



2015

Recent Development: Garner v. State: The Unit of Prosecution for Use of a Handgun in the Commission of a Crime of Violence is the Crime of Violence, Not the Victim or Criminal Transaction; The Evidence Corroborated Two Separate Handgun Convictions; And the Trial Court's One-Year Sentence for the Second Use of a Handgun Conviction Was Illegal

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Recommended Citation

Campos, Ashlyn J. (2015) "Recent Development: Garner v. State: The Unit of Prosecution for Use of a Handgun in the Commission of a Crime of Violence is the Crime of Violence, Not the Victim or Criminal Transaction; The Evidence Corroborated Two Separate Handgun Convictions; And the Trial Court's One-Year Sentence for the Second Use of a Handgun Conviction Was Illegal," *University of Baltimore Law Forum*: Vol. 46 : No. 1 , Article 6.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol46/iss1/6>

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RECENT DEVELOPMENT

GARNER V. STATE: THE UNIT OF PROSECUTION FOR USE OF A HANDGUN IN THE COMMISSION OF A CRIME OF VIOLENCE IS THE CRIME OF VIOLENCE, NOT THE VICTIM OR CRIMINAL TRANSACTION; THE EVIDENCE CORROBORATED TWO SEPARATE HANDGUN CONVICTIONS; AND THE TRIAL COURT’S ONE-YEAR SENTENCE FOR THE SECOND USE OF A HANDGUN CONVICTION WAS ILLEGAL.

By: Ashlyn J. Campos

The Court of Appeals of Maryland held that the unit of prosecution for Section 4-204 of the Maryland Code, Criminal Law Article (“section 4-204”) is the individual crime of violence, not the victim or criminal transaction. *Garner v. State*, 442 Md. 226, 230, 112 A.3d 392, 394 (2015). The court of appeals further held that separate handgun convictions are permitted when evidence supports multiple crimes or felonies. *Id.* at 244, 112 A.3d at 402. Finally, the court held that a trial court does not possess the discretion to impose a sentence less than the mandatory five year minimum prescribed by section 4-204 of the Criminal Law Article (“CL”). *Id.* at 250-52, 112 A.3d at 406-08.

On December 18, 2010, Terrance Garner (“Garner”) attempted to rob Ben WaBeya (“WaBeya”) at gunpoint. When WaBeya did not comply with Garner’s demands, Garner shot him twelve times in the legs and stomach area. Garner then stood over WaBeya and discharged a final shot into WaBeya’s neck.

Garner was convicted in the Circuit Court for Baltimore City and sentenced to thirty years imprisonment for attempted first-degree murder, twenty years to be served consecutively for one count of use of a handgun in the commission of a crime of violence, fifteen years to be served concurrently for attempted robbery with a dangerous weapon, and a consecutive one year sentence for the second count of use of a handgun in the commission of a crime of violence.

Garner appealed and the Court of Special Appeals of Maryland affirmed the circuit court, holding that separate consecutive sentences for Garner’s use of a handgun convictions were legal. The court of special appeals judicially noted that it was not illegal to impose a one-year sentence for a violation of section 4-204 under the plain language of the statute. Garner petitioned for a writ of certiorari and the State conditionally cross-petitioned to the Court of Appeals of Maryland. The court granted both petitions.

The court of appeals first addressed Garner’s contention that the unit of prosecution for a violation of section 4-204 is the victim of the crime of violence or the criminal transaction. *Garner*, 442 Md. at 235, 112 A.3d at 397. To ascertain the proper statutorily prescribed unit of prosecution, the court

looked to the legislative intent of the statute. *Id.* at 236-38, 112 A.3d at 397-400. Legislative intent is clarified through applying the general rules of statutory interpretation, which begin with an evaluation of the plain language and meaning of the statute and a review of the statutory history. *Id.* at 236-37, 112 A.3d at 398. If the language of the statute is unambiguous, no further analysis is warranted. *Id.* at 237, 112 A.3d at 398 (citing *State v. Weems*, 429 Md. 329, 337, 55 A.3d 921, 926 (2012)).

