Circuit Court for Caroline County
Case No. C-05-CR-21-110

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1627

September Term, 2021

SHAWN LAMONT GODWIN

v.

STATE OF MARYLAND

Kehoe,
Reed,
Albright,

JJ.

Opinion by Albright, J.

Filed: July 12, 2022

Following a bench trial in the Circuit Court for Caroline County, Shawn Lamont Godwin, the Appellant, was convicted of four counts of wearing, carrying, and transporting a handgun; one count of possession of a firearm after having been convicted of a crime of violence; one count of possession of a firearm by a disqualified person; one count of illegal possession of ammunition; and two counts of possession of a controlled dangerous substance. The court sentenced Mr. Godwin to one term of five years' imprisonment on the conviction of possession of a firearm after having been convicted of a crime of violence and eight concurrent terms of one year imprisonment on the remaining convictions.

In this appeal, Mr. Godwin presents two questions, which we have rephrased as follows:[1]

1. Did the trial court, prior to finding that Mr. Godwin had waived his right to counsel, properly advise him of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, as set forth in Maryland Rule 4-215?

2. Was the evidence adduced at trial sufficient to sustain the three convictions for which a conviction of a predicate offense was an element of the crime?

[1] The issues as presented in Mr. Godwin's brief were as follows:

1. Whether the trial court violated the Sixth Amendment to the United States Constitution, Article 21 of the Maryland Declaration of Rights, and Maryland Rule 4-215 by ruling that appellant constructively waived his right to the assistance of counsel.

2. Whether there is insufficient evidence that appellant was convicted of a predicate offense, an essential element of Counts 5, 7, and 8.

For reasons to follow, we hold that the trial court failed to advise Mr. Godwin properly pursuant to Maryland Rule 4-215. We therefore reverse the judgments of the court and remand the case for a new trial. As to the sufficiency claim, we hold that the evidence was sufficient to sustain Mr. Godwin's convictions.

BACKGROUND

On January 18, 2021, the police were involved in a high-speed chase of a stolen vehicle. That chase ended when the suspect vehicle crashed into a telephone pole in a residential area. The vehicle's occupants, one of whom was later identified as Mr. Godwin, fled on foot, but were quickly apprehended. Just prior to his apprehension, Mr. Godwin was seen discarding an object wrapped in a white T-shirt. The T-shirt was recovered, and a loaded handgun was found inside. The police later searched the suspect vehicle and recovered "several wax folds" of suspected heroin and fentanyl.

Mr. Godwin was later arrested and charged by information with eleven counts: wearing, carrying, and transporting a handgun on his person (Count 1); wearing, carrying, and transporting a loaded handgun on his person (Count 2); wearing, carrying, and transporting a loaded handgun in a vehicle (Count 3); wearing, carrying, and transporting a handgun in a vehicle (Count 4); possession of a regulated firearm after having been convicted of a crime of violence (Count 5); possession of a regulated firearm after having been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult (Count 6); possession of a firearm after having been convicted of a disqualifying crime (Count 7); possession of ammunition by a person

prohibited from possessing a firearm (Count 8); possession of heroin (Count 9); possession of fentanyl (Count 10); and possession of cocaine (Count 11).

On September 8, 2021, Mr. Godwin waived his right to a jury trial. A bench trial was scheduled for November 19, 2021.

Discharge of Counsel

On November 3, 2021, a few weeks prior to trial, the parties appeared in court for a status conference. At the beginning of those proceedings, defense counsel informed the trial court that "we were prepared to take a plea next Wednesday on the 17th of November, but in speaking to Mr. Godwin today he's indicated that he wishes to discharge me from my services." After Mr. Godwin confirmed that he wanted to discharge defense counsel, the court stated that there were "some hoops we gotta jump through." The court then read the charges and applicable penalties into the record:

> [Count 1] is wear, carry and transport a handgun upon your person. The maximum penalty is three years and a $2,500 fine. Loaded handgun, three years, $2,500 fine. That's count two. Loaded handgun in vehicle, three years, $2,500 fine. And that's count three. Count four is wear, carry and transport in a vehicle public roads [sic], three years, $2,500 fine. Possession of a firearm with a felony conviction, 15 years. Count six is illegal possession of a regulated firearm, five years and/or $10,000. Looks like illegal possession again, five, $10,000 fine. That's count seven. Count eight is illegal possession of ammo, one year and a $1,000 fine. Possession of heroin, I guess, is, that maximum penalty is one year and/or a $5,000 fine. Looks like possession of fentanyl, one year and a $5,000 fine.

