

Circuit Court for Montgomery County
Case No.: 137275C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1662

September Term, 2021

KYLE CHRISTOPHER HABEL

v.

STATE OF MARYLAND

Graeff,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: October 4, 2022

*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 a bench trial in the Circuit Court for Montgomery County, the court found Kyle Christopher Habel, appellant, guilty of possession of a regulated firearm after having been convicted of a disqualifying felony.^{1,2} Thereafter, the court sentenced him to 3 years' imprisonment.

Appellant noted an appeal. In it, he claims that the evidence is legally insufficient to support his conviction. We disagree and shall affirm.

BACKGROUND

The evidence adduced at trial, when viewed in the light most favorable to the State, revealed the following events. In March 2020, appellant allowed three people to stay in his apartment: Gregory Sumner Jr., Sumner Jr.'s 10-year-old son, and Sumner Jr.'s girlfriend Kathleen Nieberger. On March 8, 2020, Sumner Jr.'s father, Gregory Sumner Sr., came over to appellant's apartment where the group (except for the 10-year-old boy) smoked crack cocaine together. At some point, they ran out of drugs and Sumner Sr. and Nieberger left to purchase more crack cocaine. After they returned, appellant asked Sumner Sr. for some of the crack cocaine, and when Sumner Sr. refused to share it, appellant became irate, picked up a shotgun, pointed it at Sumner Sr., and ordered him to leave the apartment.

¹ The court acquitted appellant of first-degree assault and use of a firearm in the commission of a crime of violence. In addition, while the court had initially found appellant guilty of reckless endangerment, during the sentencing proceeding it vacated the guilty finding on that count.

² Section 5-133(b)(1) of the Public Safety Article of the Maryland Code prohibits a person previously convicted of a disqualifying crime from possessing a regulated firearm.

At trial, the parties stipulated that, among other things, the shotgun recovered from appellant’s apartment was a regulated firearm within the meaning of Section 5-133(b) of the Public Safety Article, and that appellant was disqualified from possessing such a firearm because he had previously been convicted of a disqualifying crime.

Appellant testified to a different series of events in his apartment that evening. In short, appellant testified that, after he had fallen asleep in his bedroom, Sumner Sr. crawled into his room and said “they took my crack.” Appellant claimed that he then picked up a gun that he had never seen before and used it, out of fear, to get Sumner Sr. to leave the apartment.

DISCUSSION

As noted above, appellant contends that the evidence is legally insufficient to support his conviction for possession of a regulated firearm after having been convicted of a disqualifying felony. Appellant does not dispute that he picked up and held a regulated firearm or that he was disqualified from possessing such a weapon as a result of having been convicted of a disqualifying crime. His trial testimony and the stipulations entered into at trial established, beyond cavil, that he was in actual physical possession of a regulated firearm after having been convicted of a disqualifying crime. Rather, he contends

that the evidence is insufficient because, according to him, the State did not disprove any element of the common law necessity-based defense he advanced at trial.³

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 *Titus v. State*, 423 Md. 548, 557 (2011), in turn quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In doing so, we defer to the fact-finder’s evaluations of witness credibility, resolution of evidentiary conflicts, and discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *Grimm v. State*, 447 Md. 482, 495 (2016).

³ In *State v. Crawford*, 308 Md. 683, 698-99 (1987), the Court of Appeals held that the common law necessity defense can be a defense to unlawful possession of a firearm. The Court determined that such a defense has five elements:

- (1) the defendant must be in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe himself or others to be in such danger;
- (2) the defendant must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct;
- (3) the defendant must not have any reasonable, legal alternative to possessing the handgun;
- (4) the handgun must be made available to the defendant without preconceived design, and
- (5) the defendant must give up possession of the handgun as soon as the necessity or apparent necessity ends.

Id. at 699.

In this case, the court simply did not believe appellant’s version of events. In delivering its verdict, it noted that:

Quite frankly, [appellant’s] testimony with regard to this shotgun is not credible. On these issues, the Court doesn’t find his testimony credible at all, and in fact if anybody has the greater motivation to lie between [appellant] and the other three, well the other two people, the two Sumners, it would certainly be [appellant.] And I’m not aware of any real reason for the Sumners to fabricate this story and the way it happened.

In weighing the evidence at trial, the trial court was free to believe all, some, or none of witness testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013). As can be seen, it found appellant’s version not credible. From that standpoint, it found that the State had disproved at least one element of the necessity-based defense appellant had advanced. As a result, the evidence is legally sufficient.

Consequently, we affirm the judgment of the circuit court.

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