UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0190

September Term, 2015

CORTEZ ANTONIO STACKHOUSE

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 8, 2016

Cortez Antonio Stackhouse appeals his convictions by a jury of the Circuit Court for Prince George's County of wearing, carrying, and transporting a handgun, and convictions by that court of two counts of illegal possession of a regulated firearm. He presents for our review one question, which for clarity we have expanded and rephrased:[1]

I. Did the court err in convicting Stackhouse of multiple counts of illegal possession of a regulated firearm?

II. Alternatively, does the rule of lenity require the vacation of one of the sentences for illegal possession of a regulated firearm?

Finding no error, we affirm the judgments of the circuit court.

Facts and Proceedings

In July 2014, Stackhouse was charged by indictment with the aforementioned offenses. The indictment stated, in pertinent part:

> Count 5
>
> The grand jurors of the State of Maryland for the body of Prince George's County on their oath do present that Cortez Antonio Stackhouse on or about the 18th day of February, 2014, in Prince George's County, Maryland, did possess a regulated firearm after having been convicted of a crime of violence . . . in violation of [Md. Code (2003, 2011 Repl. Vol., 2013 Supp.), § 5-133(c) of the Public Safety Article ("PS")[2]] against the peace,

[1] Stackhouse's question presented *verbatim* is: "Did the trial court err in imposing consecutive sentences for the simultaneous possession of a regulated firearm?"

[2] PS § 5-133(c) states, in pertinent part:

> *Penalty for possession by person convicted of crime of violence.* – (1) A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence[.]
>
> * * *

(continued…)

> government and dignity of the State. (Possession of a regulated firearm after being convicted of a crime of violence)
>
> Count 6
>
> The grand jurors of the State of Maryland for the body of Prince George's County on their oath do present that Cortez Antonio Stackhouse on or about the 18th day of February, 2014, in Prince George's County, Maryland, did wear, carry and transport a handgun upon and about their person . . . against the peace, government and dignity of the State. (Wear, carry and transport handgun upon their person)
>
> Count 7
>
> The grand jurors of the State of Maryland for the body of Prince George's County on their oath do present that Cortez Antonio Stackhouse on or about the 18th day of February, 2014, in Prince George's County, Maryland, did possess a regulated firearm after being convicted of a disqualifying crime, to wit: burglary and motor vehicle theft, in violation of [PS § 5]-133(b)(1)[3] . . . against the peace, government and dignity of the State. (Possession of a regulated firearm after being convicted of a disqualifying crime)

(Some capitalizations and boldface omitted.)

Stackhouse demanded a jury trial. At trial, Officer Dontavia Estep testified that, on February 18, 2014, she was approached by a man who "was talking really fast" and "sounded really . . . anxious." The man pointed at Stackhouse and stated: "[T]hat guy right there in the red jacket, red Helly Hansen jacket, he just robbed me, he stole my

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> (2) (i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

[3] PS § 5-133(b)(1) prohibits a person who "has been convicted of a disqualifying crime" from "possess[ing] a regulated firearm[.]" PS § 5-101(g) defines "disqualifying crime" as a "crime of violence," a "violation classified as a felony in the State," or "a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years."

jacket and he has two gun[s] in his book bag." Officer Estep asked Officer Devon Thompson, who had just driven past Officer Estep, to "stop the guy with the red coat on." Following a brief pursuit, the officers apprehended Stackhouse. Officer Thompson testified that after Stackhouse was apprehended, a handgun was recovered from "in between the buildings where [Stackhouse] initially ran from," and a second handgun was recovered "on the other side of the buildings." The parties stipulated that Stackhouse had two prior convictions for first degree burglary, that Stackhouse "was aware he was a convicted felon on February 18th of 2014 and was prohibited from possessing at [sic] handgun because of his status as a convicted felon[,] and that on" that date, Stackhouse "was in possession of a revolver and . . . semi-automatic handgun."

