

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 487

September Term, 2016

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JERMAINE ANTHONY BOLLING

v.

STATE OF MARYLAND

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Kehoe,  
\*Krauser,  
Battaglia, (Senior Judge, Specially  
Assigned),

JJ.

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Opinion by Battaglia, J.

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Filed: May 22, 2017

\*Krauser, C.J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

\*\*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.

In the present appeal, we are called upon to review the denial of a Motion to Correct an Illegal Sentence filed in the Circuit Court for Harford County in February of 2016 by the Appellant, Jermaine Anthony Bolling, related to his convictions for common law assault and assault with intent to murder and also what he deems his conviction for possession of a pistol after having been convicted of a crime of violence when, in fact, he had been convicted of possession of a firearm after having been convicted of a felony. After noting a timely appeal, Bolling presents one question for our review:

Did the Circuit Court of Maryland for Harford County through the Honorable Judge Angela Eaves err in denying the Appellant’s Motion to Correct an Illegal Sentence?

Bolling contends before us that his convictions of and sentences for common law assault and assault with intent to murder were illegal, because Chapter 632 of the Maryland Laws of 1996, abrogating the common law crimes relating to assault, was in effect at the time of his trial and sentencing and so he should have been tried under the new statutory scheme. Chapter 632, however, did not become effective until October 1, 1996, well after Bolling had committed his crimes in October of 1995.

Bolling points us to *Robinson v. State*, 353 Md. 683, 694 (1999), in which Judge Irma Raker, writing for the Court of Appeals, determined that the provision of Chapter 632 related to statutory assault crimes abrogated the common law offenses of assault and battery:

It is a cardinal rule of statutory construction to give effect to the intent of the Legislature. *Jones v. State*, 311 Md. 398, 405, 535 A.2d 471, 474 (1988). To be sure, the language of the 1996 assault statutes contain no specific words of repeal or abrogation, nor is there any conflict between those statutes and the common law. We have determined, however, that the statutes as adopted represent the

entire subject matter of the law of assault and battery in Maryland, and as such, abrogate the common law on the subject. The 1996 statutes are more than mere penalty provisions for the common law offenses of assault and battery. They created degrees of assault unknown to the common law, and while retaining the common law elements of the offenses of assault and battery and their judicially determined meanings, the statutes repealed the statutory aggravated assaults and created new offenses.

Perhaps ironically, some of the best evidence that the 1996 assault statutes comprise more than just penalty provisions for the common law offenses of assault and battery, and that they actually abrogated those common law offenses, derives from the fact that the statutes explicitly repealed and replaced the entire *statutory* scheme for aggravated assaults then existent, *i.e.*, Assault with Intent to Murder, Ravish or Rob, Assault—Third Person Aiding One Being Assaulted, and Assault by Inmates, as well as the crime of Maiming. *See* 1996 Laws of Maryland, Ch. 632, § 1, at 3616–17 and 3629; Maryland Code (1957, 1992 Repl. Vol., 1995 Supp.) Article 27, §§ 11E, 12, 12A, and 384–86. The new statutes thus subsumed all previous statutory assault provisions as well as the common law into a single scheme and established a two-tiered regimen.

After establishing that Chapter 632 abrogated the common law offenses relating to assault and battery, the Court of Appeals also acknowledged that the common law assault crimes continued to be effective until September 30, 1996:

The crimes of common law assault and battery existed through September 30, 1996. Contrary to Petitioner’s assertion that the circuit court lacked jurisdiction, we find that the indictment charging Petitioner with common law assault and battery on or about September 7 through October 30, 1996 was legally adequate to charge an offense and that the circuit court had fundamental jurisdiction<sup>□</sup> to hear the criminal charges pending against Petitioner. *See Powell v. State*, 324 Md. 441, 446, 597 A.2d 479, 482 (1991). The crimes of common law assault and battery were still cognizable between September 7 and September 30, 1996. The indictment’s extended time frame from October 1 to October 30, 1996 did not defeat the trial court’s jurisdiction. Rather, the expiration of the common law crimes on September 30, 1996 simply limited the time frame upon which Petitioner could be convicted of assault and battery. We therefore hold that the charging document properly charged an offense within the jurisdiction of the trial court and one proscribed by the common law.

