

Circuit Court for Baltimore City
Case No.: 121075001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 411

September Term, 2022

DARRIUS LEMAR JORDAN

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 2, 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 Baltimore City, Darrius Lemar Jordan, appellant, was convicted of two counts of second-degree assault. On appeal, Jordan contends that the court erred by imposing separate sentences for the two counts because they were based on the same acts and thus gave rise to only a single assault. For the reasons that follow, we shall affirm.

BACKGROUND

In February 2021, an unlicensed cab driver drove Jordan to Uptown Liquors, a bar and liquor store located at 1901 Edmondson Avenue in Baltimore City. Jordan sat in the rear of the vehicle, and a man known as “Black” sat in the passenger seat. Upon arrival at Uptown Liquors, Black and Jordan were approached by Guy Thomas, and the three of them engaged in a minor drug deal. Thomas warranted that he did not have much money, so Black and Jordan “fronted” him enough cash for the deal to happen. Jordan and Thomas then entered the bar; Black remained outside.

Once inside, Jordan observed Thomas purchase a drink with money he had just claimed not to have. This angered Jordan, causing him to hit, kick, and stomp Thomas. This attack ended when the bartender Susan Chase told Jordan to stop. At trial, Chase testified that Jordan told Thomas “he wasn’t going to hit him no more” because he had promised Chase he wouldn’t. Thomas apologized to Jordan, Jordan purchased a beer, and the two men left the bar shortly thereafter.

Black was still outside when Jordan and Thomas exited. As they approached Black, Jordan insisted that Thomas apologize to Black. At trial, Jordan testified that he and Thomas were each telling Black their version of events when Thomas told Jordan to “shut

up.” In response, Jordan “hit him again.” Thomas fell to the ground, and Jordan “kicked him a couple of times.” Black then pulled out a handgun and fired three shots at Thomas, killing him.

During the State’s closing argument, the prosecutor described the beatings by Jordan as separate assaults—the first inside the bar, the second outside. The verdict sheet given to the jury contained seven questions. Questions one through five were prefaced: “Do you find that the defendant, Darrius Jordan, committed the following . . . at 1900 Edmondson Avenue in Baltimore City, Maryland[?]” Question four asked, “Do you find Darrius Jordan[] [a]ssaulted Guy Thomas in the Second Degree[?]” Questions six and seven were prefaced: “Do you find that the defendant, Darrius Jordan, committed the following . . . inside 1901 Edmondson Avenue in Baltimore City, Maryland[?]” Question seven asked, “Do you find Darrius Jordan[] [a]ssaulted Guy Thomas in the Second Degree[?]” The jury answered “guilty” to all questions.

The circuit court imposed two consecutive 10-year sentences on Jordan—the maximum allowed by law. This appeal followed.

DISCUSSION

On appeal, Jordan contends that the conduct underlying both assault convictions was predicated on a single “flurry of blows artificially separated by the act of leaving the bar.” In essence, he argues that one conviction should be vacated because both were the result of the same act. He further asserts that even if there were distinct acts to support separate assault charges, the jury’s verdict is ambiguous as to whether its convictions were based on those distinct acts. We disagree.

To evaluate the legality of separate sentences imposed for multiple counts of the same crime, we look to whether the charges “arose out of the same act or transaction.” *Alexis v. State*, 437 Md. 457, 485 (2014) (cleaned up) (quoting *Morris v. State*, 192 Md. App. 1, 39 (2010)). This inquiry turns on whether the act or transaction was “one single and continuous course of conduct,” without a “break in conduct” or “time between the acts.” *Id.* at 486 (cleaned up). The burden of proving distinct acts or transactions for purposes of separate units of prosecution falls on the State. *Id.* Any ambiguity as to whether the jury based its convictions on distinct acts must be resolved in favor of the defendant. *Id.*

Here, we find that the evidence supported a finding that Jordan physically assaulted Thomas inside the bar because Thomas lied about not having money; that Jordan stopped when Chase told him to; that Jordan told Thomas he would not hit him again; that Jordan and Thomas remained inside the bar long enough for Jordan to purchase a beer; that Jordan and Thomas began speaking with Black after exiting the bar; and that Jordan physically assaulted Thomas again, outside the bar because Thomas told him to “shut up.” Although the assaults occurred in close proximity to each other, they were two separate acts, with different motivations, that did not adjoin or overlap in time. The charges, therefore, were based on distinct acts rather than “one single and continuous course of conduct[.]” *Id.*

Likewise, the jury’s verdict was unambiguously based on distinct acts. The circuit court here instructed the jury to “consider each charge separately and return a separate verdict for each charge.” The prosecutor then took care to describe to the jury what acts constituted the first assault distinct from the second. And finally, the verdict sheet asked

the jury—in separate questions—whether it believed Jordan assaulted Thomas “*at 1900 Edmondson Avenue*” and “*inside 1901 Edmondson Avenue.*” (Emphasis added.) By answering guilty to both questions, the jury unambiguously found that Jordan committed two separate assaults based on two separate courses of conduct. *See State v. Frazier*, 469 Md. 627, 642–44 (2020); *Butler v. State*, 255 Md. App. 477, 503–04 (2022). Therefore, the court did not err in imposing separate sentences for each count.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**