After Mr. Godwin confirmed that he understood those charges and potential penalties, the trial court asked him why he wanted to discharge counsel. Mr. Godwin responded that defense counsel was not "fighting" for him and was "trying to make [him]

cop out to something [he] didn't do." Mr. Godwin also stated that defense counsel had failed to print hard copies of the discovery materials for his review. Mr. Godwin added that he never told defense counsel that he "was willing to take three years."

The trial court then informed Mr. Godwin that, because defense counsel was appointed by the Public Defender's Office, it was "very likely" the Public Defender's Office would not provide another attorney. Mr. Godwin responded that he would "figure it out."

The trial court thereafter found that Mr. Godwin's reasons for discharging counsel were unmeritorious. The court confirmed that Mr. Godwin had received a copy of the charging documents and stated that Mr. Godwin had a right to be represented by an attorney, that an attorney could assist him in preparing for trial, and that an attorney can be of substantial assistance in obtaining and developing information that could affect his sentence. The court reminded Mr. Godwin that trial was set to begin in a few weeks and that, if he appeared at trial without an attorney, the case would likely proceed even though he was unrepresented. The court then told Mr. Godwin to contact the Public Defender's Office or write a letter to the Clerk of the Court requesting that an attorney be appointed. Finally, the court asked Mr. Godwin if he had "been advised of the nature of the charges and the penalties," and Mr. Godwin responded in the affirmative.

At the conclusion of the hearing, the court permitted Mr. Godwin to discharge defense counsel but found that he had "no meritorious reason for doing so." The court then cancelled the upcoming trial and converted it to a status hearing.

When the parties returned to court for that status hearing, Mr. Godwin had not secured replacement counsel. The trial court informed Mr. Godwin that trial would be scheduled "in the next two or three weeks" and that, if he wanted an attorney, he needed to get one before then.

On December 6, 2021, the parties returned to court for trial. Again, Mr. Godwin appeared without an attorney. When the trial court asked Mr. Godwin about his not having an attorney, he responded that he "was supposed to have one." He stated that he had filed for a new attorney with the Public Defender's Office and had received a letter indicating that a new attorney would be appointed. The court asked Mr. Godwin to produce the letter, and he responded that he had left the letter at his home. The court then contacted a representative in the Public Defender's Office, and that person stated that the Public Defender's Office does not appoint new attorneys once an appointed attorney is discharged by a defendant. The representative added that there was no record of Mr. Godwin having filed for a new attorney.

The trial court concluded that Mr. Godwin was not telling the truth and that no public defender would be representing him. The court asked Mr. Godwin if he was "ready to go to trial." When Mr. Godwin stated that he needed a lawyer, the court found that he had waived his right to counsel by neglect. The court then proceeded with trial.

Evidence of Prior Convictions

During trial, the State introduced testimony and other evidence showing that Mr. Godwin was the person who, on January 18, 2021, fled the suspect vehicle that had

crashed during the police chase. The State also introduced testimony and other evidence showing that, upon being apprehended by the police, Mr. Godwin was found in possession of a loaded handgun.

In addition, because Mr. Godwin was charged with several crimes for which a predicate crime was a necessary element, the State introduced two exhibits, which the State proffered were "true test copies of prior convictions." State's Exhibit 4 was a true test copy of a case summary for case number 22-K-15-000225 from the Circuit Court for Wicomico County. This exhibit showed that an individual named "Shawn L. Godwin" had been sentenced on second-degree assault on September 1, 2015.[2] State's Exhibit 5 was a true test copy of a case summary for case number 0H00077189 from the District Court of Maryland for Wicomico County. This exhibit showed that an individual named "Shawn Lamont Godwin, Jr." had been convicted of second-degree assault on September 15, 2015. The exhibits were admitted without objection or comment from Mr. Godwin.