Section 4-204 provides that “a person may not use a firearm in the commission of a crime of violence... or any felony.” *Garner*, 442 Md. at 238, 112 A.3d at 399 (citing CL § 4-204). The court found the plain language to be clear and unambiguous. *Id.* at 242, 112 A.3d 401. However, the “plain language must be read within the context of the statutory scheme” and the court will not ignore signs that the plain language conflicts with the “purpose, aim, or policies” the drafters intended. *Id.* at 237, 112 A.3d at 398 (citing *Weems*, 429 Md. at 337, 55 A.3d at 926).

To ensure the legislative intent and purpose of the statute were correctly interpreted, the court reviewed the statutory history. *Garner*, 442 Md. at 237, 112 A.3d at 398. Prior to the enactment of section 4-204, Art. 27, § 36B(d) (“Art. 27”) was the governing statute for use of a handgun offenses. *Id.* at 238-39, 112 A.3d at 399. In *Brown v. State*, the Court of Appeals of Maryland concluded that the unit of prosecution for Art. 27 was the crime of violence or felony committed with a handgun. *Id.* at 239, 112 A.3d at 399. (citing *Brown v. State*, 311 Md. 426, 434-35, 53 A.2d 482, 486 (1988)). The *Brown* court opined that the victim and the criminal transaction were irrelevant factors in determining the unit of prosecution for Art. 27. *Id.* at 239-40, 112 A.3d at 399-400. (citing *Brown*, 311 Md. at 434-35, 53 A.2d at 486). The *Garner* court found no reason to believe that the legislature intended section 4-204 to be interpreted differently than Art. 27. *Id.* at 240-41, 112 A.3d at 401.

After reviewing the legislative history and examining the plain language of section 4-204, the court of appeals concluded that the statute criminalizes using a handgun during every felony or crime of violence. *Garner*, 442 Md. at 242-43, 112 A.3d at 401-02. Thus, the proper unit of prosecution for a violation of section 4-204 is the crime of violence committed with a handgun. *Id.* Additionally, as long as there is evidence of multiple crimes of violence and evidence that each of those crimes is committed with a handgun, each crime of violence will sustain its own distinct handgun conviction. *Id.* at 243-44, 112 A.3d at 402-03.

Next, the court addressed *Garner*’s alternative argument that under the court’s prior decision in *Johnson v. State*, either the rule of lenity, the required evidence test, or the principle of fundamental fairness mandated separate handgun sentences to be merged. *Garner*, 442 Md. at 246, 112 A.3d at 404. The court, however, was unpersuaded that merger is required under the rule of lenity. In *Johnson*, the statute that regulated sentencing for a use of a handgun offense was ambiguously written and has since been superseded. *Id.* (citing *Johnson v. State*, 56 Md. App. 205, 219, 467 A.2d 544, 550-51(1983)). The court further concluded that merger is not required under the required evidence

test or the principle of fundamental fairness because the two handgun convictions are not “part and parcel” of each other and the elements of the underlying crimes attached to the convictions are unrelated. *Id.* at 249-50, 112 A.3d at 406.

Finally, the court addressed the State’s argument that a one-year sentence for a use of a handgun conviction was illegal. *Garner*, 442 Md. at 250, 112 A.3d at 406. Pursuant to Md. Rule 4-345(a), “the court may correct an illegal sentence at any time,” including on appeal. *Id.* at 250-51, 112 A.3d at 406. Section 4-204(c) provides that a person convicted for use of a handgun in the commission of a crime of violence “shall be sentenced to imprisonment for not less than 5 years.” *Id.* at 252, 112 A.3d at 407. Therefore, the imposition of a one-year sentence was illegal because it is less than the mandatory minimum prescribed by the statute. *Id.*

In *Garner*, the Court of Appeals of Maryland held that a violation of section 4-204 permits separate consecutive sentences, the unit of prosecution is the crime of violence, and the mandatory minimum sentencing clause is a hard-floor component of the statute. The court’s decision significantly empowers prosecutors in plea-bargaining, because they will be able to utilize the statute’s mandatory five-year sentence as leverage over the defendant. This decision also advances society’s interest against gun violence, given that no sentencing leniency will be afforded to defendants who are convicted of handgun crimes. Furthermore, this decision may discourage practitioners from presenting merger arguments because the *Garner* court found no merit in the three rules that require merger of sentences. With the enactment of section 4-204, it is clear that the courts will be punishing handgun crimes to their fullest extent.