Following the entry of the stipulation, Stackhouse waived his right to a trial by jury as to the counts of illegal possession of a regulated firearm, and asked the court "to make the determination of . . . guilt or innocence as to" those counts. Following the close of the evidence, the jury convicted Stackhouse of wearing, carrying, or transporting a handgun. After the jury was excused, the court stated:

> All right. Given the stipulation that the defendant was aware and that he did have both a prior conviction for a crime of violence[4] and a prior conviction for disqualifying crime,[5] based upon the joint stipulation and the stipulation that he did have both a revolver and a semi-automatic handgun, on February 18th, 2014, the Court is going to find him guilty of Count 5 and Count 7.

[4] PS §5-101(c) classifies first degree burglary as a crime of violence.

[5] Md. Code (2002, 2012 Repl. Vol, 2013 Supp.), § 6-202 of the Criminal Law Article classifies first degree burglary as a felony.

At sentencing, the court sentenced Stackhouse, pursuant to PS § 5-133(c), to a term of 15 years imprisonment, all but 5 years suspended, for the possession of a regulated firearm after being convicted of a crime of violence. The court sentenced Stackhouse to a term of 3 years imprisonment for the wearing, carrying, and transporting of a handgun, and ordered that the sentence run concurrent to the sentence for possession of a regulated firearm after being convicted of a crime of violence. Finally, the court sentenced Stackhouse, pursuant to PS § 5-144,[6] to a term of 5 years imprisonment for the possession of a regulated firearm after being convicted of a disqualifying crime, and ordered that the sentence run consecutive to the sentence for possession of a regulated firearm after being convicted of a crime of violence.

Analysis

I. The multiple convictions of illegal possession of a regulated firearm

Stackhouse contends that, for two reasons, one of the convictions for illegal possession of a regulated firearm must be reversed.

[6]PS § 5-144 states:

> (a) *Prohibited.* – Except as otherwise provided in this subtitle, a dealer or other person may not:
> (1) knowingly participate in the illegal . . . possession . . . of a regulated firearm in violation of this subtitle[.]
>
> * * *
>
> (b) *Penalty.* – A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years[.]

First, he asserts that "the charging document, stipulation, and court's verdict [erroneously] provided no clarification as to whether [the] conviction for [PS] § 5-133(b)(1) was based on acts different than those underlying [the] conviction under [PS] § 5-133(c)."[7] Conceding that he possessed two firearms "at the same time [and] in the same bag," Stackhouse claims that "the unit of prosecution under [PS § 5-133] is the single act of possession, not the number of firearms simultaneously possessed."

Snyder v. State, 210 Md. App. 370, *cert. denied*, 432 Md. 470 (2013), is instructive. In the early morning hours of April 29, 2009, Synder fired numerous gunshots at two residences in Harford County. The second incident occurred about thirty minutes after the first, and the two homes were some distance apart. As a result, Snyder was charged in two separate cases (the "Crouse Case" and the "Neighbor Case") with committing a variety of crimes, including multiple counts attempted murder, first and second-degree assault, burglary and handgun violations. *Id.* at 376–78.

In each case, the court sentenced Snyder to a term of five years imprisonment for illegal possession of a firearm. *Id.* at 378 n.3. "The court ordered [Snyder] to serve the sentence he received in the Crouse Case consecutive to the sentence he received in the Neighbor Case." *Id.*

On appeal, Snyder

> claim[ed] that his possession of the firearms during [the morning of April 26, 2009,] constitute[d] only one violation. Thus, he argue[d], his second

[7] Stackhouse does not contend that the indictment was impermissibly deficient for failing to charge him with multiple counts of violating PS § 5-133(b)(1), or alternatively, multiple counts of violating PS § 5-133(c).

trial for the illegal possession of a firearm offense, in the Crouse Case, constitute[d] double jeopardy.