Motion for Judgment of Acquittal and Verdict

At the conclusion of the State's case-in-chief, the trial court moved for judgment of acquittal on Mr. Godwin's behalf. In response, the State conceded that it had not met its burden on two of the charges: possession of a regulated firearm after having been

[2] This exhibit also showed March 13, 2020 as the date that "Shawn L. Godwin" pleaded guilty to second degree assault. At trial here, the State surmised that the 2020 proceeding was a violation of probation hearing following a 2015 conviction. Given that the exhibit showed that on September 1, 2015, a jury trial was "Concluded/Held," the Maryland Sentencing Guidelines were filed, and the defendant was notified on his post-trial rights, we agree with the State. Whether it was in 2015 or 2020, though, this conviction predated the January 18, 2021 firearm-and-ammunition possession at issue here.

adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult (Count 6), and possession of cocaine (Count 11). Accordingly, Mr. Godwin was acquitted of these counts.[3]

As to the remaining counts, the trial court found that the State had presented sufficient evidence. The court explained that the State had shown that Mr. Godwin was in possession of the drugs found in the vehicle and the handgun found wrapped in the white shirt. The court also found that Mr. Godwin had "been convicted of certain qualifying crimes, second-degree assault being one such crime." The court noted that "it appears that [Mr. Godwin] has several convictions of that [crime], one in 2015 in Wicomico County and the other[] in Wicomico County, 2020."[4]

The court ultimately found Mr. Godwin guilty of wearing, carrying, and transporting a handgun on his person (Count 1); wearing, carrying, and transporting a loaded handgun on his person (Count 2); wearing, carrying, and transporting a loaded handgun in a vehicle (Count 3); wearing, carrying, and transporting a handgun in a vehicle (Count 4); possession of a regulated firearm after having been convicted of a crime of violence (Count 5); possession of a firearm after having been convicted of a disqualifying crime (Count 7); possession of ammunition by a person prohibited from

[3] After the trial court acquitted Mr. Godwin of Counts 6 and 11, Mr. Godwin testified on his own behalf. Thereafter, the trial court heard closing arguments from the State and Mr. Godwin.

[4] As above, it appears the proceeding in 2020 was a violation of probation hearing and that the conviction occurred in 2015.

possessing a firearm (Count 8); possession of heroin (Count 9); and possession of fentanyl (Count 10). This timely appeal followed.

DISCUSSION

Mr. Godwin first contends that the trial court failed to advise him sufficiently, pursuant to Maryland Rule 4-215, about the penalties of the charged offenses before allowing him to discharge defense counsel and then finding that he had waived his right to counsel by inaction.[5] Mr. Godwin asserts that the court's failure to comply with Rule 4-215 constituted reversible error. The State agrees, as do we.

"A defendant's right to counsel in a criminal case is guaranteed by the Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights." *Turner v. State*, 192 Md. App. 45, 68-69 (2010) (footnotes omitted). "As part of the implementation and protection of this fundamental right to counsel, the Court [of Appeals] adopted [Maryland] Rule 4-215." *State v. Camper*, 415 Md. 44, 55 (2010) (citations and quotations omitted). "The Rule provides an orderly procedure to insure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of his Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation." *Id.* (citations and quotations omitted).

[5] Mr. Godwin presents additional grounds on which, he claims, the trial court erred with respect to his discharge of counsel. Because we reverse, we need not address those additional grounds.

We begin with Maryland Rule 4-215(e), which "outlines the procedures a court must follow when a defendant desires to discharge his counsel to proceed *pro se* or to substitute counsel[.]" *State v. Campbell*, 385 Md. 616, 628 (2005). Under that Rule:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. *If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance*.

Md. Rule 4-215(e) (emphasis added).

Maryland Rule 4-215(a), which is embodied in Rule 4-215(e), provides, in relevant part:

> At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:
>
> (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
>
> (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
>
> (3) *Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.*

> (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.
>
> (5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Md. Rule 4-215(a) (emphasis added).

In addition to outlining the process for the discharge of counsel, Rule 4-215 also "defines the mechanisms by which a defendant can waive her right to counsel" and "establishes fixed and stringent procedures governing waiver in order to ensure that this right is protected." *Grant v. State*, 414 Md. 483, 489 (2010). One mechanism by which a defendant can waive his or her right to counsel is by inaction. *Camper*, 415 Md. at 55-56. Such a waiver is governed by Rule 4-215(d), which states, in pertinent part:

> If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, *and the record shows compliance with section (a) of this Rule*, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. … If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

Md. Rule 4-215(d) (emphasis added).

