

Circuit Court for Harford County
Case No.: 12-K-17-001269

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 319

September Term, 2019

NEAL LAWRENCE, IV

v.

STATE OF MARYLAND

Graeff,
Leahy,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: July 16, 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.

Neal Lawrence, IV, the appellant herein, was convicted by a jury in the Circuit Court for Harford County of wearing, carrying, or transporting a handgun; possession of cocaine; driving a vehicle while under the influence of alcohol; and, driving a vehicle while impaired by a controlled dangerous substance, but acquitted of possession of a regulated firearm and possession of ammunition by a person disqualified from possessing either. The Honorable Kevin Mahoney of the Circuit Court for Harford County, thereafter, sentenced Lawrence to a total of 5 years' imprisonment with all but 2 years suspended.

Lawrence presents the following question for our review:

Did the lower court err in failing to instruct the jury, as requested, that Mr. Lawrence could not be convicted of carrying or transporting a handgun about his person absent knowledge of the presence of that weapon?

For the reasons set forth below, we shall answer Lawrence's question in the negative and shall affirm the judgment of the Circuit Court.

At trial, Trooper Nicholas Urbano of the Maryland State Police testified that, in the wee hours of July 29, 2017, he responded to the report of a Nissan Altima stopped on Route 152 in Harford County near Interstate 95 with an "unresponsive" individual in the driver's seat. As he approached the stopped car, he noticed that the driver's window was open. He then "tried to engage in a conversation with the driver" and "yell[ed] to see if he would wake up." When the individual did not respond, Trooper Urbano reached inside the car and "shook" the individual's shoulder and "gave him a sternum rub,"¹ but still received no

¹ Trooper Urbano testified that a "sternum rub" is "where you use your knuckles and rub the sternum bone area between the breast. It is supposed to [cause] discomfort and it usually wakes whoever you're trying to wake up."

response. Trooper Urbano testified that he then opened the car door, placed the car in park, and gave the individual, whom he identified at trial as Lawrence, a “second sternum rub,” after which Lawrence started to wake up.

Trooper Urbano described that, “[r]ight as” Lawrence was waking up, he “observed what appeared to be the handle or back of a handle of a handgun . . . under the driver’s seat kind of in between his legs in the center of the driver’s seat but on the floorboard.” The officer ordered Lawrence out of the car, assisted him in so doing, and placed him in handcuffs; he noted also the odor of alcohol as he patted Lawrence down for weapons. Lawrence informed the officer that he had been traveling from his home in Baltimore to his girlfriend’s home in Edgewood.

Trooper Urbano testified that, after he “separated” a “lethargic” Lawrence from the Nissan, he then “went back to the vehicle and secured the handgun that was under the driver’s seat on the floorboard.” He removed the magazine from the handgun and saw four bullets therein. The officer placed Lawrence under arrest and took him to the State Police Barracks in Bel Air.

At the Barracks, Trooper Urbano conducted another search of Lawrence and found what he suspected to be “crack cocaine rocks inside one of [his] socks.” Lawrence then agreed to a sobriety test, after which the officer concluded that Lawrence was under the

influence of alcohol.² After having waived his *Miranda* rights,³ Lawrence admitted that he had smoked “crack” at 1:00 a.m. that morning. When asked about the handgun Trooper Urbano found in the car, Lawrence “denied knowing anything about” it.

Trooper Urbano testified that, at the time of the stop, he conducted a “NCIC”⁴ search, in which he was able to see “all the MVA records,” the results of which indicated that Lawrence owned the Nissan. On cross-examination, defense counsel presented Trooper Urbano with the “temporary registration card” from the time of the stop and a “permanent registration” card for the Nissan, both of which indicated that another individual owned the car.