The State argue[d] that the prosecution on the charge of illegal possession of a firearm in the Crouse Case [did] not constitute double jeopardy. [The State] point[ed] out that the two handguns, a 9mm handgun and a .25 caliber Baretta, were found in [Snyder's] vehicle when [he] was arrested. The State contend[ed] further that because two handguns were found in [Snyder's] vehicle, the State could pursue two charges of illegal possession of a firearm, even if done in separate trials.

. . . . [Snyder] argue[d] that, because he was convicted of one count of illegal possession of a firearm in the Neighbor Case and again in the Crouse Case, the State prosecuted him twice for the same offense. . . . .

Id. at 395-97.

Affirming the convictions, *id.* at 398, we stated (emphasis added):

We find *Webb v. State,* 311 Md. 610, 536 A.2d 1161 (1988), informative to our examination of [Snyder's] convictions for illegal possession of a firearm. [Webb] was convicted of two counts of carrying and transporting a handgun. [Webb] was in possession of the gun when he robbed someone at 1:30 a.m. and when he was arrested at 4:30 a.m. The State offered no evidence at trial that [Webb] was in possession of more than one gun during this time period. In reversing [Webb's] conviction on one count of illegal possession of a firearm, the Court of Appeals stated as follows:

> "On the record before us, all that was proved which was material with respect to the circumstances surrounding the handgun offense was that on 13 May 1986, about 1:30 a.m., Webb was unlawfully carrying a handgun, and that about three hours later he was unlawfully carrying a handgun. The State did not establish that more than one handgun was involved or that the carrying of the weapon between 1:30 a.m. and 4:30 a.m. was intermittent."

Id. at 618-19, 536 A.2d at 1165. Thus, had the State in *Webb* offered evidence that at some point [Webb] was in possession of two different

handguns, [he] could have been found guilty of two counts of illegal possession of a firearm.

The Court of Appeals confirmed that possession of more than one regulated firearm can sustain multiple convictions under § 5-133 of the Public Safety Article. In *Melton v. State,* 379 Md. 471, 842 A.2d 743 (2004), the defendant was convicted of illegal possession of a firearm by a person convicted previously of a crime of violence, illegal possession of a firearm by a person previously convicted of a felony, and illegal possession of a firearm by a person convicted of a misdemeanor with a penalty of over two years of incarceration. The State argued that a defendant could be charged with a count of illegal possession of a firearm for each prior conviction even though [Melton] had possessed only a single regulated firearm. After reviewing the statutory test, the Court of Appeals stated that by enacting § 5-133 of the Public Safety Article the General Assembly prohibited the

> "*possession* of a firearm by a person with *certain qualifying convictions,* which suggests that preventing the act of possessing firearms was the true goal of the legislation, not multiple punishments for a single act based upon multiple prior convictions. The driving force behind the statute, and the evil sought to be remedied, is the *act* of possessing the regulated firearm."

Melton at 485, 842 A.2d at 751. The Court of Appeals held that the unit of prosecution was the regulated firearm which [Melton] possessed rather than [his] previous convictions[.] *Id.* at 502, 842 A.2d at 761. In other words, a defendant commits a separate violation of the statute for each regulated firearm that is in his possession. Since [Snyder] was in possession of two regulated firearms, the State may prosecute him for two counts of illegal possession of a regulated firearm.

[Snyder] committed two separate offenses of illegal possession of a firearm. At the time of his arrest, [Snyder] was in possession of two firearms, a 9mm handgun and a .25 caliber Baretta handgun. Both are regulated firearms within the meaning of § 5-133(b) of the Public Safety Article. Possession of each firearm is unlawful under the statute and each is punishable separately. *Melton,* 379 Md. at 503, 842 A.2d at 761-62.

> [Snyder's] trial and conviction on a second count of illegal possession of a firearm does not constitute double jeopardy if for a separate firearm.

Snyder, 210 Md. App. at 397-98 (emphasis in original).[8]

We reach a similar conclusion here. Like Snyder, Stackhouse does not contest that he possessed two regulated firearms and had been previously convicted of a disqualifying crime, specifically a crime of violence. Stackhouse's possession of each firearm was unlawful under PS § 5-133 and each is punishable separately. Hence, the court was not required to clarify whether the conviction for violating PS § 5-133(b)(1) was based on an act different than that underlying the conviction for violating PS § 5-133(c).

