

Circuit Court for Dorchester County  
Case No. C-09-CR-19-000174

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1582

September Term, 2019

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ELWOOD EDWARD BRIGGS, JR.

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: October 5, 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 a bench trial in the Circuit Court for Dorchester County, Elwood Edward Briggs, Jr., appellant, was convicted of conspiracy to rob Gail Halterman (Count 4), conspiracy to rob Irvin Johnson (Count 5), and conspiracy to assault Gail Halterman in the second-degree (Count 9). The court merged Mr. Briggs’s convictions and sentenced him to 15 years’ imprisonment on Count 4. On appeal, Mr. Briggs contends that two of his conspiracy convictions must be vacated because the State only proved the existence of a single agreement. The State agrees.<sup>1</sup> For the reasons that follow, we shall vacate Mr. Briggs’s convictions on Counts 5 and 9 and shall affirm Mr. Briggs’s conviction and sentence on Count 4.

At trial, the State presented evidence that Gail Halterman and Irvin Johnson knew Mr. Briggs because he had previously dated Mr. Johnson’s daughter. On the evening April 19, 2019, Cornelius Foster went to the victims’ residence and knocked on the door. When Ms. Halterman answered the door, Mr. Foster gave her his phone and told her that Mr. Briggs was on the phone and wanted to speak to Mr. Johnson. When Ms. Halterman went inside to give the phone to Mr. Johnson, Mr. Foster “barged” into the house behind her. While on speakerphone, Mr. Briggs asked Mr. Johnson to give Mr. Foster \$40, which Mr. Foster then would give to Mr. Briggs. When Mr. Johnson stated that he did not have any money, Mr. Briggs told Mr. Foster to search the victims and their home to find the money. Mr. Foster initially refused; however, he subsequently grabbed Ms. Halterman by the throat and threatened to kill her if she did not give him the money. During an ensuing altercation, Ms.

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<sup>1</sup> On June 25, 2020, this Court entered an order amending the briefing schedule and requiring the State’s brief to be filed by July 23, 2020. On July 27, 2020, the State filed its brief along with an unopposed motion to accept the brief as timely filed. We shall grant that motion and accept the State’s brief as having been timely filed.

Halterman was cut in the hand several times with a knife. Mr. Foster eventually fled the residence when Mr. Johnson called 911. In addition to the testimony of the victims, the State presented cell phone records, which indicated that, on the night of the incident, Mr. Briggs and Mr. Foster had spoken on the phone on four separate occasions.

Mr. Briggs’s sole claim on appeal is that two of his conspiracy convictions must be vacated because the State only proved the existence of a single agreement. We agree. It is well established that “only one sentence can be imposed for a single criminal common law conspiracy no matter how many criminal acts the conspirators have agreed to commit.” *McClurkin v. State*, 222 Md. App. 462, 490 (2015) (citation omitted). The unit of prosecution for a conspiracy is “the agreement or combination rather than each of its criminal objectives.” *Id.* A conspiracy “remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy.” *Martin v. State*, 165 Md. App. 189, 210 (2005) (citation omitted). The conviction of a defendant for more than one conspiracy turns, therefore, “on whether there exists more than one unlawful agreement.” *Savage v. State*, 212 Md. App. 1, 13 (2013). Where the State fails to establish a second conspiracy, “there is merely one continuous conspiratorial relationship . . . that is evidenced by the multiple acts or agreements done in furtherance of it.” *Id.* at 17. “If a defendant is convicted of and sentenced for multiple conspiracies when, in fact, only one conspiracy was proven, the Double Jeopardy Clause has been violated.” *Id.* at 26.

In the instant case, the evidence did not establish, and the prosecutor did not contend, that Mr. Briggs and Mr. Foster had entered into multiple unlawful agreements. Moreover, the court, in rendering its verdict, did not find the existence of multiple unlawful agreements.

Consequently, to avoid a double jeopardy violation, Mr. Briggs’s convictions on Count 5 and Count 9 must be vacated. *See id.* at 31.

**APPELLEE’S MOTION TO TREAT ITS BRIEF AS TIMELY FILED GRANTED.**

**APPELLANT’S CONVICTIONS FOR CONSPIRACY TO COMMIT ROBBERY IN COUNT 5 AND CONSPIRACY TO COMMIT SECOND-DEGREE ASSAULT IN COUNT 9 VACATED. APPELLANT’S CONVICTION AND SENTENCE FOR CONSPIRACY TO COMMIT ROBBERY IN COUNT 4 AFFIRMED. COSTS TO BE PAID BY DORCHESTER COUNTY.**