Circuit Court for Montgomery County
Case No. 133429C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1059

September Term, 2018

ISIAH BUTLER

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Friedman,
JJ.

Opinion by Friedman, J.

Filed: November 8, 2019

Following a bench trial in the Circuit Court for Montgomery County, Isiah Butler was convicted of possession of a regulated firearm after having been convicted of a crime of violence and theft between $100 and $1,500. On appeal, Butler presents two questions for our review:

1. Was the evidence adduced at trial sufficient to sustain Butler's conviction of possession of a regulated firearm after having been convicted of a crime of violence?

2. Did the circuit court fail to comply with Maryland Rule 4-215 after defense counsel informed the court that Butler was dissatisfied with present counsel and wanted to obtain new counsel?

For the reasons that follow, we hold that the evidence was insufficient to sustain Butler's conviction for possession of a regulated firearm. Moreover, because we reverse Butler's possession conviction on sufficiency grounds, he cannot be retried on that charge. We also hold that the circuit court failed to comply with Maryland Rule 4-215 and, as a result, committed reversible error. Unlike the possession charge, however, Butler may be retried for the theft conviction. Accordingly, we reverse the judgments of the circuit court.

BACKGROUND

Butler was stopped by a loss prevention agent at a Safeway grocery store after putting items in a trash bag and walking past the cash registers without paying. During the apprehension, the loss prevention agent recovered a gun from Butler's person. Butler was arrested and charged with theft of between $100 and $1,500. The State also charged Butler with possession of a regulated firearm after being convicted of a crime of violence based on Butler's 2015 conviction in the District of Columbia for "assault on a police officer."

In support of this charge, the State offered a certified record of Butler's District of Columbia conviction. Based on this evidence alone, the trial court determined that Butler had, in fact, committed a crime of violence. The trial court then convicted Butler of possession of a regulated firearm after having been convicted of a crime of violence.

DISCUSSION

I. SUFFICIENCY OF EVIDENCE—CRIME OF VIOLENCE

Butler first argues that the certified record of his 2015 District of Columbia conviction, which was offered by the State as evidence that he had been convicted of a crime of violence, was insufficient to support his conviction of possession of a regulated firearm after having been convicted of a crime of violence. As such, Butler contends that the State failed to prove the elements of the crime charged and his conviction must be reversed. We agree.

When reviewing a challenge to the sufficiency of the evidence to sustain a conviction, the appellate court decides "whether, after viewing evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Derr v. State*, 434 Md. 88, 129 (2013). If an element of the offense has not been established by the evidence, the conviction "fails as a matter of law." *Smith v. State*, 225 Md. App. 516, 520 (2015).

Butler was convicted under Title 5 of the Public Safety Article of the Maryland Code. MD. CODE, Public Safety ("PS") § 5-133. Subsection (c)(1) of that section states that "a person may not possess a regulated firearm if the person was previously convicted of: (i) a crime of violence … or (iii) an offense under the laws of another state or the United

States that would constitute" a crime of violence.[1] PS § 5-133(c)(1). To support Butler's conviction, the State was required to establish the following elements: (1) that the handgun involved was a regulated firearm;[2] (2) that Butler possessed the firearm; and (3) that Butler was precluded from possessing the firearm because of a disqualifying status, specifically a prior conviction for a crime of violence. *See Smith*, 225 Md. App. at 520; PS § 5-133(c)(1). Butler argues that the State had insufficient evidence to establish that he was disqualified from possessing the regulated firearm.

In Maryland, first or second-degree assault are "crimes of violence." PS § 5-101(c)(3). First-degree assault occurs when an individual "intentionally cause[s] or attempt[s] to cause serious physical injury to another." MD. CODE, Criminal Law ("CR") § 3-202(a). Second-degree assault "encompasses three types of common law assault and battery: (1) the 'intent to frighten assault'; (2) attempted battery; and (3) battery." *Snyder v. State*, 210 Md. App. 370, 380 (2013); CR § 3-203(a). Whether Butler's conviction for "assault on a police officer" was a crime of violence that falls into Maryland's definition of assault requires us to review the statute under which he was convicted.

Butler was convicted in 2015 of violating § 22-405 of the District of Columbia Code, titled "assault on member of police force, campus or university special police, or fire

[1] The statute also prohibits possession of a regulated firearm by a person previously convicted of certain enumerated offenses, none of which are relevant to Butler's conviction. PS § 5-133(c)(1)(ii).

[2] The parties stipulated to this at trial.

department." At that time,[3] § 22-405 read, in pertinent part, "whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor." D.C. CODE § 22-405(b).