The State charged Lawrence with possession of ammunition by a disqualified person; possession of a regulated firearm by a disqualified person; wearing, carrying, or transporting a handgun; possession of cocaine; driving under the influence of alcohol; and, driving while impaired by a controlled dangerous substance. With respect to the wearing, carrying, or transporting a handgun, the statute prohibiting such is Section 4-203 of the Criminal Law Article, which provides, in part:

² Later that morning, while in custody, police officers administered to Lawrence an intoximeter test after which he registered a blood alcohol level of .13 percent. “An intoximeter is ‘[a] non-portable instrument for measuring the alcohol content of a person’s breath, especially in cases of suspected drunken driving, usually sited at a police station.’” *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 683 n.5 (2018) (internal citation omitted).

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

⁴ “NCIC” refers to the “National Crime Information Center,” a computer system “through which licenses, vehicle registrations, and outstanding warrants are checked[.]” *Byndloss v. State*, 391 Md. 462, 469 (2006).

(a) Prohibited. – Except as provided in subsection (b) of this section, a person may not:

- (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;
- (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;
- (iii) violate item (i) or (ii) of this paragraph while on public school or property in the State; or
- (iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person.

(2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

(b) Exceptions. – This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

- (i) a law enforcement official of the United States, the State, or a county or city of the State;
- (ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;
- (iii) a law enforcement official of another state or subdivision of another state temporarily in the State on official business;
- (iv) a correctional officer or warden of a correctional facility in the State;
- (v) a sheriff or full-time assistant or deputy sheriff of the State; or
- (vi) a temporary or part-time sheriff's deputy;

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on

the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment.

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle; or

(9) the wearing, carrying, or transporting of a handgun by a person who is carrying a court order requiring the surrender of the handgun, if:

(i) the handgun is unloaded;

(ii) the person has notified the law enforcement unit, barracks, or station that the handgun is being transported in accordance with the court order; and

(iii) the person transports the handgun directly to the law enforcement unit, barracks, or station.

Maryland Code (1957, 2012 Repl. Vol.).⁵

⁵ In 2018, after the conduct in issue occurred, the statute was amended to include a fifth offense. Section 4-203(a)(1)(v) of the Criminal Law Article, Maryland Code (1957, 2012 Repl. Vol., 2019 Supp.) added that a person “may not” “violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.” This provision is not in issue here.

At the close of evidence, but before the jury was instructed, Lawrence’s counsel objected to the instruction requested by the State relating to the wearing, carrying, or transporting of a handgun charge, the pattern jury instruction,⁶ which provided:

The defendant is charged with the crime of carrying [or] transporting a handgun upon their person. In order to convict the defendant, the State must prove: (1) That the defendant, wore, carried, or transported a handgun that was within his reach and available for his immediate use.

A handgun is a pistol, revolver, or other firearm, capable of being concealed on or about the person, and which is designed to fire a bullet by the explosion of gunpowder.^[7]

Counsel argued that the trial judge should include a knowledge requirement:

There doesn’t seem to be any requirement for the person to even know they have the firearm on their person. When I say on the person, it doesn’t have to be on the person. It can be apparently transported somewhere in a vehicle and under the definition still be technically on your person. So, I guess you could have a gun in your car or someone could secret a small gun in your jacket and you could be convicted without any knowledge at all merely because the gun, in fact, was there without any scienter or mens rea on your part of criminal intent.

The gun in this case is a regulated firearm. . . . To have that firearm it has to be knowingly possessed. There is a definition for possessed, which the possession is similar to that in the other instruction of being within your

⁶ Maryland Criminal Pattern Jury Instruction 4:35.2 provides:

The defendant is charged with the crime of carrying a handgun. In order to convict the defendant, the State must prove: that the defendant wore, carried, or transported a handgun that was within his reach and available for his immediate use.

A handgun is a pistol, revolver, or other firearm, capable of being concealed on or about the person, and which is designed to fire a bullet by the explosion of gunpowder.

(2d ed., 2018 Supp.). The current pattern instruction is the same as it was at the time of Lawrence’s trial.

⁷ The parties stipulated that the handgun found in the car was operable.

reach or grasp. So, you have a regulated firearm, you have to have knowledge, but if that same regulated firearm is in your car arguably you don't have to have knowledge, which makes no sense.

