

Circuit Court for Baltimore City
Case Nos. 100189024, 100189026, and
100189028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1724

September Term, 2021

RICKY KNIGHT

v.

STATE OF MARYLAND

Nazarian,
Tang,
Albright,

JJ.

Opinion by Albright, J.

Filed: November 17, 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 more than 20 years ago, Ricky Knight was convicted of several offenses arising from the robbery and death of an individual in Baltimore, Maryland, including the offense of second-degree murder.¹ Mr. Knight now contends that the relevant indictment, which relied upon the statutory “short-form” language that was then in effect, did not charge him with second-degree murder. As such, Mr. Knight argues that his sentence for second-degree murder is illegal. He presents one question for our review (which we have rephrased):²

1. Is Mr. Knight’s sentence for second-degree murder illegal?

For the reasons below, we conclude that Mr. Knight was not illegally sentenced for second-degree murder. We will affirm the Circuit Court for Baltimore City, which denied Mr. Knight’s motion to correct an illegal sentence.

¹ It appears that Mr. Knight’s first name has been spelled inconsistently in the record, both as Rickey and as Ricky. We will adopt the latter spelling, which matches the notice of appeal filed by Mr. Knight.

² In his brief, Mr. Knight phrased his question as follows:

1. Did the Circuit Court abuse its discretion [sic] in denying the Appellant’s Motion to Correct Illegal Sentence when the Trial Court was without power or authority to convict and sentence the Appellant for second degree murder, an offense for which he was not indicted?

BACKGROUND

I. The Death of Wiley McCroery

Mr. Knight was investigated in connection with the death of Wiley McCroery, who was shot and killed in January 2000.³ At around the time of the killing, police learned that Mr. Knight, together with one of his associates, were known in the community as “stickup boys”—that is, people who commit robberies—operating in the Western District of Baltimore. Mr. Knight and his associate were arrested on an unrelated robbery charge a few months after Mr. McCroery’s death. Police then began questioning Mr. Knight.

While in police custody, Mr. Knight stated that, on the day that Mr. McCroery was killed, Mr. Knight and his associate hailed an unlicensed taxicab⁴ with the intent to drive around and commit robberies. He said that they eventually picked up a third man with a gun. After passing Mr. McCroery, who was standing on the street, the men told the driver to stop, and Mr. Knight remained in the car to prevent the driver from leaving. He said that the other two men left the car to rob Mr. McCroery. Mr. Knight then stated that he heard gunshots, and that his associate returned to the car and explained that he “had to kill” Mr. McCroery.

³ Mr. McCroery’s first name has been spelled inconsistently in the record, both as Wylie and Wiley. We will adopt the latter spelling, which matches the spelling used by the Court of Appeals during Mr. Knight’s direct appeal. *See Knight v. State*, 381 Md. 517 (2004).

⁴ The record frequently refers to these taxicabs by their slang term: “hack.”

Later, however, police determined that Mr. Knight's statement was at least partly false. Although portions of Mr. Knight's statement matched certain nonpublic information about Mr. McCroery's death, police confirmed that the supposed third man was in prison at the time and could not have taken part in the robberies or the killing. The focus of the investigation narrowed, centering on Mr. Knight and his associate.

II. The Charges Against Mr. Knight

By multiple indictments, Mr. Knight was charged with several crimes in the circuit court.⁵ Of those charges, only the first is relevant here.⁶ That charge was drafted using the (then-current) statutory short-form language for murder and manslaughter, with only minor alterations:⁷

[FIRST COUNT]

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that [Mr. Knight], late of said City, heretofore on or about the date of offense set forth above, at the location set forth above, in the City of Baltimore, State of Maryland, feloniously, wilfully and of

⁵ Mr. Knight's charges were contained in three separate indictments arising from the same incident involving Mr. McCroery. These were filed under three case numbers in the circuit court, 100189024, 100189026, and 100189028, and subsequently consolidated. Mr. Knight included all three of these case numbers in his notice of appeal. Not relevant here, Mr. Knight was also charged under two different case numbers for other alleged offenses (of which he was ultimately acquitted), involving a different individual. The second-degree murder charge at issue here was filed under case number 100189024.

⁶ The other charges included using a handgun in committing a felony or crime of violence; armed robbery and robbery (and conspiracies to commit the same); first-degree assault; second-degree assault; theft scheme for \$300 or more; and additional firearms offenses.

