

Circuit Court for Anne Arundel County  
Case No.: C-02-CR-21-000778

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1838

September Term, 2021

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SHANE SEBATIAN PEART

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: September 30, 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 jury trial in the Circuit Court for Anne Arundel County, Shane Sebastian Peart, appellant, was convicted of resisting arrest, wearing and carrying a dangerous weapon, and two counts of second-degree assault—Counts 2 and 5. The sentencing judge merged Count 2 with resisting arrest for sentencing purposes. On appeal, Peart contends that the court erred by not merging Count 5 as well. For the reasons that follow, we shall affirm the judgments of conviction but vacate Peart’s sentence on Count 5.

### **BACKGROUND**

Three police officers came to Peart’s home to execute a warrant for his arrest: Corporal Saadia Feliciano, Sergeant Matthew Beall, and Corporal Christopher Boyd.<sup>1</sup> After some brief conversation with Peart’s mother, Corporal Feliciano and Sergeant Beall made their way upstairs to Peart’s bedroom, which his father unlocked for them. As soon as the officers opened the door, Peart started shouting at them to leave. From the doorway, Corporal Feliciano explained that they had a warrant for Peart’s arrest. She assured Peart that it was “nothing serious” and that they were just taking him down to the station to see a commissioner for booking. She estimated Peart would “probably be released in about two hours depending on how busy it was.”

Although he had begun to cool down at this point, Peart’s anger reignited after seeing his mother behind the officers. Peart resumed shouting at them that he “didn’t do anything” and demanding the officers leave. When they did not, Peart advanced on the officers, slammed the door—striking Sergeant Beall’s foot—and locked it.

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<sup>1</sup> There is some dispute as to whether a fourth officer was present, but as it is not relevant to our decision, we need not dwell on it.

Pearť’s father unlocked the door for the officers again. This time when they opened it, the officers saw Pearť across the room trying to unsheathe a knife he had retrieved from his nightstand. Both officers commanded Pearť to drop it. When he refused, Sergeant Beall fired his taser, striking Pearť in the chest, and causing him to fall into a seated position on his bed and drop the knife.

Corporal Feliciano quickly moved to restrain Pearť. He fought back by kicking and flailing his arms. The officers then radioed Corporal Boyd—who had been stationed outside the house—for assistance. Pearť continued to fight back, but the officers eventually restrained him using several sets of handcuffs and leg shackles.

After a trial, the jury convicted Pearť of resisting arrest, wearing and carrying a dangerous weapon, and two counts of second-degree assault—one against Sergeant Beall and one against Corporal Feliciano.<sup>2</sup> At sentencing, Pearť argued that both of his second-degree-assault convictions should merge into his resisting-arrest conviction. The circuit court agreed that the assault conviction against Corporal Feliciano should merge but refused to merge the conviction against Sergeant Beall. The court explained that the jury “could have” based that conviction on either Pearť striking Beall’s foot with the door or threatening him with the knife. The court considered these acts as distinct from Pearť’s resisting arrest because, in the court’s view, they occurred before an arrest attempt. The court sentenced Pearť to 10 years for second-degree assault with all but 5 suspended, 3 years for the dangerous-weapon conviction to run concurrently to the assault conviction,

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<sup>2</sup> No charges were brought regarding Corporal Boyd.

and 3 years for resisting arrest to run consecutively to the assault conviction. This resulted in a 13-year sentence with all but 8 suspended. This appeal followed.

## DISCUSSION

The common-law rule of merger precludes separate sentences for merged offenses. *Nicolas v. State*, 426 Md. 385, 400 (2012). Offenses merge if they are the same under the required-evidence test and “are based on the same act or acts.” *Id.* at 408 (quotation marks and citation omitted). A departure from this rule imposes an illegal sentence that may be corrected at any time, even if unpreserved. *See id.*; *Johnson v. State*, 427 Md. 356, 371 (2012). Whether a sentence is illegal is a question of law that we consider *de novo*. *Bonilla v. State*, 443 Md. 1, 6 (2015).

### I. Merger of Second-Degree Assault and Resisting Arrest

Resisting arrest and second-degree assault are the same under the required-evidence test when the assault is of the common-law-battery modality. *Nicolas*, 426 Md. at 407. Consequently, we need to resolve whether Peart’s convictions for these offenses were based on the same or separate acts. This requires us to make three determinations.

First, we must determine when Peart assaulted Sergeant Beall in relation to when the officers attempted to arrest him. Peart’s sentences will not merge if his assault conviction was based on acts before an arrest attempt. *Id.* at 407–08. That said, merger is not guaranteed just because an assault occurred after an arrest attempt. *Butler v. State*, \_\_\_ Md. App. \_\_\_, No. 1037, Sept. Term 2021, slip op. at 21-22 (filed August 31, 2022). If Peart assaulted Sergeant Beall after the officers attempted his arrest, we must then determine whether the jury based the assault conviction on a common-law battery or

another assault modality. This distinction must be clear from the record. *State v. Frazier*, 469 Md. 627, 642 (2020). Finally, we must determine whether the jury based Peart’s resisting-arrest conviction on the same act as his assault conviction. If there is a factual ambiguity as to whether the convictions arose out of the same or separate acts, “that ambiguity is resolved in [Peart’s] favor[.]” *Nicolas*, 426 Md. at 400.