Additionally, there are bullets in the firearm and under the definition of ammunition it again indicates that you have to have knowledge and possess it. So, you can have a firearm in your car that you don't know about, you can't be convicted on the bullets in the firearm because there you have to have knowledge . . . but seemingly you could be convicted on a [firearm] which is . . . in your car that you don't know about under the definition, which makes no sense.

So, that is my objection. I just don't think the instruction could possibly be correct.

Judge Mahoney overruled the objection.

THE COURT: I understand. . . . [I]f we were talking about a situation where we were trying to craft an instruction that did not or was not addressed in the pattern, I think we would have to spend a little bit more time on this.

But when we have a pattern instruction, I am generally not going to deviate from that pattern absent there being some compelling argument particularly citing case law which would support such a position. I believe you indicated when we were back in chambers that you were not aware of any case law on point that would address the issue.

[DEFENSE COUNSEL]: No.

THE COURT: So, since we are dealing with a pattern jury instruction, I'm not going to edit[] that in any way, shape or form. Whether that is an issue that should be addressed by the legislature, I'll leave that to somebody else to decide, but it seems to me it is creating a distinction between a general intent and a specific intent crime.

[DEFENSE COUNSEL]: But in both instances you have an intent. I'm saying you can't have an intent when you have no knowledge. But I understand the Court's position.

Judge Mahoney, at the hearing on Lawrence's motion for a new trial, which he also denied, further explained why he rejected the addition of a scienter requirement in the pattern instruction, as he stated:

All right. The Court did have some pause because of the very recent decision in *Williams versus State*^[8] from the Court of Appeals that deals with the issue of where a pattern instruction was wrong. Of course, it is often hammered home to judges that you can't go wrong with using the pattern instructions. But, of course, as *Williams* indicates that is not always true because sometimes the pattern instructions are wrong.

But the difference between *Williams* and this case is that in *Williams*, as I read it, the pattern instruction did not properly set forth the elements that are established in the statute and in the present case the statute very clearly sets for two separate elements of the two types of offenses or actually there are five total options under Section 4-203.

The two that are applicable here are wear, carry or transport a handgun whether concealed or open on or about the person. The State's position, and the Court agrees, that that is the crime, the nature of the crime that the Defendant was charged with and which was instructed to the jury in which the jury found the Defendant guilty of.

The second option there is wear, carry or knowingly transport a handgun whether concealed or open in a vehicle, and that clearly contains the knowingly element in that count, but given that the indictment in this case is for wear, carry or transport a handgun, whether concealed or open, on or about the person, the Court concludes that the instruction that I gave which does not include the element of scienter is the proper instruction to give in this case.

Therefore, I will deny the defense's motion for new trial as to that count.

The jury acquitted Lawrence of possession of ammunition and possession of a regulated firearm by a disqualified person and convicted him of wearing, carrying, or transporting a handgun; possession of cocaine; driving under the influence of alcohol; and, driving while impaired by a controlled dangerous substance. Judge Mahoney, thereafter, sentenced Lawrence to a total of 5 years' imprisonment with all but 2 years suspended, which included 3 years' imprisonment on the handgun conviction.⁹

⁸ *Williams v. State*, 462 Md. 335 (2019).

⁹ Judge Mahoney gave Lawrence 355 days for time served, in addition to sentencing Lawrence to an additional eight years for violating the conditions of his probation.

We review a “trial court’s refusal or giving of a jury instruction under the abuse of discretion standard.” *Stabb v. State*, 423 Md. 454, 465 (2011) (citing *Gunning v. State*, 347 Md. 332, 351 (1997)). In determining whether a trial court abused its discretion in denying a particular jury instruction, we consider “whether the requested instruction was a correct statement of the law,” “whether it was applicable under the facts of the case,” and “whether it was fairly covered in the instructions actually given.” *Id.* (citing *Gunning*, 347 Md. at 348). Our role basically is to determine whether the jury instruction correctly identified the elements of the statutory crime.