⁷ These alterations involved changes to punctuation, rather than to the substance of the statutory short-form indictment. Neither party argues that those changes are relevant here.

deliberately premeditated malice aforethought did kill and murder [Mr. McCroery]; contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State. (Art. 27, Sec. 616; 407-413; Common Law)[.]

III. The Trial

A jury trial was held in the circuit court. After the conclusion of the State’s case, the prosecutor noted that the State would proceed against Mr. Knight on a first-degree felony murder theory, relying upon the statutory short-form language for murder and manslaughter in Count I of the indictment. Counsel then discussed specific jury instructions with the circuit court. The circuit court advised that it would give the pattern jury instruction for first-degree felony murder, and it then asked if Mr. Knight would also request an instruction for “the lesser included second degree murder[.]” Mr. Knight’s counsel first indicated that Mr. Knight would not, but then changed her mind:

[The Court]: And the Pattern [jury instruction] 4:17.6 first degree felony murder. Ms. Flynn, are you requesting the lesser included second degree murder?

[Mr. Knight’s Counsel]: No, Your Honor.

[The Court]: Okay.

[Mr. Knight’s Counsel]: Actually, Your Honor, let me take that back just to be on the safe side . . .

[The Court]: The second degree murder instruction?

[Mr. Knight’s Counsel]: Yeah.

[The Court]: Okay.

Pursuant to the defense’s request, after the jury returned to the courtroom, the circuit court instructed the jurors on the elements of both first-degree felony murder and second-degree murder:

[The Court]: In this case the defendant is charged with several separate offenses. You will get a verdict sheet, which is a short questionnaire, that your Jury Foreperson . . . will fill out.

* * *

The defendant is charged with the crime of murder; first degree felony murder and second degree murder. First degree felony murder . . . the State must prove that the defendant or another person participating in the crime with the defendant committed or attempted to commit a felony; must prove that the defendant or another participating in the crime with the defendant killed the victim, and that the act resulting in the death of the victim occurred during the commission or attempted commission of the felony. Felony murder does not require the State to prove that the defendant intended to kill the victim.

The defendant is also charged with the crime of second degree murder. Second degree murder is the killing of another person with either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result. Second degree murder does not require premeditation or deliberation.

In order to convict the defendant of second degree murder, the State must prove that the conduct of the defendant caused the death of the victim, that the defendant engaged in the deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result.

The jury then left to deliberate. During that time, the circuit court received questions from the jury, including the following: “What is second degree murder?” and “What is the difference between first and second degree murder?” The circuit court discussed those questions with counsel and responded by providing the jury with copies of the pattern instructions for both crimes. The court also considered providing the aiding

and abetting pattern instruction to the jury. Mr. Knight made an initial objection to that approach,⁸ so the circuit court discussed the issue further. In so doing, the circuit court noted that the defense had requested that the second-degree murder charge be submitted to the jury, and that the State was proceeding on an aiding and abetting theory:

[The Court]: Well, he's charged with second degree [murder] on the aiding and abetting theory. Is that correct?

[The Prosecutor]: Yes, sir.

[The Court]: Okay.

[The Prosecutor]: And I understood that the defense had asked that that particular charge go to the jury.

[Mr. Knight's Counsel]: That is true.

* * *

[The Court]: Okay. The note I'm going to send back is this: Dear Jury: I sent you the instructions on felony murder. Mr. Knight is also charged with second degree murder as an aider and abettor. For that reason, I am also sending you the second degree murder and aiding and abetting instructions[.]

[Mr. Knight's Counsel]: Thank you, Your Honor.

[The Prosecutor]: Thank you.

After the circuit court shared its proposed response to the jury, the defense did not object again, and the circuit court's response was delivered to the jury. The jurors then

⁸ The transcript of the record is not entirely clear, but it appears that the defense's initial objection to the aiding and abetting instruction was on grounds that the instruction should not be provided to the jury separately, without all of the other instructions.

finished their deliberations. The jury ultimately found, among other things, that Mr. Knight was not guilty of first-degree felony murder and guilty of second-degree murder.

We will add additional facts as needed.

