

Circuit Court for Baltimore City
Case No: 117345020

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1221

September Term, 2019

ERNEST RATCHFORD

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 14, 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.

Ernest Ratchford, appellant, was convicted in the Circuit Court for Baltimore City of second degree attempted murder (count II),¹ two counts of first degree assault (counts III and IX),² attempted robbery with a dangerous weapon (count VII),³ and other related offenses.⁴ In pertinent part, Mr. Ratchford received a 30-year sentence on the charge of attempted murder in the second degree. For each first degree assault conviction, he received a 20-year sentence. The sentences for first degree assault were ordered to run concurrent to each other and to the sentence for second degree attempted murder. On appeal, Mr. Ratchford raises the following questions for our review:

1. Did the lower court erroneously admit into evidence and play for the jury a surveillance video taken from the Greentree Liquor Store without adequate foundation?
2. Did the lower court err in failing to merge Appellant’s conviction for first degree assault on Mr. Evans into his conviction for attempted second degree murder of Mr. Evans?

For the reasons that follow, we shall vacate the sentence for first degree assault of Mr. Evans (count III) and otherwise affirm the judgments of the circuit court.

¹ Md. Code Ann., Crim. Law § 2-206.

² Md. Code Ann., Crim. Law § 3-202.

³ Md. Code Ann., Crim. Law § 3-403.

⁴ Mr. Ratchford was also convicted of two counts of use of a firearm in the commission of a crime of violence (Md. Code Ann., Crim. Law § 4-204), possession of a regulated firearm as a prohibited person (Md. Code Ann., Public Safety 5-133), wearing, carrying and transporting a handgun (Md. Code Ann., Crim. Law § 4-203), and discharging a firearm with in the City of Baltimore (Balt., Md., CITY CODE, art. 19, § 59-2).

BACKGROUND

In June 2017, Christopher Evans was outside of his Baltimore home, standing on the driver’s side of a silver van operated by his mother, Mary Jordan. While speaking with his mother, a man wearing a “baseball cap [], white shoes, and...a blue shirt,” approached the van, brandished “a big silver gun,” threatened to shoot Mr. Evans, and demanded Ms. Jordan’s pocketbook. Because her granddaughters were in the van, Ms. Jordan instead “shifted [her] car” and drove away. In turn, Mr. Evans grabbed the assailant’s gun, and a fight ensued between the two men. During the scuffle, the assailant shot Mr. Evans twice. Abandoning the fight, Mr. Evans ran to his mother’s van, which had stopped on Baltimore Street “in between Carey and Calhoun.” The assailant fled the scene. Mr. Evans survived his wounds and was able to testify at the trial of Mr. Ratchford.

DISCUSSION

VIDEO SURVEILLANCE AUTHENTICITY

At trial, Mr. Ratchford objected to the admission of surveillance video acquired from the Greentree Liquors store located in the area of the shooting on the grounds that it was not properly authenticated. The video showed a man in a white hat and white sneakers walk in the direction of Mr. Evans’s home before the shooting and showed Ms. Jordan’s van in transit followed by Mr. Evans on foot after the shooting.

We review a trial court’s ruling on the admissibility of video evidence for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011). For the purposes of admissibility, “[a] videotape is considered a photograph....and is subject to the same general rules of admissibility as a photograph.” *Washington v. State*, 406 Md. 642, 651 (2008). Because

videos and photographs can be “easily manipulated,” trial courts require authentication “as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine.” *Id.* at 651-52.

Videotape may be authenticated under “two distinct rules.” *Id.* at 652 (internal quotations or citations omitted). Under the “pictorial testimony theory of authentication,” video may be “authenticated through the testimony of a witness with personal knowledge” that the “[video] fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.” *Id.* (internal citation omitted). Under the “silent witness method of authentication,” video may be authenticated through “the presentation of evidence describing a process or system that produces an accurate result.” *Id.* Upon reviewing the record in the present appeal, we hold that the court did not abuse its discretion in admitting the liquor store videotape under either method of authentication.

Considering first the “pictorial testimony theory of authentication,” the court allowed Mr. Evans to testify and authenticate the portions of the video in which he was personally involved. Specifically, Mr. Evans identified himself in the video and testified that the portions of the video that he reviewed “fairly and accurately...represent[ed] the events that occurred that day.” Accordingly, the portions of the video involving Mr. Evans were properly authenticated through his personal knowledge and testimony.

As to the remainder of the video in which Mr. Evans was not involved, the State laid a sufficient framework for its authentication under the “silent witness method of authentication.” Detective Durel Hairston testified that, on the day of the incident, he responded to the scene of the incident and located a surveillance camera in the area at

Greentree Liquors. The next morning, Detective Hairston verified that the cameras were recording live by “rewinding the tapes,” observing himself enter the liquor store that morning and verifying that the feed accurately reflected the time and date on which he entered the store. The detective then rewound the video to the approximate time of the incident, observed the video, and instructed another detective to record the footage on a thumb drive. Detective Hairston then took the thumb drive to his office and viewed it. He testified that the contents of the video he observed at his office were the same as the video he observed earlier that day at the liquor store.

Detective Hairston’s testimony, therefore, laid out a sufficient framework for the court to find that the State had made a prima facie showing that the video was genuine under the “pictorial testimony theory of authentication.” See *Jackson v. State*, 460 Md. 107, 116 (2018) (“When making an authenticity determination, the trial court “need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so.”). His testimony was also sufficient to show that the video fairly and accurately represented the scene of the incident in the moments before and after the shooting.