Second, Stackhouse contends that *United States v. Dunford*, 148 F.3d 385 (4th Cir. 1998), on which the *Melton* Court relied, is instructive. We disagree. During a search of Dunford's residence, police officers discovered six firearms and ammunition. *Id.* at 387. "Dunford was indicted on fourteen counts of firearms offenses – seven for violation of 18 U.S.C. § 922(g)(1) (prohibiting possession of a firearm or ammunition by a convicted felon) and seven for violation of 18 U.S.C. § 922(g)(3) (prohibiting possession of a firearm or ammunition by an illegal drug user)." *Id*. "At trial, Dunford acknowledged by stipulation that he was disqualified from possessing a firearm both because he was a

[8] From our judgment, Snyder filed in the Court of Appeals a Petition for Writ of Certiorari, in which he contended, in part, that we erred in concluding "that had the State in Webb offered evidence that the defendant was in possession of two handguns, the defendant would have been found guilty of two counts of illegal possession of a firearm." Petition for Writ of Certiorari, Petition Docket No. 114, September Term, 2013 (filed May 2, 2013), at 14. The Court of Appeals denied the petition, 432 Md. 470 (2013).

convicted felon and because he was an illegal drug user." *Id.* "The jury convicted Dunford on all fourteen counts, and the court sentenced him to 63 months imprisonment on each count with sentences to run concurrently." *Id.* at 388.

On appeal, Dunford contended that "his possession of all six firearms and the ammunition constituted only one act of possession within the meaning of the statute." *Id.* Reversing all but one of the convictions, *id.* at 390, the Fourth Circuit stated:

> Section 922(g) makes it unlawful for any member of a disqualified class "to . . . possess . . . *any firearm or ammunition*." 18 U.S.C. § 922(g) (emphasis added). This language presents the recurring question of what Congress has made the allowable unit of prosecution.
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> * * *
>
> Through a literal construction of the statute, we could conclude that when "any" is used in context of the singular noun "firearm," "any" means a single firearm. Through the same analysis, we could also conclude that "ammunition" is collective so that several rounds possessed at the one time constitutes a single offense. Under this literal interpretation, Dunford would have committed seven offenses, one for each firearm and one for the ammunition. But this literal interpretation would also require that each possession of a firearm constituted an offense, requiring a construction that defines the beginning and ending. It might require ammunition located in different rooms of Dunford's house to be separate offenses and different calibers of ammunition to support a finding of different offenses. The Supreme Court has cautioned, however, that the question of what constitutes the allowable unit of prosecution cannot be answered merely by a literal reading of the statute. Moreover, when such ambiguity exists, we are instructed that such ambiguity should be resolved in favor of lenity. This lenity does not arise from any sympathy for the defendant who has committed a crime; it merely means that if Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses.
>
> We applied these principles in *United States v. Mason*, 611 F.2d 49, 52-53 (4th Cir. 1979), to hold that [Mason], who had purchased multiple firearms in one transaction and had misrepresented his qualification to

> possess those firearms on separate information forms submitted for each firearm, could not be convicted of separate offenses for making false statements in connection with each firearm. Similarly, in *United States v. Mullins*, 698 F.2d 686 (4th Cir. 1983), while we held that multiple possession of firearms at different times were separate offenses under 18 U.S.C. § 1202(a), a now-repealed statutory ancestor of § 922(g), we stated the rule that "when a convicted felon acquires two or more firearms in one transaction and stores and possesses them together, he commits only one offense under § 1202(a)(1)." *Id.* at 687.
>
> We will apply the rule stated in *Mullins* to hold now that Dunford's possession of the six firearms and ammunition, seized at the same time from his house, supports only one conviction of 18 U.S.C. § 922(g).

