Circuit Court for Baltimore City
Case No: 109194025

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 507

September Term, 2020

MARK KENNETH FLOYD

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 8, 2021

*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.

In 2014, Mark Kenneth Floyd, appellant, was sentenced by the Circuit Court for Baltimore City to two 10-year terms of imprisonment, run consecutively, for two counts of robbery. The victims, who were murdered in the incident, were Allisha Royster and Lydia Steed. The victims shared a residence and were found dead in their home.[1] In separate but apparently identical indictments, Mr. Floyd was charged with, among other offenses, robbery.[2] The trial transcripts are not in the record before us, but in our opinion affirming the judgments of conviction for two counts of robbery this Court stated that Ms. Steed and Ms. Royster's "cell phone, laptop computer, television, video games, and car were missing."

In 2019, Mr. Floyd filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his robbery sentences should have merged because at trial the State "never differentiated which [stolen] property belonged to which victim." He claimed that instead, "the evidence showed that the property in question was jointly owned by the victims." He argued, therefore, that because "the property was jointly owned by the

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[1] The jury convicted Mr. Floyd of the two robbery counts and acquitted him of first-degree murder and robbery with a deadly weapon as to both victims and of carrying a weapon openly with intent to injure. The jury deadlocked with respect to second-degree murder of both victims. Following a re-trial on the second-degree murder charges, the jury was again deadlocked and a mistrial was declared. On direct appeal after sentencing on the two robbery convictions, this Court affirmed the judgments. *Floyd v. State*, No. 1159, Sept. Term, 2014 (filed March 24, 2016).

[2] The record before us only includes the Indictment in case no. 109194025, where Ms. Royster was the named victim. Count 2 charged Mr. Floyd with robbery, "to wit: automobile, computer, jewelry, and electronic devise [sic][.]" In his brief, Mr. Floyd indicates that the Indictment in case no. 109194026, naming Ms. Steed as the victim, charged him with robbery of the same goods as in the other case. The cases were tried together.

victims" his "charges of robbery were part of the same act and transaction and thus should've merged for sentencing purposes." The State responded that "robbery is a crime against [the] person" and, therefore, Mr. Floyd was properly sentenced "for two separate robberies of two separate victims" and the fact that "the property taken was the joint property of two individuals [ ] does not negate the fact that two people were placed in fear, and that two people had property taken." The circuit court summarily denied relief. Mr. Floyd appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

On appeal, Mr. Floyd repeats the arguments he made in his motion before the circuit court. And he insists that "the proper unit of prosecution for robbery was the robbery itself, not the number of individual[s] inside" the residence. The State responds that "the unit of the prosecution in robbery is the *victim*, and not the stolen property or the time period in which the crime occurred." And relying on *Borchardt v. State*, 367 Md. 91 (2001), the State maintains that it is irrelevant that the stolen property was jointly owned by the victims.

We agree with the State. In *Borchardt*, the defendant was convicted of two counts of murder and two counts of armed robbery; the victims were husband and wife. 367 Md. at 98. At trial, the evidence established that a wallet was taken from a desk in the hallway of the victim's home, not from the person of either victim. *Id*. at 100. In rejecting the defendant's argument that the evidence was insufficient to establish that he had robbed the wife, as well as the husband, of the wallet and its contents, the Court of Appeals explained that, although the wallet and its contents belonged to the husband, "a robbery conviction may be sustained even if the victim of the force is not the owner of the property taken and is not in the immediate presence of the property when it is taken." *Id*. at 144. The Court

further observed that, "[r]obbery convictions have been sustained where the victim was in one room of the house or place of business and property was taken from another room and that the defendant may be convicted even though [the person killed] was not the owner of the jewelry." *Id*. (quotation marks and citation omitted). Hence, the Court upheld the robbery conviction of the wife, noting that "there is a fair inference that [the wife] had equivalent possession of the desk or chest and thus of the wallet in the chest." *Id*. at 145. The Court also rejected the defendant's claim that he suffered a "double conviction for the 'single criminal transaction' in which he took [the husband's] wallet." *Id.* In doing so, the Court held that "the unit of prosecution for the crime of robbery is the individual victim from whose person or possession property is taken by the use of violence or intimidation." *Id*. at 148. Accordingly, the Court let stand the separate convictions and sentences for robbery of husband and of wife.

We find *Borchardt* is dispositive here and hold that Mr. Floyd's sentences are legal.

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