

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Reginald L. Johnson, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 7, 2023

Court of Appeals Case No.  
23A-CR-691

Appeal from the  
Morgan Superior Court

The Honorable  
Brian Williams, Judge

Trial Court Cause No.  
55D02-2208-F4-1105

**Memorandum Decision by Senior Judge Baker**  
Judges Vaidik and Weissmann concur.

## **Baker, Senior Judge.**

### Statement of the Case

- [1] Reginald L. Johnson, Jr., arrived at the scene of a police investigation and, while arguing with officers, told them he had a gun in his car. Officers found the gun and arrested him. Johnson appeals his conviction of unlawful possession of a firearm by a serious violent felon, a Level 4 felony. He argues the trial court gave erroneous jury instructions. Concluding the trial court did not err, we affirm.

### Facts and Procedural History

- [2] In August 2022, police officers were dispatched to an apartment complex to investigate a reported disturbance. Upon arrival, the officers discovered the parents of two children arguing in a parking lot. Next, the mother's boyfriend, Johnson, arrived by car, parked "a block" away, and approached by foot. Tr. Vol. 2, p. 102; *see also id.* at 111 (different witness describing Johnson driving up to the scene and then approaching the mother and the officers on foot). Johnson was "confrontational" and told officers he had a gun in his car. *Id.* at 150-51. An officer looked in the car and saw a "small, single stack magazine" of handgun rounds on a car seat. *Id.* at 135.
- [3] Meanwhile, a case worker from the Indiana Department of Child Services arrived at an officer's request. The officers had arrested the children's mother, and the case manager needed to determine the appropriate temporary placement for the children. As part of this process, Johnson entered his car to

retrieve certain items while the officers watched. An officer saw a handgun in the pocket of the driver's side door and a magazine on the driver's seat. After further investigation, the officers entered the car a second time, using Johnson's keys. They saw the handgun had been moved so that it was partially under the driver's seat, with the magazine loaded in the gun. The officers arrested Johnson and took him to jail. During the booking process, Johnson told the officers to "watch out" because he would "smoke" them after he was released. *Id.* at 143-44.

- [4] The State charged Johnson with Level 4 felony unlawful possession of a firearm by a serious violent felon ("SVF"); Level 6 felony intimidation; Class A misdemeanor unlawful carrying of a handgun; and Class B misdemeanor disorderly conduct. The State later dismissed the Class A misdemeanor charge.
- [5] The parties agreed to a bifurcated trial. In the first phase, the jury would consider whether Johnson was guilty of intimidation, disorderly conduct, and unlawful possession of a firearm. In the second phase, the jury would determine whether Johnson had previously been found guilty of a predicate felony to establish his SVF status.
- [6] Johnson objected to the trial court's proposed instructions on the charge of unlawful possession of a firearm by a SVF and offered different instructions. The court overruled his objections and gave the jury the court's proposed instructions. The jury determined Johnson was guilty as charged. The court imposed a sentence, and this appeal followed.

## Discussion and Decision

- [7] Johnson argues the trial court’s instructions on the SVF charge were erroneous, and the court should have given his proposed instructions instead. “Generally, we review jury instructions for an abuse of discretion.” *Miller v. State*, 188 N.E.3d 871, 874 (Ind. 2022). “We undertake a three-part analysis in determining whether a trial court has abused its discretion.” *Washington v. State*, 997 N.E.2d 342, 345 (Ind. 2013). We “look to whether: (1) the tendered instruction correctly states the law; (2) there is evidence in the record to support the giving of the instruction; and (3) the substance of the tendered instruction is covered by other instructions.” *Shoultz v. State*, 995 N.E.2d 647, 659-60 (Ind. Ct. App. 2013), *trans. denied*.
- [8] When a defendant is tried for the offense of possession of a firearm by a SVF, “there is the potential for unfair prejudice against the defendant when the jury learns of the defendant’s underlying criminal status.” *McAnalley v. State*, 134 N.E.3d 488, 507 (Ind. Ct. App. 2019), *trans. denied*. A court may bifurcate the trial “to keep prior convictions away from the jury in their initial determination of guilt for the substantive crime charged.” *Russell v. State*, 997 N.E.2d 351, 354 (Ind. 2013). “With bifurcation, however, comes the difficulty of explaining to a jury [during the first phase of the trial] why the defendant is facing trial for merely possessing a firearm.” *Williams v. State*, 834 N.E.2d 225, 228 (Ind. Ct. App. 2005).