Thus, under the plain language of subsections (d) and (e) of Rule 4-215, if a trial court permits a defendant to discharge counsel and/or finds that a defendant has waived his or her right to counsel by inaction, the court must ensure prior compliance with Rule 4-215(a). That includes ensuring that the defendant has been advised "of the nature of the

charges in the charging document, and the allowable penalties, including mandatory penalties, if any." Md. Rule 4-215(a).

As the Court of Appeals has explained, "the Maryland Rules are precise rubrics," and "the mandates of Rule 4-215 require strict compliance." *Pinkney v. State*, 427 Md. 77, 87 (2012). "[A] court's failure to comply strictly with the Rule constitutes reversible error." *Camper*, 415 Md. at 55.

Moreover, "[b]ecause of the fundamental nature of the right to counsel, any waiver of the right must comply absolutely with the requirements of Rule 4-215." *Grant*, 414 Md. at 489. "Compliance with the disclosure requirements of Md. Rule 4-215 is necessary to ensure that the defendant knowingly and intelligently waives the right to counsel." *Brye v. State*, 410 Md. 623, 637 (2009). "A failure to comply with the dictates of (a)(1)-(5) precludes a finding of waiver by inaction under section (d)." *Webb v. State*, 144 Md. App. 729, 741 (2002).

Turning back to the instant case, we hold that the trial court failed to comply with Rule 4-215(a)(3) prior to permitting Mr. Godwin to discharge counsel and subsequently finding that he had waived his right to counsel by inaction. As noted, Mr. Godwin was charged with 11 counts. The only evidence in the record to indicate that the trial court advised Mr. Godwin of the allowable penalties, including mandatory penalties, for those eleven counts was the court's colloquy at the hearing on November 3, 2021, at which Mr. Godwin informed the court that he wished to discharge defense counsel. During that colloquy, the court recited the charges and corresponding penalties as follows:

> [Count 1] is wear, carry and transport a handgun upon your person. The maximum penalty is three years and a $2,500 fine. Loaded handgun, three years, $2,500 fine. That's count two. Loaded handgun in vehicle, three years, $2,500 fine. And that's count three. Count four is wear, carry and transport in a vehicle public roads [sic], three years, $2,500 fine. Possession of a firearm with a felony conviction, 15 years. Count six is illegal possession of a regulated firearm, five years and/or $10,000. Looks like illegal possession again, five, $10,000 fine. That's count seven. Count eight is illegal possession of ammo, one year and a $1,000 fine. Possession of heroin, I guess, is, that maximum penalty is one year and/or a $5,000 fine. Looks like possession of fentanyl, one year and a $5,000 fine.

That advisement was erroneous for two reasons. First, the trial court stated that Mr. Godwin was charged with "possession of a firearm with a felony conviction" and that the charge carried a sentence of 15 years. While the court was correct in stating that Count 5 (possession of a firearm after having been convicted of a crime of violence) carried a maximum sentence of 15 years, the court failed to mention that the charge carried a mandatory minimum sentence of five years. Md. Code, Pub. Safety § 5-133(c)(2). Second, the court completely omitted from its colloquy the charge of possession of cocaine (Count 11) and the applicable penalties for that charge.

Because the trial court failed to comply strictly with the mandates of Rule 4-215 prior to permitting Mr. Godwin to discharge counsel, reversal is required. And, because the court never corrected its mistake prior to finding that Mr. Godwin had waived his right to counsel by inaction, that waiver was invalid. As such, the case must be remanded to the circuit court for a new trial.

Mr. Godwin argues that, because he had a meritorious reason for discharging defense counsel, this Court should direct the trial court to appoint him a new counsel. We

decline to do so. Since we are reversing Mr. Godwin's convictions and remanding for a new trial, the decisions Mr. Godwin made with respect to his right to counsel, and the rulings the trial court made in conjunctions with those decisions, are immaterial. By reversing and remanding the case, we have effectively "wiped the slate clean," such that the case is returned, procedurally, to its pretrial posture. *See Hammersla v. State*, 184 Md. App. 295, 311-14 (2009). On remand, Mr. Godwin will have the opportunity to obtain new counsel, and the court will have the opportunity to make the necessary arrangements should Mr. Godwin express a desire for counsel. Obviously, whatever Mr. Godwin decides, the court must ensure that the strictures of Rule 4-215 are met.

