

Circuit Court for Baltimore City
Case No.: 118122002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 222

September Term, 2019

MARKIES BRADLEY

v.

STATE OF MARYLAND

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2020

*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 trial in the Circuit Court for Baltimore City, a jury found Markies Bradley, appellant, guilty of (1) robbery with a deadly weapon, (2) conspiracy to commit robbery with a deadly weapon, (3) robbery, (4) conspiracy to commit robbery, (5) first-degree assault, (6) use of a handgun in the commission of a crime of violence, (7) conspiracy to commit use of a handgun in the commission of a crime of violence, (8) second-degree assault, (9) conspiracy to commit second-degree assault, and (10) unauthorized removal of property.¹

The court sentenced appellant to concurrent sentences of (1) eighteen years' imprisonment for robbery with a deadly weapon, (2) eighteen years' imprisonment for conspiracy to commit robbery with a deadly weapon, (3) eighteen years' imprisonment for conspiracy to commit robbery, (4) eighteen years' imprisonment for first-degree assault, (5) eighteen years' imprisonment, with the first five years to be served without the possibility of parole, for use of a handgun in the commission of a crime of violence, and (6) four years' imprisonment for unauthorized removal of property. The court merged the remaining counts for sentencing.

On appeal, appellant contends that some of his sentences were erroneously imposed, and that his conviction for robbery with a deadly weapon, and his acquittal for theft of property valued between \$1,500 and \$25,000, constitute prohibited legally inconsistent

¹ The jury acquitted appellant of armed carjacking, conspiracy to commit armed carjacking, carjacking, conspiracy to commit carjacking, theft of property valued between \$1,500 and \$25,000, conspiracy to commit theft of property valued between \$1,500 and \$25,000, motor vehicle theft, conspiracy to commit motor vehicle theft, and reckless endangerment.

verdicts. We agree that some of appellant’s sentences were erroneously imposed, but we disagree that any of his verdicts are legally inconsistent. We explain.

The victim testified that two masked men robbed him at gunpoint while he was attempting to pick up food from a restaurant. The attack was recorded by surveillance video and played for the jury. It showed that one of the assailants was wearing a black Under Armour-branded hooded sweatshirt, and a silver watch with a white face. The two assailants took the victim’s cash, car keys, and cell phone and fled in the victim’s vehicle. A few days later, appellant was stopped by the police while driving the victim’s car. That encounter was recorded on the police officer’s body-worn camera, and the footage was played for the jury. When appellant was arrested he was wearing a black Under Armour-branded hooded sweatshirt, and a silver watch with a white face.

Conspiracy

Appellant contends that there was only one conspiracy in this case, and that, therefore, the sentence for conspiracy to commit robbery must be vacated.² The State agrees and so do we. “It is well settled in Maryland that only one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit. The unit of prosecution is the agreement or combination rather than each of its criminal objectives.” *Tracy v. State*, 319 Md. 452, 459 (1990). When the

² Appellant also contends that the eighteen-year sentence imposed exceeded the lawful maximum because it exceeded the statutory maximum of fifteen years for the target offense of robbery. While we agree that is true, the issue is moot in light of our decision to vacate the sentence imposed for conspiracy to commit robbery in its entirety.

same offense is charged more than once in a charging document, the charging document is multiplicitous. *Ezenwa v. State*, 82 Md. App. 489, 501 (1990) (citation omitted). Because appellant was found guilty and sentenced for both conspiracy to commit robbery with a dangerous weapon, and conspiracy to commit robbery, when there was but one conspiracy, he was punished twice for committing the same crime in violation of the Double Jeopardy Clause. *Savage v. State*, 212 Md. App. 1, 26 (2013). The remedy for that violation is to vacate his eighteen-year concurrent sentence for conspiracy to commit robbery. *Ezenwa*, 82 Md. App. at 501.^{3 4}

First-Degree Assault

Appellant next contends that his sentence for first-degree assault should merge into his sentence for robbery with a dangerous weapon. The State agrees, and so do we. Where, during a robbery, the perpetrator commits a first-degree assault of the use of a firearm variety, the sentence for the first-degree assault merges into that for the robbery, absent some clear indication that the offenses were based upon separate acts. *Gerald v. State*, 137 Md. App. 295, 312 (2001); *Morris v. State*, 192 Md. App. 1, 39 (2010). In the instant case

³ Without analysis, appellant contends that the remedy for the violation should result in vacating his conviction and sentence. We disagree.