[9] In *Williams*, the defendant was charged with possession of a firearm by a SVF. The trial court bifurcated the trial and instructed the jury as follows during phase one:

The Defendant is charged with Illegal Possession of a Firearm. The trial of charge [sic] will be in two (2) stages. In the first stage, there will be a trial on the issue of whether the Defendant knowingly or intentionally possessed the firearm as charged. If you find beyond a reasonable doubt that the defendant knowingly or intentionally possessed the firearm as charged, there will be a second stage of the trial. In the second stage, there will be a trial of the issue [of] whether the Defendant committed a crime by possessing a firearm.

*Id.* at 228. Williams argued the instruction was erroneous because it “allegedly implied that there necessarily would be a second stage of the trial.” *Id.* The Court rejected Williams’ argument, concluding the instruction “struck the proper balance between advising the jury that Williams had indeed been charged with a firearm-related crime” and avoiding identifying Williams as a convicted felon during phase one. *Id.*

[10] In *Carpenter v. State*, 15 N.E.3d 1075, 1077-78 (Ind. Ct. App. 2014), *trans. denied*, the State charged Carpenter with possession of a firearm by a SVF, among other offenses. During phase one of the bifurcated trial, the court instructed the jury to determine whether Carpenter possessed a firearm in violation of a statute. The statute described the offense of possession of a firearm by a SVF, but the court did not identify the statute nor recite its terms. The jury asked the court to discuss the statutory citation, but the judge merely instructed the jury it

had “all of the evidence and law applicable.” *Id.* at 1078. The jury determined Carpenter was guilty.

[11] On appeal, Carpenter argued the instruction defeated the purpose of bifurcation, speculating the jurors could have looked up the statute independently and learned he was alleged to have a prior felony conviction. The Court disagreed, noting that the trial court instructed the jurors not to perform their own research and that jurors are presumed to follow the court’s instructions. *Id.* at 1078. The Court stated that the “jury’s question indicates it did not know the content of the statute or the nature of Carpenter’s past offenses.” *Id.* As a result, the Court concluded that Carpenter had not “demonstrated he was prejudiced by the partial bifurcation of his trial.” *Id.*

[12] By contrast, in *Ray v. State*, 846 N.E.2d 1064, 1069-70 (Ind. Ct. App. 2006), *trans. denied*, the Court concluded the trial court erred in instructing the jury on a SVF charge because, during a non-bifurcated trial, the court informed the jury that Ray had a prior conviction of robbery. Although the Court deemed the error harmless, the Court concluded the instruction was an abuse of discretion due to its potentially prejudicial effect.

[13] Similarly, in *McAnalley*, 134 N.E.3d at 511, the trial court did not bifurcate the trial of a charge of possession of a firearm by a SVF, and the court instructed the jury McAnalley had a prior conviction of robbery. The Court concluded the instruction identifying the prior conviction would have been reversible, but any error was harmless due to the weight of the evidence presented.

[14] In Johnson’s case, while giving preliminary instructions in phase one of the trial, the trial court described the charge of unlawful possession of a firearm by a disqualified person as follows: “[the charging officer] says that on or about August 21, 2022, in Morgan County, State of Indiana, Reginald L. Johnson, Junior, having previously been disqualified from possessing a firearm under Indiana Code 35-47-4-5, did knowingly possess a firearm.” Tr. Vol. 2, pp. 79-80.

