

Circuit Court for Carroll County
Case No. C-06-CR-18-000122

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2287

September Term, 2019

DAMON A. COLLINS

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 7, 2021

*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.

Convicted by a jury in the Circuit Court for Carroll County of two counts of second degree assault, two counts of reckless endangerment, use of a firearm in the commission of a crime of violence, illegal possession of a regulated firearm by a person convicted of a disqualifying crime, and illegal possession of a regulated firearm by a convicted felon, Damon A. Collins, appellant, presents for our review two questions: whether the conviction for illegal possession of a regulated firearm by a person convicted of a disqualifying crime should have been merged into the conviction for illegal possession of a regulated firearm by a convicted felon, and whether the evidence is sufficient to sustain the convictions for use of a firearm in the commission of a crime of violence and illegal possession of a regulated firearm. For the reasons that follow, we shall vacate the sentence for the conviction for illegal possession of a regulated firearm by a person convicted of a disqualifying crime. We shall otherwise affirm the judgments of the circuit court.

At trial, the State presented evidence that on April 22, 2018, Mr. Collins and Hannah Rinaldi engaged in an altercation at the intersection of Harney and Conover Roads in Taneytown. When a group of people, including Samantha Lawson and Leanne McVey, exited a minivan and attempted to intervene, Ms. Rinaldi fought with Ms. Lawson and Ms. McVey. As Ms. Lawson and Ms. McVey were returning to the minivan, Mr. Collins fired two shots, one of which struck Ms. McVey in her leg, and one of which struck the minivan.

Following trial, the court sentenced Mr. Collins to a term of twenty years' imprisonment, all but five years suspended, for the use of a firearm in the commission of a crime of violence, and a consecutive term of five years' imprisonment for the illegal possession of a regulated firearm by a convicted felon. The court further sentenced Mr.

Collins to concurrent terms of five years' imprisonment for the first count of second degree assault, three years' imprisonment for the second count of second degree assault, and five years' imprisonment for the illegal possession of a regulated firearm by a person convicted of a disqualifying crime.

Mr. Collins first contends that the conviction for illegal possession of a regulated firearm by a person convicted of a disqualifying crime “should have been merged” into the conviction for illegal possession of a regulated firearm by a convicted felon, because “the unit of prosecution is the possession of the firearm.” The State concurs, as do we. *See Melton v. State*, 379 Md. 471, 474 (2004) (“the Legislature did not intend for a court to render separate multiple verdicts of convictions on an individual for illegal possession of a regulated firearm . . . where that individual fits within several categories of prior qualifying convictions, but only possessed a single regulated firearm on a single occasion”). Accordingly, we vacate the sentence for illegal possession of a regulated firearm by a person convicted of a disqualifying crime.

Mr. Collins next contends that the evidence is insufficient to sustain the convictions for use of a firearm in the commission of a crime of violence and illegal possession of a regulated firearm because “no rational trier of fact could find beyond a reasonable doubt that the item fired twice that night was a handgun or firearm . . . and not a BB gun.” We disagree. At trial, the State elicited the following testimony:

- An eyewitness named Mychall Hickey testified that he “saw [a] firearm being drawn in the air and fired.” Hickey stated: “It was a really little gun. It was – I believe it was a little revolver like – it wasn’t big, it was like a 22 maybe. It was like a real small like pocket gun.” Hickey also confirmed that he “recognize[d] those sounds as gunshots.”

- Maryland State Trooper Derek Eckhardt testified that when he responded to the scene, he discovered two “spent shell casings.” When asked what “spent” means, Trooper Eckhardt stated: “That the rounds were discharged[,] were expelled from the firearm, the casing itself contains the black powder or the pow[d]er that expels the round off the front of it. So, the round was missing and the powder was no longer in it, so they were empty.”
- Ms. McVey testified that when she “got to the van,” Mr. Collins “reached into [an] SUV and pulled the gun out and pointed it down and fired off two shots.” Ms. McVey stated that “[i]t was a small silver gun” and not “too big, like a handgun.” Ms. McVey further stated that her “doctor could not treat [her] because it was a gunshot wound.”
- Ms. Lawson testified that as she was “going back to the van,” she “heard two gunshots and . . . saw a man pointing a gun in [her] direction.” When asked to describe the gun, Ms. Lawson stated: “It was – a handgun. I am not – I don’t really know. It – it was black, a handgun.” Ms. Lawson further stated: “I didn’t realize the situation was as serious as it was until after I saw the bullet hole in my vehicle.”

We conclude that this evidence could convince a rational trier of fact beyond a reasonable doubt that the gun possessed and used by Mr. Collins was a firearm, and hence, the evidence is sufficient to sustain the convictions for use of a firearm in the commission of a crime of violence and illegal possession of a regulated firearm.

SENTENCE FOR ILLEGAL POSSESSION OF A REGULATED FIREARM BY A PERSON CONVICTED OF A DISQUALIFYING CRIME VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR CARROLL COUNTY OTHERWISE AFFIRMED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-HALF BY CARROLL COUNTY AND ONE-HALF BY APPELLANT.