Circuit Court for Anne Arundel County
Case No.: C-02-CR-22-000265

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 958

September Term, 2022

TEDDY ALLAN MACEY

v.

STATE OF MARYLAND

Wells, C.J.,
Shaw,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 28, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case stems from an auto accident in which Teddy Allan Macey, appellant, after being found unconscious in the driver's seat of a truck that stopped in the middle of the road, awoke and accelerated into an oncoming gasoline tanker. After this collision, officers removed Macey from the vehicle and ordered him to display his license, but Macey refused. Following a jury trial in the Circuit Court for Anne Arundel County, Macey was convicted and sentenced as follows:

- Count 5—reckless driving (Md. Code Ann., Transp. § 21-901.1): $500 fine
- Count 6—failure to obey traffic control device (Md. Code Ann., Transp. § 21-201): $45 fine
- Count 7—failure to drive vehicle on right half of roadway (Md. Code Ann., Transp. § 21-301): $100 fine
- Count 8—failure to display license to uniformed police officer (Md. Code Ann., Transp. § 16-122): $250 fine
- Count 9—driving on a suspended license (Md. Code Ann., Transp. § 16-303): 2 years' incarceration concurrent with Count 21
- Count 11—failure to control speed to avoid collision (Md. Code Ann., Transp. § 21-801): $130 fine
- Count 13—willfully disobeying a lawful order of a police officer (Md. Code Ann., Transp. § 21-103): $150 fine
- Count 21—DUI/DWI with three or more previous convictions (Md. Code Ann., Transp. § 21-902): 10 years' incarceration with all but 6 suspended
- Count 23—DUI/DWI with 3 or more previous convictions (Md. Code Ann., Transp. § 21-902): merged into Count 21

Macey presents two issues for our review: whether the circuit court allowed inadmissible hearsay into evidence; and whether certain traffic offenses should have merged for sentencing. For the following reasons, we shall affirm the judgments of conviction but vacate Macey's monetary fines on Counts 6, 7, 8, and 11.

The evidentiary issue in this case centers on a statement made at trial by Corporal Matthew Bauer of the Anne Arundel County Police Department briefly explaining what brought him to the scene of the accident:

> [STATE]: How did you come to encounter the Defendant?
>
> [CORPORAL BAUER]: I received a call from our dispatch for a driving under the influence.
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE COURT]: Overruled.
>
> [STATE]: As a result of hearing that call, what did you do?
>
> [CORPORAL BAUER]: I responded to that call.

On appeal, Macey asserts the trial court erred by allowing this testimony because it was inadmissible hearsay. We disagree.

Hearsay is any out-of-court statement offered at trial to prove the truth of what it asserts. Md. Rule 5-801(c). Absent a statutory exception, hearsay is not admissible. Md. Rule 5-802. We review *de novo* whether evidence is hearsay. *Frobouck v. State*, 212 Md. App. 262, 282 (2013).

Macey does not argue that the statement was offered for its truth. Instead, he argues that, nevertheless, that is how the jury would take it. Relying on this Court's decision in

Zemo v. State, 101 Md. App. 303, 310 (1994), Macey contends that a jury "has no need to know the course of an investigation unless it has some direct bearing on guilt or innocence." But *Zemo* dealt with "a sustained and deliberate line of inquiry that [could] have had no other purpose than to put before the jury an entire body of information that was none of the jury's business." *Id.* at 306. By contrast, in *Frobouck*, we held that testimony "not offered to prove the truth of the matter asserted . . . but, rather, to explain *briefly* what brought the officer[] to the scene in the first place" is proper. *Frobouck*, 212 Md. App. at 283. So too here. In fact, the testimony at issue in *Frobouck* is almost identical to the exchange here. *See id.* at 281 (when asked why he responded to a location, the officer testified, "I was dispatched there for a suspected marijuana grow."). Corporal Bauer's testimony was not "unduly extensive[,]" "totally irrelevant[,]" or "highly prejudicial." *Geiger v. State*, 235 Md. App. 102, 127–29 (2017). And the State did not intentionally "'milk' [it] . . . for far more than it was legitimately worth." *Id.* at 129 (cleaned up). Consequently, the circuit court did not err in allowing the testimony.

Macey also contends that the circuit court erred by failing to merge his convictions for Counts 6, 7, and 11 with his conviction for Count 5, and by failing to merge his conviction for Count 8 with his conviction for Count 13. The State agrees. And so do we.

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. 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).

The offenses of failing to control speed to avoid a collision and reckless driving—Counts 11 and 5—are the same under the required-evidence test. *See Jones v. State*, 175 Md. App. 58, 89 (2007) (holding that the offense of failing to maintain a reasonable and prudent speed merges with the offense of reckless driving). During closing argument, the State argued that Macey was guilty of reckless driving because he endangered other drivers on the road when he accelerated toward a gasoline tanker and collided with it. As to failure to control speed to avoid a collision, the State relied on the same actions to argue Macey's guilt. Because the jury could have—and likely did—base Macey's convictions for these offenses on the same acts, they should have merged for sentencing. *See Nicolas*, 426 Md. at 400.

The remaining convictions that Macey challenges do not merge under the required-evidence test because each has an element the other does not. *Compare* Md. Code Ann., Transp. § 21-901.1 *with id.* at § 21-201 *and id.* at § 21-301; *and compare* Md. Code Ann., Transp. § 16-122 *with id.* at § 21-103. But they do merge under the rule of lenity. Traffic offenses must merge under this rule if they are "alleged to have been committed at the same time or arising out of circumstances simultaneous in time and place[.]" *Jones v. State*, 357 Md. 141, 165–67 (1999) (quoting and interpreting Md. Code Ann., Transp. § 16-402).

When arguing Macey's guilt as to failure to obey a traffic control device and failure to drive vehicle on right half of the roadway (Counts 6 and 7), the State described the same conduct on which it had relied when arguing Macey was guilty of reckless driving—*i.e.*,

accelerating towards, and colliding with, an oncoming gasoline tanker. Similarly, the State based its argument that Macey was guilty of willfully disobeying a lawful order of a police officer (Count 13) on the same acts as failing to display a license to a uniformed officer on demand (Count 8)—*i.e.*, refusing to produce his license when ordered to. In both instances, the State alleged Macey committed multiple traffic offenses at the same time. Thus, they must merge.

Under the rule of lenity, the offense carrying the lesser maximum penalty ordinarily merges into the offense carrying the greater maximum penalty. *Miles*, 349 Md. 215, 229 (1998). When offenses carry the same maximum penalty, however, as is the case here, the same lesser offense merges into "the more serious offense." *Jones*, 357 Md. at 167. Here, the "more serious" offenses are reckless driving, because it carries more points, *see* Md. Code Ann., Transp. § 16-402, and willfully disobeying a lawful order of a police officer, because it contemplates conduct more severe than simply failing to display one's driver's license on demand, *see id.* at § 21-103. Accordingly, the lesser challenged offenses should merge with these.

APPELLANT'S SENTENCES IN COUNTS SIX, SEVEN, EIGHT, AND ELEVEN 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 EQUALLY BY THE PARTIES.