

Circuit Court for Cecil County
Case No. C-07-CR-20-000519

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2066

September Term, 2021

GARY EUGENE REED

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 22, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Cecil County, Gary Eugene Reed, appellant, was convicted of first-degree assault, reckless endangerment, and use of a firearm in the commission of a crime of violence. The court imposed a sentence of twenty years' imprisonment, with all but three years suspended for first-degree assault; a five-year suspended sentence for reckless endangerment, to run concurrently with the sentence for first-degree assault; and a consecutive sentence of five years' imprisonment, to be served without the possibility of parole, for use of a firearm in the commission of a crime of violence. Appellant raises two issues on appeal: (1) whether the court erred in refusing to strike a prospective juror for cause, and (2) whether his conviction for reckless endangerment should have merged with his conviction for first-degree assault. For the reasons that follow, we shall vacate appellant's sentence for reckless endangerment, but otherwise affirm the judgments.

Appellant first asserts that the court erred in failing to strike prospective juror 194 for cause because that juror indicated that he had "strong feelings" about domestic violence and initially indicated that it would be "hard to sway [his] decision[.]" We need not resolve this issue, however, because appellant used a peremptory strike to remove that prospective juror, and he had peremptory strikes remaining at the conclusion of jury selection. Consequently, even if the court erred in not striking the prospective juror for cause, the error was not reversible. *See Morris v. State*, 153 Md. App. 480, 496 (2003) ("If disqualification for cause is improperly denied, but the accused has not exercised all allowable peremptory challenges, there is no reversible error." (quoting *White v. State*, 300 Md. 719, 728 (1984))).

Appellant also contends, and the State agrees, that his conviction for reckless endangerment should have merged with his conviction for first-degree assault. In *Williams v. State*, 100 Md. App. 468, 510 (1994), this Court held that convictions for assault with intent to maim and reckless endangerment were not inconsistent where they were based on the “same act.” Nevertheless, we concluded that merger was required because “the subjective *mens rea* of reckless indifference to a harmful consequence” had ripened “into the even more blameworthy specific intent to inflict the harm” that was required for the assault conviction. *Id.* Similarly, in *Marlin v. State*, we concluded that reckless endangerment merges into first-degree assault by firearm where the defendant’s “conduct as to the reckless endangerment involved the same conduct that formed the basis for the first degree assault[.]” *Marlin*, 192 Md. App. 134, 171 (2010). We explained that, because “the evidence at trial pertained solely to a single act of shooting a single victim” and “no other conduct was involved in proving either offense[.]” only one sentence was warranted. *Id.*

At trial, the State presented evidence that appellant was intoxicated and got into an argument with his wife. Appellant’s wife eventually went to their son’s house, who was not home, and locked herself inside. Appellant arrived and asked his wife to open the door so that they could talk. When his wife refused to let him in, appellant fired a handgun multiple times at the door and window of the home. Neither the charging document, nor the jury instructions, nor the closing arguments, nor the verdict sheet specified which act or acts served as the basis for its verdict of guilty on either charge. And appellant’s wife was the only victim. Consequently, we agree with the parties that

merger was required and therefore appellant's sentence for reckless endangerment should be vacated.

**APPELLANT'S SENTENCE FOR RECKLESS
ENDANGERMENT VACATED. JUDGMENTS
OF THE CIRCUIT COURT FOR CECIL
COUNTY OTHERWISE AFFIRMED. COSTS
TO BE PAID ONE-HALF BY APPELLANT,
ONE-HALF BY CECIL COUNTY.**