The instant instruction did so because Section 4-203 of the Criminal Law Article specified that some charges required scienter but the one for which Lawrence was convicted did not. Lawrence, however, posits that we should require a knowing element to convict an individual for wearing, carrying, or transporting a handgun under Section 4-203(a)(1)(i) of the Criminal Law Article.

Absent a statutory exception, a person may not either “wear, carry, or transport a handgun, whether concealed or open, on or about the person[.]” Section 4-203(a)(1)(i), or juxtaposed against Section 4-203(a)(1)(ii), which prohibits the “wear[ing], carry[ing], or knowingly transport[ing] a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State[.]” Knowingly is not an element of the crime for which Lawrence was charged and convicted.

In requesting that we impute a scienter element into Section 4-203(a)(1)(i), Lawrence runs afoul of the Court of Appeals’ decision in *Lee v. State*, 311 Md. 642 (1988).

In *Lee*, the Court held that the predecessor statute to Section 4-203(a) of the Criminal Law Article, Section 36B(b) of Article 27, Maryland Code (1957, 1982 Repl. Vol.),¹⁰ “create[d] strict liability for the wearing or carrying of a handgun about one’s person.” *Id.* at 647. The Court defined “about one’s person” to include situations in which “the accused was carrying the weapon or that it was in such proximity to him as would make it available for his immediate use.” *Id.* at 674 n.1 (quoting *Corbin v. State*, 237 Md. 486, 491 (1965) (interpreting Maryland Code (1957, 1964 Cum. Supp.), Article 27, Section 36, the predecessor to the statute interpreted in *Lee*)). In concluding that wearing or carrying a handgun was a strict-liability crime, the Court emphasized that the Legislature purposely omitted a scienter requirement in the statute for which Lawrence was charged and convicted, but included it in the vehicular transportation section:

The plain language of § 36B(b) creates strict liability for the wearing or carrying of a handgun about one’s person. The scienter requirement applies only to a vehicular transportation of a handgun and was inserted ‘so that a person who shows that he was not aware that his vehicle was transporting a handgun will not incur penalties.’ *Shell v. State*, 307 Md. 46, 49, 512 A.2d 358, 369 (1986). This interpretation is strengthened by the fact that the legislative bill by which § 36B(b) was proposed provided for strict liability without any knowledge requirement as to wearing, carrying and transporting. The ‘knowledge’ requirement for transporting was inserted by amendment. *See* Acts of 1972, ch. 13. The addition of a scienter requirement specifically

¹⁰ Section 36B(b) of Article 27, Maryland Code provided:

Any person who shall wear, carry or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or knowingly transport any handgun whether concealed or open in any vehicle traveling upon the public roads . . . shall be guilty of a misdemeanor; and it shall be a rebuttable presumption that the person is knowingly transporting the handgun.

(1957, 1982 Repl. Vol.).

for vehicular transport underscores the corresponding omission of that requirement for wearing and carrying handguns.

Id. (footnote omitted). As a result, the instruction given was a correct elucidation of the applicable law.

Lawrence, nonetheless, without citation to authority, posits that *Lee* should be confined to situations where the weapon is “on,” rather than “about” a person, and that it would be “improper to render this offense a strict liability offense when the handgun is not ‘on’ the defendant’s person.” He further avers that “[s]trict application of *Lee*” to the circumstances of the present matter “permits conviction of a defendant for merely being in proximity to a handgun, in a vehicle, without knowledge of the presence of that handgun.” As such, Lawrence argues, his conviction should not stand, as the State impermissibly avoided charging him under Section 4-203(a)(1)(ii) of the Criminal Law Article so as to not have to prove that he was aware of the handgun’s presence in the car. Lawrence’s arguments, however, fail.

Section 4-203(a)(1)(i) makes it unlawful for a handgun to be “on or about” a person, meaning, in the person’s reach and available for immediate use. *Lee*, 311 Md. at 647 n.1. The instruction given by Judge Mahoney reflected the factual circumstances described by Trooper Urbano, that the handgun was under the driver’s seat, between Lawrence’s “legs in the center of the driver’s seat but on the floorboard.”

The jury instruction was appropriate, and we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**