### **A. Timing of Assault**

On timing, the circuit court ruled that Peart’s assaultive conduct against Sergeant Beall was not “part and parcel” of his resisting arrest—*i.e.*, when Peart assaulted the Sergeant, the officers were not yet attempting an arrest. We disagree. An arrest occurs when an officer detains a suspect by an act that indicates intent to take them into custody and subjects them to the officer’s actual control and will. *Olson v. State*, 208 Md. App. 309, 332 (2012). Often, this requires “a touching” by the officer. *Id.* at 333 (quotation marks and citation omitted). But when there is no touching, the officer’s intent and the suspect’s understanding are determinative. *Id.* A touchless arrest occurs when an officer intends to arrest a suspect who understands this and submits. *Id.* Antecedently, a touchless-arrest *attempt* begins when an officer intends to arrest a suspect who understands they are being arrested but has not yet submitted. *Id.* at 333–34. Any physical assaultive conduct by the suspect after this point could constitute resisting arrest.

Here, the sole reason the officers were at Peart’s home was to arrest him; their intent is unquestioned. We are also persuaded that Peart understood he was being arrested before he assaulted Sergeant Beall. Corporal Feliciano testified that she explained to Peart that they were there with a warrant for his arrest. She then detailed the arrest-and-booking

process to him including an estimated duration. Although Peart had not been touched by the officers before he slammed the door, he certainly would have been in the absence of his submitting to the arrest. That Peart understood he was being arrested is reflected by his shouting that he “didn’t do anything” in response to Corporal Feliciano’s explanations and his slamming the door to prevent the officers from reaching him. This, in our view, constitutes an attempted arrest that began once Corporal Feliciano explained that the officers were there to arrest Peart and was completed when he was cuffed and shackled. *Compare id.* at 333–34. Since Peart’s assaultive conduct happened after Corporal Feliciano’s explanations, a common-law battery could have supported either a second-degree-assault or resisting-arrest conviction.

### **B. Modality of Assault**

We next determine what conduct justified Peart’s assault conviction. The record reflects two separate acts of assaultive conduct against Sergeant Beall: one common-law battery—when Peart hit Sergeant Beall’s foot with the door; the other intentional frightening—when Peart brandished the knife at him. If the jury based Peart’s assault conviction on the latter only, the sentences would not merge because intentional frightening does not satisfy the force element of resisting arrest—*i.e.*, resisting arrest and the intentional-frightening modality of assault are not the same under the required-evidence test. *See Nicolas*, 426 Md. at 407–08. But the factual basis for their verdict is unclear. Put another way, the jury “could have” convicted Peart of second-degree assault on either of these acts. This ambiguity must be resolved in Peart’s favor, and we assume they convicted him of the common-law-battery modality of assault. *Id.* at 400.

### **C. Act Constituting Resisting Arrest**

We finally turn to the question of whether the jury based Peart’s resisting-arrest conviction on the same act as his assault conviction. Again, the record reflects two separate acts that could support a second-degree-assault conviction, only one of which could also support a resisting-arrest conviction. And again, the factual basis for the jury’s verdict is unclear: Neither the judge’s instructions nor the State’s closing argument nor the verdict sheet asked the jury to consider whether Peart’s convictions were based on distinct acts. *See Frazier*, 469 Md. at 642–44. *Compare with Butler*, \_\_\_ Md. App. at \_\_\_, slip op. at 24 (holding that convictions did not merge where the jury was given a special verdict sheet and the prosecutor “took care to describe to the jury” what acts constituted second-degree assault distinct from resisting arrest). And again, this ambiguity must be resolved in Peart’s favor, so we assume the jury based Peart’s resisting arrest-conviction on striking Sergeant Beall’s foot with the door—*i.e.*, the same act on which they based his assault conviction. *Nicolas*, 426 Md. at 400. Therefore, Peart’s assault sentence should have merged with his resisting-arrest sentence and must be vacated.

### **II. Resentencing**

Anticipating that we might vacate Peart’s assault sentence, the State requests that we remand the case for resentencing. In light of post-appeal developments, we decline to do so. While this appeal was pending, Peart filed an Application for Review of Sentence Under Maryland Rule 4-344. The three-judge panel determined that the sentencing judge was provided with incorrect Sentencing Guidelines. The panel modified Peart’s sentence to 3 years for resisting arrest, 10 years for second-degree assault with all but 3 suspended

to run concurrently, and 3 years for the dangerous-weapon conviction with all 3 suspended to run consecutively. This totals a 13-year sentence with all but 3 suspended. So modified, Peart has received the maximum possible sentence for both his dangerous-weapon conviction and his resisting-arrest conviction. *See* Md. Code Ann., Crim Law §§ 4-101(d)(1) and 9-408(c). Additionally, because his assault sentence was ordered to run concurrently with his other sentences, vacating it does not alter the sentencing “package” devised by the circuit court. *See Twigg v. State*, 447 Md. 1, 26–28 (2016). Remand for resentencing is thus futile and unnecessary. *See Johnson v. State*, 248 Md. App. 348, 357 (2020). Therefore, we vacate Peart’s assault sentence and remand with instructions for the circuit court to issue a revised commitment record in accordance with this opinion.

**APPELLANT’S SENTENCE FOR  
SECOND-DEGREE ASSAULT IN  
COUNT FIVE VACATED.  
JUDGMENTS OF THE CIRCUIT  
COURT FOR ANNE ARUNDEL  
COUNTY OTHERWISE AFFIRMED.  
REMANDED TO THE CIRCUIT  
COURT FOR ANNE ARUNDEL  
COUNTY TO REVISE THE  
COMMITMENT RECORD. COSTS  
TO BE PAID BY APPELLEE.**