In Maryland, the captions and catchlines of code sections are not written or voted upon by the General Assembly and are not part of the law itself. *Gilroy v. SVF Riva Annapolis LLC*, 234 Md. App. 104, 109 (2017), *aff'd* 459 Md. 632 (2018); *see* MD. CODE, General Provisions ("GP") § 1-208 (noting that the caption or catchline are "intended as a mere catchword to indicate the contents" of the section and "may not be considered as a title of the section"). The District of Columbia, however, follows a different rule. The titles in its law are part of the D.C. Code, but are given limited significance in interpreting the statute. *See, e.g.*, *Facebook v. Wint*, 199 A.3d 625, 629-30 (D.C. 2019) (holding that legislative titles are of "limited utility when weighed against plain statutory language"); *see also Cherry v. District of Columbia*, 164 A.3d 922, 928 (D.C. 2017) (noting that the significance of the title should "not be exaggerated"). As a result, although the title of DC § 22-405 says that it concerns "assault on member of police force, campus or university special police, or fire department," the text of the provision clearly covers a broader sweep of conduct, including conduct that we would not consider assault in Maryland. *See In re J.S.*, 19 A.3d 328, 331 (D.C. 2011) (noting that the statute covers conduct "beyond assault,"

[3] The statute has since been amended, but for our analysis, we cite to the version of the statute in effect at the time of Butler's conviction.

as it clearly enumerates other conduct against police officers, which can result in a violation of the statute).

The certified record presented by the State at Butler's trial was insufficient to sustain Butler's conviction. That document contained nothing more than the title of the crime Butler was convicted of—"assault on a police officer." Without any additional information as to Butler's conduct, the trial court had no way of knowing whether Butler's District of Columbia conviction was based on an "assault" or on some other behavior, like resisting, opposing, impeding, intimidating, or interfering with a police officer—all of which are grounds for conviction under the D.C. statute, but would not constitute first or second-degree assault in Maryland.

Butler's conduct may have been assaultive, but we don't know. All we know is that he was convicted under D.C. Code § 22-405. It was the State's duty to prove Butler's conduct constituted a "crime of violence" in Maryland and the State failed to do so. Accordingly, we reverse. Moreover, because we hold that the evidence was insufficient to sustain Butler's conviction, Butler cannot be retried on this charge. *See Burks v. U.S.*, 437 U.S. 1, 11 (1978) (holding that the Double Jeopardy Clause "forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding").

II. FAILURE TO COMPLY WITH MARYLAND RULE 4-215

Butler next argues that the trial court committed reversible error when it failed to inquire into his dissatisfaction with defense counsel. Because the trial court did not ask Butler why he was dissatisfied with counsel once it was brought to the trial court's

attention, Butler contends that the trial court failed to comply with Maryland Rule 4-215 and, as such, reversal is mandated. Again, we agree.

Maryland Rule 4-215(e) protects a defendant's right to counsel and provides, in relevant part, that "[i]f a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request." MD. RULE 4-215(e); *State v. Graves*, 447 Md. 230, 241 (2016). The provisions of Rule 4-215(e) are "mandatory, and a trial court's departure from them constitutes reversible error." *State v. Hardy*, 415 Md. 612, 621 (2010).

A defendant's expression of dissatisfaction with counsel or desire to discharge counsel is a "red flag" for the trial court. *State v. Taylor*, 431 Md. 615, 633 (2013). As such, when "any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel" is made, a judge's duty to inquire under Rule 4-215(e) is triggered. *Gambrill v. State*, 437 Md. 292, 302 (2014). The trial judge is required to "ask about the reasons underlying the request" and provide the defendant with a forum to explain. *Taylor*, 431 Md. at 633. Such inquiry is "vitally important" because the reasons from the defendant will "dictate how the court proceeds." *Graves*, 447 Md. at 242-43.

During a pre-trial hearing, Butler's counsel announced that Butler had "continually express[ed] dissatisfaction with counsel" and "really want[ed] to hire his own lawyer." Instead of asking Butler to explain why he was dissatisfied, the trial court had Butler's sister discuss her arrangements to secure private counsel. When the trial court eventually addressed Butler, only one question was asked—whether Butler would "continue" with Office of the Public Defender if he was unable to secure private counsel. The court then

postponed the proceedings. Upon returning to court several days later, Butler informed the court that the Office of the Public Defender would continue to represent him. Again, the court did not inquire into Butler's prior stated dissatisfaction with his counsel.

The trial court's failure to comply with the mandates of Rule 4-215(e) resulted in reversible error. Butler's postponement request did not discharge the trial court's duty to inquire under Rule 4-215. *See Gambrill*, 437 Md. at 305 (noting that a defendant's request to hire a new attorney, even if "coupled with a request for a postponement," may not have been a "paradigm of clarity" but its "inherent ambiguity did not relieve the judge of his obligation to comply with Rule 4-215(e)"). The trial court was required to ask Butler *why* he was dissatisfied with his counsel but, it never did. *See Graves*, 447 Md. at 253 (noting that asking the defendant whether they wanted to fire counsel is not the equivalent of asking them why discharge was desired). Because the trial court failed to comply with Rule 4-215, we hold that it erred. As a result, the appropriate remedy is to reverse and remand for a new trial on this charge only. *Hawkins v. State*, 130 Md. App. 679, 688 (2000).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY THE MONTGOMERY COUNTY.