Moreover, even if the trial court erred in admitting the Greentree Liquors video, the error would have been harmless because admission of the video did not influence the verdict. See *Mack v. State*, 244 Md. App. 549, 575 (2020) (“even an established error may be deemed harmless if a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.”).

There is ample evidence on the record to support Mr. Ratchford’s conviction. Mr. Evans and his mother testified regarding the events surrounding the shooting. Mr. Ratchford was identified as the shooter through a DNA match with a baseball cap found at the scene, through Mr. Evans’s subsequent identification of Mr. Ratchford as the shooter from a photo array, and through Mr. Evans’s and Ms. Jordan’s identification of Mr. Ratchford as the shooter during trial. The Greentree Liquors video itself did not show the actual shooting and did not directly implicate Mr. Ratchford as the shooter. Upon our review of the record, we are not convinced that this case turned on the admission of the Greentree Liquors video.

MERGER OF CONVICTIONS

Mr. Ratchford’s second contention on appeal is that the court failed to merge his second degree attempted murder conviction with his first degree assault of Mr. Evans conviction for sentencing purposes, resulting in an “inherently illegal sentence as a matter of law.” The State concurs with this claim of error, as does this Court.

A. MERGER GENERALLY

“Merger is [a] common law principle that derives from the protections afforded by the Double Jeopardy Clause.” *State v. Frazier*, 469 Md. 627, 490 (2020). The prohibition against double jeopardy protects the criminally accused from multiple prosecutions and punishments stemming from a singular criminal offense. *See Monge v. California*, 524 U.S. 721, 727-28 (1998). This doctrine, a “fundamental ideal in our constitutional heritage,” is applicable to the states by the Fourteenth Amendment. *Benton v. Maryland*,

395 U.S. 784, 794 (1969). Additionally, Maryland provides double jeopardy protections at common law. *Purnell v. State*, 375 Md. 678, 691 (2003) (internal citation omitted).

Merger is a mechanism used to “protect[] a convicted defendant from multiple punishments for the same offense.” *Frazier*, 469 Md. at 641. Merger of convictions for sentencing purposes can be based on three grounds: “(1) the required evidence test; (2) the rule of lenity; and (3) ‘the principle of fundamental fairness.’” *Carroll v. State*, 428 Md. 679, 693-94 (2012). We hold that under the rule of lenity, the court was required to merge Mr. Ratchford’s convictions for the first degree assault of Mr. Evans and for the second degree attempted murder.

B. RULE OF LENITY

The rule of lenity provides for “a merger of penalties, not offenses, and the lesser penalty generally merges into the greater penalty.” *Jenkins v. State*, 146 Md. App. 83, 134 (2002), *aff’d in part, rev’d in part on other grounds*, 375 Md. 284 (2003). The rule is applicable where there is “doubt or ambiguity as to whether the legislature intended that there be multiple punishments for the same act or transaction.” *Id.* at 133. Such ambiguity is present in the subject case because “[t]here has never been any indication, in either statutory provisions or legislative history or this Court’s opinions, that one of the purposes in establishing the offense of assault with intent to murder was to compound the punishment for attempted murder.” *Williams v. State*, 323 Md. 312, 322-23 (1991). Accordingly, the rule of lenity provides that such ambiguity “be resolved against turning a single transaction into multiple offenses.” *Jenkins*, 375 Md. at 133.

Additionally, the rule of lenity “is applicable when both crimes are statutory, or when one offense is statutory and the other is a common law crime.” *Id.* at 134. Because first degree assault is a statutory offense, the rule of lenity is applicable here in conjunction with Mr. Ratchford’s second degree attempted murder conviction.

C. AMBIGUITY ON THE BASIS OF CONVICTIONS

In order to merge two convictions, there must be a showing that the “convictions are based on the same act or acts.” *Frazier*, 469 Md. at 641-42 (internal citation omitted). However, it is unclear, in the present appeal, whether the jury based its first degree assault of Mr. Evans conviction on the modality (b)(1) or (b)(2) version of first degree assault. At trial, the court instructed the jury on both the (b)(1) and (b)(2) modalities. However, the court did not instruct the jury that in order to convict Mr. Ratchford of both first degree assault and second degree attempted murder, it was required to find that the assault was based on acts separate and distinct from the acts which supported the attempted murder conviction. It is, therefore, ambiguous whether Mr. Ratchford’s conviction for the first degree assault of Mr. Evans was based on the actual shooting under (b)(1) or whether it was based on the separate act of pointing the firearm at Mr. Evans under (b)(2).

“[W]here there is a factual ambiguity in the record, in the context of merger, that ambiguity is resolved in favor of the defendant.” *Nicolas v. State*, 426 Md. 385, 400 (2012). Such factual ambiguity is present in the subject case. Resolving this factual ambiguity in favor of Mr. Ratchford, the court was required to merge the second degree attempted murder of Mr. Evans conviction and the first degree assault of Mr. Evans conviction for

the purposes of sentencing. We, therefore, vacate the sentence for first degree assault of Mr. Evans (count III).

**APPELLANT’S SENTENCE FOR FIRST
DEGREE ASSAULT IN COUNT THREE
VACATED. JUDGMENT OF THE
CIRCUIT COURT FOR BALTIMORE
CITY OTHERWISE AFFIRMED.
COSTS TO BE DIVIDED EQUALLY
BETWEEN THE PARTIES.**