*Id.* at 702 (footnote omitted).

As recognized in *Robinson*, the date upon which the criminal acts are committed is dispositive with respect to charging and disposition so that Bolling was legally indicted, convicted, and sentenced for common law assault and assault with intent to murder. *See also Smith v. State*, 62 Md. App. 670, 681 (1985) (“Although Count VI tracks the language of the current statute, it must comply with the provisions of the law applicable when the offense occurred.”).

The opposite result, however, is reached with regard to Bolling’s conviction for possession of a firearm after having been convicted of a felony. Bolling erroneously urges that he was illegally convicted of possession of a pistol after a previous conviction for a violent crime, but the docket entries reveal that his conviction was for possession of a firearm after being convicted of a felony.

Bolling’s conviction and sentence, however, must be vacated because in 1995, when Bolling possessed the firearm as a convicted felon,<sup>1</sup> there was no statutory prohibition of the act. It was not until October 1, 1996, that the prohibition of possession of regulated firearms by a person who had been convicted of “[a]ny violation classified as a felony in this State” went into effect as a result of the enactment of Chapters 561 and

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<sup>1</sup> Section 30(b) of Article 27 of the Maryland Code (1957, 1987 Repl. Vol.), under which Bolling had previously been convicted, provided that daytime housebreaking was a felony:

(b) Any person, his aiders, abettors and counsellors, who shall be convicted of the crime of breaking a dwelling house in the daytime with intent to commit murder or felony therein, or with intent to steal, take or carry away the personal goods of another of any value therefrom, shall be guilty of a felony, and upon conviction thereof, shall be sentenced to the penitentiary for not more than ten years.

562 of the 1996 Laws of Maryland, which amended Section 445 of Article 27 of the Maryland Code:

- (d) A person may not possess a regulated firearm if the person:
  - (1) Has been convicted of:
    - (i) A crime of violence;
    - (ii) **Any violation classified as a felony in this State;**
    - (iii) Any violation classified as a misdemeanor in this State that carries a statutory penalty of more than 2 years; or
    - (iv) Any violation classified as a common law offense where the person received a term of imprisonment of more that [sic] 2 years.
  - (2) Is:
    - (i) A fugitive from justice;
    - (ii) A habitual drunkard;
    - (iii) Addicted to or a habitual user of any controlled dangerous substances;
    - (iv) Suffering from a mental disorder as defined in § 10-101(f)(2) of the Health-General Article and has a history of violent behavior against another person or self, or has been confined for more than 30 consecutive days to a facility as defined in § 10-101 of the Health-General Article, unless the person possesses a physician’s certification that the person is capable of possessing a regulated firearm without undue danger to the person or to others; or
    - (v) A respondent against whom a current non ex parte civil order has been entered under § 4-506 of the Family Law Article.

1996 Maryland Laws, Chapters 561 and 562 (emphasis added).

It is black letter law, as noted in *Smith*, 62 Md. App. at 681, that a criminal indictment, and resulting conviction and sentence, “must comply with the provisions of the law applicable when the offense occurred.” In *Smith*, Smith had been indicted for the act of child abuse that had taken place before an amendment to the relevant statute which changed the definition of a “minor child” from a child under the age of sixteen to a child under the age of eighteen. Smith’s criminal information defined a minor child as one under the age of eighteen, following the language of the amended statute rather than the

statute in effect at the time of his alleged conduct. We determined that the information “did not adequately charge a crime under the applicable law,” and, thus, required vacation of Smith’s conviction for child abuse and the accompanying sentence. *Id.* at 682. As a result, Bolling could not have been indicted nor convicted or sentenced for being a felon in possession of a firearm for acts that occurred in October of 1995, when the felon in possession statute did not exist.

**JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY DENYING APPELLANT’S MOTION TO CORRECT ILLEGAL SENTENCE AFFIRMED, IN PART, AND REVERSED, IN PART. CONVICTIONS AND SENTENCES FOR COMMON LAW ASSAULT AND ASSAULT WITH INTENT TO MURDER AFFIRMED. CONVICTION AND SENTENCE FOR POSSESSION OF A FIREARM AFTER CONVICTION OF A FELONY VACATED. COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND HARFORD COUNTY.**