II.

We now turn to Mr. Godwin's sufficiency claim, which we must address because, should we agree that the evidence was insufficient to sustain any or all of the charges, Mr. Godwin could not be retried on those charges. *Turner*, 192 Md. App. at 79-80. Mr. Godwin argues that the evidence adduced at trial was insufficient to sustain three of the charges: possession of a regulated firearm after having been convicted of a crime of violence (Count 5); possession of a firearm after having been convicted of a disqualifying crime (Count 7); and possession of ammunition by a person prohibited from possessing a firearm (Count 8). He notes that, in order to meet its burden on each of those charges, the State needed to prove that he had previously been convicted of the requisite predicate offense. He further notes that the only evidence presented by the State on that element was State's Exhibits 4 and 5, which were "true test" copies of two "case summary"

documents that showed that a person named "Shawn L. Godwin" or "Shawn Lamont Godwin, Jr." had previously been convicted of second-degree assault in Wicomico County in 2015 twice. Mr. Godwin argues that that evidence, in which the only identifying information was the name of the defendant, was insufficient to establish that he was the same "Shawn Godwin" who had been convicted of second-degree assault. He argues, therefore, that the State failed to meet its burden of proof on the charges for which that predicate offense was a necessary element.

The State contends that the evidence was sufficient. The State asserts that a reasonable factfinder could have concluded that Mr. Godwin was the same "Shawn Godwin" named in the case summary reports. The State maintains that there was sufficient circumstantial evidence to support that finding, including that "the prior convictions were from nearby Wicomico County" and that "Godwin's age at trial was not inconsistent with his being convicted of a 2015 assault."[6]

[6] The State raises three additional considerations, none of which is germane to our analysis. First, the State notes that the trial court could rationally conclude that the two Wicomico County cases related to the same defendant. Second, the State notes that the "presumption of identity was not rebutted at trial." Third, the State highlights the fact that Mr. Godwin admitted during closing argument that he had committed a second-degree assault. Again, none of those factors is relevant. Whether the defendant in the two Wicomico County cases was the same person provides no insight into whether that person was Mr. Godwin. In addition, Mr. Godwin was under no obligation to rebut the State's evidence, and his failure to do so did not relieve the State of its burden of proof as to the elements of the charged crimes. *See Williams v. State*, 462 Md. 335, 354-55 (2019). Finally, any admission by Mr. Godwin during closing argument is of no moment because, "[i]n assessing legal sufficiency, we will look only at that which was formally received in evidence." *DeHogue v. State*, 190 Md. App. 532, 546 (2010) (citations omitted).

"The standard for appellate review of evidentiary sufficiency is 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." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (emphasis in original). "When making this determination, the appellate court is not required to determine 'whether *it* believes that the evidence at trial established guilt beyond a reasonable doubt.'" *Roes v. State*, 236 Md. App. 569, 583 (2018) (citing *State v. Manion*, 442 Md. 419, 431 (2015)) (emphasis in original). "This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber*, 236 Md. App. at 344 (citations omitted). "Thus, the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Id.* (emphasis in original) "The measure of legal sufficiency, moreover, is precisely the same whether we are applying it in the context of a jury trial or a non-jury trial." *Starke v. Starke*, 134 Md. App. 663, 677 (2000).

We further note that, when determining the sufficiency of the evidence, we are concerned only with the State's burden of production. *Purnell v. State*, 250 Md. App. 703, 710-11 (2021), *cert. denied* 476 Md. 252 (2021). In other words, "[t]he concern is with production, as a matter of law, and not with persuasion, as a matter of fact." *Roes*, 236 Md. App. at 583 (citations omitted). "The appellate assessment of the burden of production is made by measuring the evidence that has been admitted into the trial

objectively and then determining whether that body of evidence is legally sufficient to permit a verdict of guilty." *Id.* (citations omitted). What the fact finder ultimately does with that evidence in terms of the State's burden of persuasion is of no concern. *Purnell*, 250 Md. App. at 711. As we have explained, the difference between the State's burden of production and its ultimate burden of persuasion is a matter of great consequence in the context of a sufficiency claim:

> [The] civil or criminal burden of production is a constant that does not rise and fall with the shifting of the burden of persuasion. The burden of persuasion is simply an attempt to communicate to lay jurors our historic understanding of the level of certitude, greater or lesser, that they should feel before reaching a decision on a particular kind of issue. How a fact finder, properly instructed, then assesses credibility and how much weight a fact finder gives evidence, however, are matters within the exclusive control of the fact finder. Evidence that is legally sufficient to persuade one fact finder only by a bare preponderance of the evidence may persuade a second fact finder clearly and convincingly or yet a third fact finder beyond a reasonable doubt. Our measurement of the legal sufficiency of the evidence has nothing to do with what the burden of persuasion may be.

Starke, 134 Md. App. at 676-77.

In the present case, the charges at issue are: possession of a regulated firearm after having been convicted of a crime of violence as defined in § 5-101(c) of the Public Safety Article ("PS") of the Maryland Code (Count 5); possession of a firearm after having been convicted of a disqualifying crime in violation of PS 5-133(b) (Count 7); and possession of ammunition while being prohibited from possessing a firearm under PS 5-133(b) or (c) (Count 8). For each of those counts, the State needed to prove that Mr. Godwin had been convicted of the requisite predicate crime. It is undisputed that a conviction of second-

degree assault would satisfy that element for each of the charged crimes. *See* Md. Code, Pub. Safety §§ 5-101 and 5-133.

Against that backdrop, we hold that the evidence adduced at trial was sufficient to show that Mr. Godwin had previously been convicted of second-degree assault twice. That evidence included two "true test" copies of two different court records, one of which showed that a "Shawn L. Godwin" had been convicted of second-degree assault in the Circuit Court for Wicomico County, Maryland in 2015. The other showed that a "Shawn Lamont Godwin, Jr." had been convicted of second-degree assault in the District Court of Maryland for Wicomico County, also in 2015. In addition, Maryland State Police Trooper Christina Capranica, who was involved in the chase on January 18, 2021, testified at trial and identified Mr. Godwin in court as "Shawn Godwin." Maryland State Police Trooper Steve Mills, who was involved in the chase as well, also testified and identified Mr. Godwin as "Shawn Lamont Godwin."

From that evidence, a reasonable inference could be made that Mr. Godwin was the "Shawn L. Godwin" who had previously been convicted of second-degree assault in the Circuit Court for Wicomico County. Both individuals had the same first and last names. The middle initial matched Mr. Godwin's middle name. The second-degree assault occurred in Wicomico County, which is geographically close to Caroline County, where the instant crimes were perpetrated. The second-degree assault conviction was from 2015, and the instant crimes occurred only a few years later.

From the trial evidence, it was also reasonable to infer that Mr. Godwin was the "Shawn Lamont Godwin, Jr." who had previously been convicted of second-degree assault in the District Court of Maryland for Wicomico County. Again, both individuals had the same first, middle, and last names. Again, this second-degree assault conviction was geographically close to the instant crimes. Again, this second-degree assault conviction was from 2015, a few years before the instant crimes. Although the suffix "Jr." in this conviction record could mean that the conviction record belonged not to Mr. Godwin but to his son, Mr. Godwin's age suggests otherwise. Indeed, on September 1, 2021, at a status conference before a different circuit court judge in this case, Mr. Godwin told the court he was born in June, 1995. Thus, Mr. Godwin was 26 years old then and at the December 6, 2021 trial. The trial court would likely have noticed Mr. Godwin's youthfulness particularly when he addressed the court while representing himself and testifying. Thus, the trial court could have reasonably inferred that the Shawn Lamont Godwin on trial was young enough to be "Shawn Lamont Godwin, Jr." and not his older father.

When viewing these facts in a light most favorable to the State, it was reasonable for the trial court to infer that Mr. Godwin had been convicted of second-degree assault twice. Accordingly, the evidence was sufficient to sustain Mr. Godwin's convictions of possession of a regulated firearm after having been convicted of a crime of violence, possession of a firearm after having been convicted of a disqualifying crime, and possession of ammunition while being prohibited from possessing a firearm.