IV. Sentencing

Mr. Knight was sentenced to 30 years for second-degree murder. He was also sentenced for other crimes of which he was found guilty.⁹

V. Mr. Knight's Motion To Correct Illegal Sentence

In 2021, pursuant to Maryland Rule 4-345, Mr. Knight moved to correct his sentence for second-degree murder,¹⁰ contending that this sentence was illegal because (a) he was not charged with second-degree murder; and (b) the sentencing court failed to specify how Mr. Knight's consecutive sentences (including that for second degree murder) were to be served and when they would commence.

The State opposed Mr. Knight's motion, and the circuit court denied it in December 2021. Mr. Knight then filed a timely appeal on the first issue only, contending

⁹ Specifically, Mr. Knight was also sentenced to 20 years for the use of a handgun in the commission of a crime of violence (the first five of those years without possibility of parole); 20 years for robbery with a dangerous and deadly weapon; and 20 years for conspiracy to commit robbery with a dangerous and deadly weapon. All sentences ran consecutively. All other convictions merged for sentencing, and Mr. Knight's total sentence was 90 years.

¹⁰ Before filing this motion, the denial of which prompted this appeal, Mr. Knight also instituted other proceedings, including a direct appeal of his convictions and a petition for post-conviction relief. Those other proceedings concerned questions different from the issue here, and neither party asserts that those proceedings are now relevant.

that his sentence for second-degree murder was illegal because he was not charged with that offense.

STANDARD OF REVIEW

“The court may correct an illegal sentence at any time.” Md. Rule 4-345(a). Because the legality of a sentence is a question of law, we review the circuit court’s decision on a motion to correct an illegal sentence *de novo*. See *Johnson v. State*, 467 Md. 362, 389 (2020). In reviewing the legality of a sentence, we distinguish between sentences that are “inherently illegal” and those that merely contain “some form of error or alleged injustice.” See *Matthews v. State*, 424 Md. 503, 513-14 (2012). Only an inherently illegal sentence is subject to correction under Maryland Rule 4-345(a). *Id.* at 513.

An illegal sentence can take multiple forms, and “[t]here is no simple formula to determine which sentences are ‘inherently illegal’ within the meaning of Rule 4-345(a)[.]” *Johnson v. State*, 427 Md. 356, 368 (2012). That said, courts have held certain categories of sentences to be inherently illegal. See generally *Garcia v. State*, 253 Md. App. 50, 57 (2021). Relevant here, any sentence imposed for a crime that was not charged is inherently illegal and must be corrected. See *Johnson*, 427 Md. at 375 (“[I]t is elementary that a defendant may not be found guilty of a crime of which he was not charged in the indictment.”) (citation omitted).

THE PARTIES' CONTENTIONS

On appeal, Mr. Knight argues that he was not charged with second-degree murder, and so his sentence for second-degree murder must be illegal. Mr. Knight acknowledges that the relevant indictment included a “short-form” charge for murder or manslaughter, which includes second-degree murder. He asserts, however, that because the State proceeded at trial on a first-degree felony murder theory, and because second-degree murder is not a lesser included offense of first-degree felony murder, the short-form charge here did not include second-degree murder. At oral argument, Mr. Knight also asserted that, because the State proceeded on a first-degree felony murder theory at trial, the evidence was necessarily insufficient to convict him of second-degree murder.

In opposition, the State cites case law holding that the relevant short-form language included the charge of second-degree murder. The State also asserts that its theory at trial and the evidence produced are irrelevant to the question of illegality that Mr. Knight now raises, because the short-form language in the relevant indictment included the charge of second-degree murder. The State further contends that, to the extent that Mr. Knight disputes the sufficiency of the evidence supporting his conviction for second-degree murder, the sufficiency of the evidence generally is not a cognizable ground to seek correction of an illegal sentence.

DISCUSSION

Given Mr. Knight’s argument on appeal, our task is narrow: to determine whether Mr. Knight was charged with second-degree murder. “Murder is a common law crime in

Maryland, separated into first and second degrees [by statute] for the purpose of punishment.” *McMillan v. State*, 428 Md. 333, 351 (2012) (citation omitted). For over a century, the General Assembly has provided statutory “short-form” language that may be used to charge a defendant with murder, but that language is not mandatory. *See Ross v. State*, 308 Md. 337, 342-43 (1987) (discussing short-form language). When Mr. Knight was indicted, the relevant short-form language read as follows:

§ 616. Indictment for murder or manslaughter.