Dunford, 148 F.3d at 389-90 (internal citations, quotations, and brackets omitted).

Returning to the case before us, in contrast to 18 U.S.C. § 922(g), the statute at issue in *Dunford,* PS § 5-133 prohibits a person previously convicted of a disqualifying crime from possessing **a**, rather than **any**, regulated firearm. The use of the article "a" in a statute that prohibits the possession of an unregistered firearm "expresses an unambiguous . . . intent to make each firearm a unit of prosecution." *United States v. Alverson*, 666 F.2d 341, 347 (9th Cir. 1982) (footnote omitted). *See also United States v. Moses,* 513 F.3d 727 (7th Cir. 2008); *United States v. Nichols,* 731 F.2d 545 (8th Cir.), *cert. denied,* 469 U.S. 1085 (1984); *Sanders v. United States*, 441 F.2d 412 (10th Cir.), *cert. denied*, 404 U.S. 846 (1971).

Although the statutes and facts of each case vary, the reasoning in each is very similar. *Alverson* is representative.

"A jury found Alverson guilty on four counts of possession of unregistered machine guns" in violation of 26 U.S.C. § 5861(d), "one count for each of . . . three

weapons seized at [a] trailer home, and one count for [a gun] left at [a] gun store." 666 F.2d at 344. "The district court ultimately sentenced [Alverson] to five years imprisonment on each of [the] four counts of possession, with the sentences to be served consecutively." *Id.* at 346.

On appeal, "Alverson argue[d] that even if he constructively possessed the three weapons seized in the trailer search, there was only one act of possession since the weapons were possessed at the same time and place." *Id.* Affirming the convictions, *id.* at 350, the Ninth Circuit stated:

> We conclude that section 5861(d) expresses an unambiguous congressional intent to make each firearm a unit of prosecution. [T]he statute states that "[i]t shall be unlawful for any person–(d) to receive or possess *a* firearm . . . ." 26 U.S.C. § 5861(d) (1976) (emphasis added). Use of the article "a" stands in marked contrast to language in other weapons statutes that have been interpreted to preclude prosecution for each object of the offense. *Compare Brown v. United States*, 623 F.2d at 58 (use of "any") *with Sanders v. United States*, 441 F.2d at 414-15 (use of "a").
>
> . . . . For these reasons, we hold that the defendant properly was prosecuted and sentenced for each firearm he possessed in violation of section 5861(d).

Alverson, 666 F.2d at 347 (footnote omitted).

At least four state courts have reached similar conclusions. *See Grappin v. State*, 450 So.2d 480 (Fla. 1984); *State v. Stratton*, 567 A.2d 986 (N.H. 1989); *State v. Lindsey*, 583 So.2d 1200 (La. Ct. App. 1991); *Commonwealth v. Jones*, 2 A.3d 650 (Pa. Super. Ct. 2010).

Based upon our analysis in *Snyder*, and the well-reasoned federal and state appellate decisions that we discussed, we hold that the appropriate unit of prosecution set in PS § 5-133(c) is an individual firearm. The trial court did not err in imposing sentences for each firearm in appellant's possession.

II. Rule of Lenity

Alternatively, Stackhouse contends that the rule of lenity requires the vacation of one of the sentences for illegal possession of a regulated firearm, because "the language in [PS] § 5-133 is ambiguous as to the unit of prosecution and as to the legislative intent in allowing multiple punishments for simultaneous possession." We disagree. Like 26 U.S.C. § 5861 and the state statutes cited above, PS § 5-133 is phrased in an unambiguous and consistently singular manner, and the Legislature's use of the article "a" in the statute expresses an unambiguous intent to make each firearm a unit of prosecution. The Court of Appeals has stated that "[w]hen [a] statute is unambiguous, the rule of lenity simply has no application," *Jones v. State*, 336 Md. 255, 262 (1994) (internal citation and quotations omitted), and hence, the rule does not require the vacation of one of the sentences for illegal possession of a regulated firearm.

THE JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.