Mr. Godwin argues that the similarities between his name and the name of the person from the court records was insufficient to establish his identity as that person. He relies primarily on two cases: *United States v. Allen*, 383 F.3d 644 (7th Cir. 2004), and *Dove v. State*, 415 Md. 727 (2010).

We remain unpersuaded. In *United States v. Allen*, the Seventh Circuit held that "[a] conviction record bearing the defendant's name but no other identifying information is insufficient to identify the conviction as the defendant's for purposes of proving felon status." *Allen*, 383 F.3d at 649. There, the defendant, David L. Allen, was convicted of possession of a firearm by a felon after the State introduced a certified court record showing that a "David L. Allen" had been convicted of a felony. *Id.* at 645-46. The Seventh Circuit ultimately overturned the conviction on the grounds that the evidence was insufficient to sustain the conviction. *Id.* at 649. The court reasoned that, while the certified court record and the attendant circumstances were enough to make it possible that the defendant had previously been convicted of a felony, the evidence fell short of proving that element beyond a reasonable doubt. *Id.* In support, the court reasoned that "[t]he evidence must make it highly improbable that two different people are involved" and that "no such judgment can be made with any reasonable degree of confidence from the identity of the name alone." *Id.* at 648 (citations and quotations omitted).

In *Dove v. State*, the Court of Appeals considered whether the erroneous introduction of a fingerprint card at a sentencing hearing was harmless error. *Dove*, 415 Md. at 732. There, the State sought an enhanced penalty against a defendant who had

been previously convicted of two predicate offenses. *Id.* at 732-33. To prove those convictions at the sentencing hearing, the State introduced certified records of the convictions and the defendant's fingerprint card, the latter of which was later held to be erroneously admitted. *Id.* at 732-33. After the sentencing court sentenced the defendant to the enhanced penalty and this Court affirmed on harmless error grounds, the Court of Appeals reversed. *Id.* In so doing, the Court made the following comments, which Mr. Godwin quotes in support of his argument: "While the certified record of the conviction, which was properly admitted into evidence, contains some information that is probative of identity, the fingerprint card contains more detailed identifying information that is not contained in the certified record of the conviction." *Id.* at 750-51.

Neither of the above cases is applicable here. Although the holding in *Allen* seems to support Mr. Godwin's position, the rationale relied on by the Seventh Circuit in support of that holding is at odds with Maryland case law. In reaching that holding, the Seventh Circuit appears to suggest that, while a certified record of a conviction bearing the defendant's name is persuasive, such evidence is not *sufficiently* persuasive to prove that the defendant and the person from the certified record are one in the same. But, as previously discussed, our concern in reviewing the sufficiency of the evidence "is with production, as a matter of law, and not with persuasion, as a matter of fact." *Roes*, 236 Md. App. at 583 (citations omitted). Here, the State satisfied its burden of production by introducing evidence from which a reasonable factfinder could have found that Mr. Godwin had been previously convicted of a second-degree assault. That was all the State

needed to do for the evidence to be legally sufficient. Whether that evidence was sufficiently persuasive was for the factfinder to decide.

As for *Dove*, we see nothing in the quoted passage that suggests that a certified conviction bearing the defendant's name is insufficient to prove that the defendant had been convicted of that crime. To the contrary, the Court of Appeals' recognition that "the certified record of the conviction … contain[ed] some information that is probative of identity" suggests that such a record would be sufficient.

To the extent that the opposite conclusion could be drawn from the text or the opinion in general, we note that the Court of Appeals in *Dove* was not assessing the sufficiency of the evidence but instead was analyzing whether the erroneous admission of the fingerprint card constituted harmless error. Under that standard, which is highly deferential to the defendant, the State was required to prove that the erroneous admission of the evidence was harmless beyond a reasonable doubt and did not influence the outcome of the case. *Dove*, 415 Md. at 743. The Court ultimately concluded that the State failed to meet that burden, holding that the introduction of the fingerprint card likely influenced the outcome of the case and that, consequently, the Court could not say beyond a reasonable doubt that the certified record of the conviction was sufficient, by itself, to connect the defendant to the prior conviction. *Id.* at 751.