[15] The Court further preliminarily instructed the jury on the SVF offense as follows:

[T]he crime of possession of a firearm in violation of Indiana code [section] 35-47-4-5 is defined by law as follows: A person who knowingly or intentionally possesses a firearm after having been disqualified under Indiana Code 35-47-4-5, commits possession of a firearm, in violation of Indiana Code 35-47-4-5, a Level 4 felony. Before you may convict the defendant, the State must have proved each of the following beyond a reasonable doubt: One, the defendant, two, knowingly or intentionally, three possessed a firearm. The nature of the issue of any disqualification is not before you at this time. You are instructed not to speculate as to or consider this issue in any way. If the State has failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of possession of a firearm, in violation of Indiana Code 35-47-4-5, a Level 4 felony.

*Id.* at 80. The trial court repeated these instructions before the jury began its deliberations at the end of phase one.

[16] After the jury determined Johnson was guilty of possession of a firearm as a disqualified person, the trial court informed the jury: “Normally after reaching a verdict, your duties as jurors would be over, however in this case, the State has filed one additional allegation and that is that the defendant has a [sic] unrelated conviction.” *Id.* at 200. The court then instructed the jury:

In this case the State of Indiana has alleged the defendant is a disqualified person under Indiana Code 35-47-4-5. You have previously entered a finding that the defendant possessed a firearm. In this stage of the trial, to convict the defendant of count one, the State must also prove that the possession was unlawful. To do so, the State must prove each of the following beyond a reasonable doubt. One, the defendant, Reginald L. Johnson, Junior, two, on or about August 21, 2022, three, has [sic] a prior conviction for child molesting in violation of 35-42-4-3(b) which the Court instructs you is an offense listed under Indiana Code 35-47-4-5(b)(11). If the State fails to prove each of these elements beyond a reasonable doubt, you must find the defendant, Reginald L. Johnson, not guilty of unlawful possession of a firearm by a disqualified person.

*Id.* at 200-01. The trial court repeated this instruction before the jury began its deliberations.

[17] Johnson had tendered jury instructions for phase one and phase two, in which he omitted the term “disqualified.” The trial court determined Johnson’s proposed instructions were not appropriate because mere “possession of a firearm is not a crime,” *id.* at 6, and use of the term “disqualified” was intended to minimize juror confusion during phase one of the trial.



[18] Johnson argues the trial court’s instructions misstated the law. He claims the use of “disqualified” violates precedent by wrongly “suggest[ing] or imply[ing] to the jury that Johnson has done something in his past that prevents him from lawful possession of a firearm . . . .” Appellant’s Br. p. 28. We disagree. Unlike in *Ray* or *McAnalley*, the trial court here did not identify the alleged prior predicate felony until necessary. And unlike the instruction at issue in *Williams*, the trial court here did not inform the jury of the possibility of a second phase. The circumstances of Johnson’s case are more like the circumstances in *Carpenter*. The trial court’s use of the phrase “disqualified,” like the unexplained citation to the SVF statute in *Carpenter*, may have given rise to juror questions about why Johnson could not own a gun. But the trial court here instructed the jury not to speculate about the nature of the disqualification, just as the trial court in *Carpenter* instructed the jurors not to do their own research. And “[w]e presume that the jury follows the trial court’s instructions.” *Harris v. State*, 824 N.E.2d 432, 440 (Ind. Ct App. 2005).

[19] We cannot conclude the trial court’s instructions during phase one of the trial misstated the law. In the absence of such a misstatement, Johnson has failed to demonstrate the trial court abused its discretion.<sup>1</sup>

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<sup>1</sup> The State argues any error in the jury instructions was harmless. We need not address this issue.

## Conclusion

[20] For the reasons stated above, we affirm the judgment of the trial court.

[21] Affirmed.

Vaidik, J., and Weissmann, J., concur.