

Circuit Court for Baltimore City
Case No.: 118191018

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 954

September Term, 2019

DEMETRIUS DONTA THOMPSON

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 4, 2020

*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 trial in the Circuit Court for Baltimore City, a jury found Demetrius Donta Thompson, appellant, guilty of attempted first-degree murder, wearing, carrying, or transporting a handgun,¹ unlawful possession of a firearm after conviction of a felony, and use of a firearm in the commission of a felony. The Court sentenced appellant to an aggregate sentence of life imprisonment plus twenty years' imprisonment to be served consecutively.²

On appeal, appellant contends that the evidence is insufficient to sustain the conviction for attempted first-degree murder, that the sentence imposed for unlawful possession of a firearm is illegal, that the docket entries need to be amended, and that the sentence for wearing, carrying, or transporting a handgun should have merged into the sentence for use of a handgun in the commission of a felony.

We disagree that the evidence is insufficient to sustain the conviction for attempted first-degree murder. However, we agree that the sentence for unlawful possession of a firearm is illegal, and that the docket entries need to be amended, and that the sentence for

¹ The lack of clarity on this conviction is addressed later in this opinion.

² Specifically, the court sentenced appellant to life imprisonment for attempted first-degree murder, twenty years' imprisonment, with the first five years to be served without the possibility of parole, to be served consecutively for use of a firearm in the commission of a felony, five years' imprisonment without the possibility of parole for unlawful possession of a firearm to be served concurrently with the sentence for use of a firearm in the commission of a felony, and three years' imprisonment for wearing, carrying, or transporting a handgun to be served concurrently with the sentence for unlawful possession of a handgun.

wearing, carrying, or transporting a handgun merges into the sentence for use of a handgun in the commission of a felony.

We therefore shall vacate the without parole portion of appellant’s sentence for unlawful firearm possession, and remand the case to the circuit court with instructions to amend the docket entries in accordance with this opinion, and to vacate the sentence for wearing, carrying, or transporting a handgun. Otherwise, we shall affirm.

Background

While Moshai Pittman (the victim) and her co-worker at St. Agnes Hospital walked between bus stops on their way to work at about 5:45 a.m. on June 8, 2018, a man walked up alongside them, pointed a pistol at the victim’s head, fired one shot and ran away. The man and the two women exchanged no words during this encounter. The man was later identified by the two women as appellant. Appellant, with whom the victim had a turbulent relationship, is the father of the victim’s young child. Video footage of the shooting, captured by surveillance video cameras, was shown to the jury.

The sufficiency of the evidence

Appellant contends that the evidence is legally insufficient to prove that he acted with the requisite intent to kill to support his conviction for attempted first-degree murder. He claims that the evidence is insufficient because he only fired one shot at the victim, which went into her right cheek “injuring the soft tissue of her face, her jaw and teeth.” The shot was not close enough to her brain, according to appellant, to indicate an intent to kill.

In reviewing the sufficiency of the evidence, we review the record to determine whether, ““after viewing the 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.”” *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

“Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.” *Spencer v. State*, 450 Md. 530, 568 (2016) (quoting *Davis v. State*, 204 Md. 44, 51 (1954)). Moreover, “[i]t is well established that under the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body.” *State v. Raines*, 326 Md. 582, 591 (1992).

We think that, in viewing the evidence in the light most favorable to the State, any rational juror could draw, from the fact that appellant shot the victim in the head, which is indisputably a vital part of the human body, the inference that appellant had the intent to kill her. Therefore we find the evidence legally sufficient to support appellant’s conviction for attempted first-degree murder.

Sentence for unlawful possession of a firearm.

Appellant claims that his sentence of five years without the possibility of parole for unlawful possession of a firearm is illegal. The State agrees, and so do we.

Count 4 of the indictment charged appellant with unlawful possession of a regulated firearm. The indictment explained that the reason that appellant was not permitted to

possesses a regulated firearm was because he had previously been convicted of carjacking. Carjacking is a disqualifying crime because it is a crime of violence. *See* Md. Code Ann. Public Safety (PS) § 5-133 & § 5-101. While the indictment did not specify the precise subsection of PS § 5-133 that appellant was charged with having violated, it is clear, based on the language of the indictment, that the indictment referred to PS § 5-133(b)(1) which prohibits a person who has been convicted of a disqualifying crime from possessing a regulated firearm.

PS § 5-144 contains the penalty provision for a violation of PS § 5-133(b). *See Jones v. State*, 420 Md. 437 (2011).³ PS § 5-144 provides, in pertinent part that a person found guilty of violating PS § 5-133(b) “is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.” As can be seen, PS § 5-144 does not authorize the court to impose its sentence without the possibility of parole. As a result, we vacate the without parole provision for the conviction on Count 4 of the indictment charging unlawful possession of a regulated firearm.

Merger of sentences

This case only involved one weapon. It was the handgun with which appellant shot the victim in the face. He was charged, however, with, two “wearing and carrying” weapons offenses, one in Count 3, and one in Count 7, of the indictment.

Count 3 of the indictment charged appellant with violating Section 4-101(c) of the Criminal Law Article (CL), which prohibits wearing or carrying a dangerous weapon. The

³ At the time *Jones* was decided the penalty provision was found in PS § 5-143. Its renumbering to PS § 5-144 became effective October 1, 2013.

statutory definition of “dangerous weapon” specifically excludes a handgun. CL § 4-101(a). Nevertheless, Count 3 of the indictment alleged that appellant violated CL § 4-101 by wearing and carrying a “.45 Caliber Type Weapon.” Neither the parties nor the court recognized this error during trial or sentencing which led to the apparent confusion outlined below.

Count 7 of the indictment charged appellant with violating CL § 4-203(a), which prohibits, *inter alia*, wearing, carrying, or transporting a handgun. The court instructed the jury with the pattern instruction for that offense, and gave no separate instruction for Count 3. The verdict sheet, however, titled the offense more in line with Count 3 by titling the offense “The wear, carry, or transportation of a deadly weapon on person.” To add to the confusion, at sentencing, the court and the State variously referred to both the counts in the indictment and the numbered questions on the verdict sheet, which did not match up with each other.

Appellant contends that, as a result of the confusion, the clerk incorrectly entered a guilty finding on Count 3, when, in reality, it should have been entered on Count 7. The State agrees, and so do we.

From that standpoint, citing to *Wilkins v. State*, 343 Md 444, 446-47 (1996) (and the cases cited therein), appellant argues that his sentence on Count 7 for wearing, carrying, or transporting a handgun should merge into his conviction on Count 6 for use of a firearm in the commission of a felony. Once again, the State agrees and so do we. We therefore

remand the case with instructions to amend the docket entries to reflect a guilty finding on Count 7, not on Count 3, and to then vacate the sentence on Count 7.

WITHOUT PAROLE PORTION OF THE SENTENCE FOR THE CONVICTION ON COUNT 4 OF THE INDICTMENT CHARGING UNLAWFUL POSSESSION OF A REGULATED FIREARM VACATED.

CASE REMANDED WITH INSTRUCTIONS TO AMEND THE DOCKET ENTRIES TO REFLECT A GUILTY FINDING ON COUNT 7 OF THE INDICTMENT CHARGING WEARING, CARRYING, OR TRANSPORTING A HANDGUN INSTEAD OF COUNT 3, AND TO VACATE THE SENTENCE ON COUNT 7.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-THIRD BY APPELLANT AND TWO-THIRDS BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.