⁴ By footnote, appellant also contends that his convictions for conspiracy to use a handgun, and conspiracy to commit second-degree assault, should be vacated. We are persuaded that, because no sentence was imposed on those counts, that appellant was not punished more than once for the same criminal conduct in violation of the Double Jeopardy Clause.

(continued)

there was no suggestion that the offenses were based on separate acts. Consequently, we vacate the eighteen-year concurrent sentence for first-degree assault.

Unauthorized Removal of Property

Next, appellant contends that his sentence for unauthorized removal of property⁵ should merge with his sentence for robbery, or robbery with a dangerous weapon. The jury was instructed on the crime of unauthorized removal of property as follows:

In order to convict the defendant of unauthorized removal of property, the State must prove that the defendant knowingly and willfully took and carried away property from another from the premises of another or the custody of another, and two, the defendant did so without permission of the owner.

The jury was instructed on the crime of robbery⁶ as follows:

Robbery is the taking and carrying away property from someone else or someone else's presence and control by force or threat of force with the intent to deprive the victim of property. In order to convict the defendant of robbery, the State must prove that the defendant took the property from the victim, that the defendant took the property by force or threat of force, and that the defendant intended to deprive the victim of the property.

Property means anything of value. Deprived means to withhold property of another permanently[,] for such a period as to appropriate a portion of its value[,] with the purpose of restoring it only upon payment of a reward or other compensation[,] or to dispose of the property and use or deal with the property so as to make it unlikely the owner will recover it.

“The rule of lenity is a principle of statutory construction that requires a court to determine if the Legislature intended for multiple punishments arising from the same act or transaction.” *Bellamy v. State*, 119 Md. App. 296, 306 (1998) (citation omitted).

If the Legislature intended two crimes arising out of a single act to be punished separately, we defer to that legislated choice.... If the Legislature

⁵ Md. Code Ann. Crim. Law § 7-203

⁶ Md. Code Ann. Crim. Law § 3-402

intended but a single punishment, we defer to that legislated choice. If we are uncertain as to what the Legislature intended, we turn to the so-called ‘Rule of Lenity’ by which we give the defendant the benefit of the doubt.

Pair v. State, 202 Md. App. 617, 638 (2011) (quoting *Walker v. State*, 53 Md. App. 171, 201 (1982)).

In the instant case, appellant’s convictions for unauthorized removal of property and robbery were based on precisely the same conduct. Under the circumstances, we are persuaded that the sentences for unauthorized removal of property and robbery should have merged under the rule of lenity because there is nothing in either statute that indicates the legislature intended separate punishments based on the same conduct. Under the rule of lenity, the offense carrying the smaller maximum penalty (here, unauthorized removal of property) merges into the offense carrying the greater maximum penalty (robbery). *See Miles v. State*, 349 Md. 215, 221, 229 (1998). We therefore vacate appellant’s four-year concurrent sentence for unauthorized removal of property.

Inconsistent Verdict

Appellant contends that the jury delivered a prohibited legally inconsistent verdict of guilty of robbery with a deadly weapon, and not guilty of theft of property valued between \$1,500 and \$25,000.

“[L]egally inconsistent verdicts are those where a defendant is acquitted of a “lesser included” crime embraced within a conviction for a greater offense. *McNeal v. State*, 426 Md. 455, n.1 (2012). Robbery and felony theft are not the same offense under the “same elements” test of *Blockburger v. United States*, 284 U.S. 299, 52 (1932). *Spitzinger v. State*, 340 Md. 114, 121 (1995). By parity of reasoning robbery with a deadly weapon, and of

theft of property valued between \$1,500 and \$25,000, are not the same offense because each has an element that the other does not. The theft offense contains a value element, and a robbery requires the use of force. Consequently, the jury's verdict was not legally inconsistent.

SENTENCES FOR CONSPIRACY TO COMMIT ROBBERY, FIRST DEGREE ASSAULT, AND UNAUTHORIZED REMOVAL OF PROPERTY VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE PAID 25% BY APPELLANT AND 75% BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.