In any indictment for murder or manslaughter, or for being an accessory thereto, it shall not be necessary to set forth the manner or means of death. It shall be sufficient to use a formula substantially to the following effect: ‘That A.B., on the day of nineteen hundred and at the county aforesaid, feloniously (wilfully and of deliberately premeditated malice aforethought) did kill (and murder) C.D. against the peace, government and dignity of the State’.

Md. Ann. Code of 1957 (Vol. 2, 1996 Repl. Vol., 1999 Supp.), Art. 27 § 616 (ellipses in original).¹¹

Turning to Mr. Knight’s arguments, Mr. Knight is correct that he was charged using that short-form language, and that this language does not expressly mention second-degree murder. Nonetheless, the Court of Appeals has held that “an indictment under [Art. 27] § 616 alleging first degree murder also charges second degree murder and manslaughter.” *Dishman v. State*, 352 Md. 279, 289-90 (1998). Indeed, the Court of

¹¹ Today, the short-form language for murder (and manslaughter) is codified at Section 2-208 of the Criminal Law Article. There are no substantive differences between today’s version and the version that was in effect at the time that Mr. Knight was indicted. *See* Md. Code, Crim. Law § 2-208.

Appeals has held that the same short-form language may also be used to charge felony murder, *see Ross*, 308 Md. at 344-45, and murder as an aider and abettor, *see State v. Williamson*, 282 Md. 100, 110 (1978).¹² As such, the relevant indictment charged Mr. Knight with second-degree murder, a charge that encompasses second-degree murder as an aider and abettor.

Mr. Knight’s focus on the State’s theory at trial and the trial evidence does not change this result. At trial, the State proceeded against Mr. Knight on the theory that Mr. Knight was guilty of first-degree felony murder. To be sure, as Mr. Knight notes, “second-degree murder of the intent-to-kill variety . . . is not a lesser included offense within felony-murder.” *Butler v. State*, 91 Md. App. 515, 523 (1992), *aff’d*, 335 Md. 238 (1994); *cf. Middleton v. State*, 238 Md. App. 295, 306-310 (2018) (applying required evidence test to determine whether one offense is a lesser included offense of another). That does not, however, mean that Mr. Knight’s sentence is illegal.

To the contrary, the pertinent question is whether Mr. Knight was *charged* with second-degree murder, not whether second-degree murder was a lesser included offense of the State’s specific theory at trial. As we have already explained, the relevant indictment charged Mr. Knight with second-degree murder (and other offenses). We further note that the trial transcript also demonstrates that Mr. Knight was so charged. As the circuit court was finalizing its jury instructions, Mr. Knight requested a second-degree

¹² *Dishman*, *Ross*, and *Williamson* were all decided before Mr. Knight was indicted.

murder instruction, apparently on the belief that second-degree murder (on an aiding and abetting theory) was included in the indictment. The proposed verdict sheet was then changed to accommodate Mr. Knight's request, the instructions for second-degree murder and aiding and abetting were provided to the jury, and the second-degree murder charge was submitted.¹³

In sum, the short-form language in Count I of the relevant indictment charged Mr. Knight with, among other things, second-degree murder. The law at the time of Mr. Knight's indictment had already established that the statutory short-form language was sufficient to charge second-degree murder. And indeed, it was Mr. Knight—not the State—who requested that the second-degree murder charge be submitted to the jury, apparently on the theory that second-degree murder was included in the relevant indictment. Mr. Knight's sentence for second-degree murder is not illegal.

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

¹³ As we noted earlier, Mr. Knight expanded his position at oral argument, contending that his sentence was also illegal because the evidence at trial was necessarily insufficient to convict him of second-degree murder. As we understand this additional argument, Mr. Knight asserts that because the State proceeded at trial on a first-degree felony murder theory (and second-degree murder is not a lesser included offense of first-degree felony murder), there could not have been sufficient evidence to support Mr. Knight's conviction for second-degree murder. Mr. Knight's argument, however, cannot succeed. Although the sufficiency of the evidence is a valid ground to seek direct appellate review, it is not a cognizable basis to correct an illegal sentence under Maryland Rule 4-345. *See Bryant v. State*, 436 Md. 653, 665-66 (2014).