Here, by contrast, we are not dealing with the erroneous admission of evidence, and we are not concerned with whether the State has proven, at the appellate level, that some error was harmless. Rather, we are deciding whether, at trial, the State met its

burden of production such that any rational trier of fact could have found the essential elements beyond a reasonable doubt. Under that standard, the certified records bearing the name "Shawn L. Godwin" or "Shawn Lamont Godwin, Jr.," each of which we must consider in a light most favorable to the State, were each separately sufficient to prove the requisite element. Whether those circumstances were sufficient to meet the harmless error standard is another matter altogether.

In his reply brief, Mr. Godwin cites several additional cases, none of which are persuasive. Three of the cases – *Woodson v. State*, 325 Md. 251 (1992), *Cosby v. Jones*, 682 F.2d 1373 (11th Cir. 1982), and *U.S. v. Jackson*, 368 F.3d 59 (2nd Cir. 2004) – involve the use of rebuttable presumptions, which the United States Supreme Court has held to be inappropriate in a criminal case because such presumptions improperly shift the burden of proof to the defendant. *E.g., Mullaney v. Wilbur*, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358 (1970).

Those cases are distinguishable from the present case because, in the present case, no rebuttable presumptions were raised. A rebuttable (or mandatory) presumption "instructs the finder of fact that it *must* infer the presumed fact if the State proves certain predicate facts." *Brown v. State*, 171 Md. App. 489, 507 (2006) (emphasis added). When it relates to an element of a crime, a rebuttable presumption "requires the trier of fact to find the presumed element unless the defendant persuades the trier of fact that such a finding is unwarranted." *Id.*

At issue here, rather, is a *permissive* inference. Such an inference "allows, *but does not require*, the trier of fact to infer the elemental fact from proof by the prosecution of the basic fact, and that places no burden of any kind on the defendant." *Id.* at 507 (emphasis added). "Because a permissive presumption allows the trier of fact to accept or reject the inference, due process is offended only when, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference." *Id.*

Here, the trier of fact was permitted (but not required) to infer that Mr. Godwin was the same "Shawn L. Godwin" or "Shawn Lamont Godwin, Jr." from the court records. Consequently, the trier of fact was permitted (but not required) to infer that Mr. Godwin had been convicted of the predicate offense. Those inferences were permitted because the State presented evidence, in the form of the certified court records, to support the inferences. The trial court could have accepted that evidence and inferred the basic fact, or the court could have rejected the evidence and inferred nothing from the evidence. The court in this case chose the former. A different factfinder may have chosen the latter. Either way, neither inference was mandatory (or rebuttable), and due process was not violated.

U.S. v. Riley, 21 F.Supp.3d 540 (D. Md. 2014), another case cited by Mr. Godwin, and *U.S. v. Jackson* are distinguishable because, like *United States v. Allen,* they suggest that a certified record of a conviction bearing the defendant's name is not sufficiently persuasive. As previously discussed, our concern in reviewing the sufficiency of the evidence "is with production, as a matter of law, and not with persuasion, as a matter of

fact." *Roes*, 236 Md. App. at 583 (citations omitted). Those cases are also distinguishable because the names at issue in those cases were fairly common, the convictions were old, and the conviction was either from a very populous region or listed what appeared to be an incorrect home address for the defendant. *E.g.*, *Jackson*, 368 F.3d at 63-64 (the evidence was insufficient to show that defendant, Aaron L. Jackson, was the same "Aaron Jackson" who had been convicted of disqualifying crime in New York City, eighteen years earlier). *Riley*, 21 F.Supp.3d at 545-46 (the evidence was insufficient to show that the defendant, Charles Riley, Jr., was convicted of a disqualifying crime, where the only evidence of the crime was a ten-year-old docket sheet that listed the name "Charles Riley" and what appeared to be an incorrect home address for the defendant). The name in the present case – "Shawn Lamont Godwin" – is considerably less common. Further, neither conviction record is as old as those in *Jackson* and *Riley*, and neither lists a home address, much less an incorrect one.

In sum, we hold that the evidence adduced at trial was sufficient to sustain Mr. Godwin's convictions on Counts 5, 7, and 8. Accordingly, Mr. Godwin can be retried on those counts.

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY REVERSED; COSTS TO BE PAID BY CAROLINE COUNTY.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1627s21cn.pdf