UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1568

September Term, 2015

JAMES CARTER TILLEY, JR.

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Graeff,
Kehoe,

JJ.

Opinion by Graeff, J.

Filed: May 17, 2016

James Carter Tilley, Jr., appellant, appeals from the ruling of the Circuit Court for Charles County denying his motion to dismiss the indictment against him. He presents the following question for this Court's review:

> Whether trial of appellant is barred by the doctrines of double jeopardy under the 5th Amendment to the U.S. Constitution, the doctrine of collateral estoppel, the Maryland common law doctrine of *autrefois convict*, or some combination of all of them?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On March 30, 2013, shortly after midnight, the manager of a motel in La Plata, Maryland, contacted the police regarding an individual who was disturbing residents. When officers from the La Plata Police Department and the Charles County Sheriff's Office arrived at the motel, they encountered appellant and asked him for identification. Appellant reached into his pocket, and when he removed his hand, a bag of marijuana fell out onto the ground. The police arrested appellant and conducted a pat-down, during which they discovered a needle with drug residue in it.

On March 30, 2014, appellant was charged with five counts (hereinafter the "drug case"): possession of marijuana–less than 10 grams (Count 1); possession of a controlled dangerous substance–not marijuana (Count 2); disorderly conduct (Count 3); possession of drug paraphernalia (Count 4); and possession of marijuana (Count 5). Appellant subsequently pled guilty in the District Court of Maryland for Charles County to possession of marijuana (Count 5), and the court sentenced appellant to 32 days of incarceration, all but 2 days suspended, and seven days of unsupervised probation.

On March 31, 2014, the day after appellant was arrested on the drug charges, a landscaping company contacted the Charles County Sheriff's Office and reported the theft of one of their trucks. On November 21, 2014, a detective with the Charles County Sheriff's Department filed an application for statement of charges in the District Court for Charles County related to appellant's alleged theft of the truck, as well as his subsequent actions in driving the truck under the influence of drugs, causing subsequent property damage during the drive, and causing a disturbance at the motel upon his arrival.

On March 13, 2015, a grand jury in the Circuit Court for Charles County returned an indictment, charging appellant with six counts (hereinafter the "theft case"). These counts included: theft of at least $10,000 but less than $100,000 (Count 1); theft of a motor vehicle (Count 2); rogue and vagabond (Count 3); malicious destruction of property with a value of more than $1,000 (Count 4); driving while impaired by a controlled dangerous substance (Count 5); driving while impaired by drugs, alcohol, or a combination thereof (Count 6).

On May 12, 2015, appellant filed a motion to dismiss the theft case, arguing that the case was "barred from prosecution by the doctrine of double jeopardy or more precisely, the Maryland common law doctrine of autrefois convict, the doctrine of collateral estoppel or some combination of those doctrines." On July 31, 2015, the circuit court heard argument and denied the motion.

On August 6, 2015, appellant noted this interlocutory appeal. The circuit court subsequently stayed appellant's trial pending this appeal.

DISCUSSION

Appellant contends that the circuit court erred in denying his motion to dismiss the charges against him. In support, he argues that his theft case is barred by the prohibition against double jeopardy.[1]

The State disagrees. It contends that the circuit court correctly denied appellant's motion to dismiss the charges against him because he has not been placed twice in jeopardy for the "same offense."

The Fifth Amendment to the United States Constitution states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. The prohibition against making a defendant twice accountable for the same offense is applicable to the States through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969). And although the Maryland Constitution does not contain an explicit double jeopardy clause, Maryland common law also provides protections for individuals against being twice put in jeopardy. *State v. Long*, 405 Md. 527, 536 (2008).

Appellant's double jeopardy argument is that, "when all criminal charges that could be prosecuted as a result of one criminal transaction or event are actually known to the

[1] Although appellant mentions the doctrine of collateral estoppel, he does not discuss it at all. Accordingly, we will not address collateral estoppel. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (when party fails to adequately brief an argument, court may decline to address it on appeal), *cert. denied*, 376 Md. 544 (2003).

prosecutor in ample time to proceed with them in one criminal trial, there is no reason not to do so, especially when they are all triable in the same court." The Court of Appeals, however, has rejected the argument that a defendant is entitled to have all charges arising from the same transaction tried in one proceeding:

> "Maryland has never recognized a common law right to have joined at one trial all offenses arising from the same transaction." *Cousins* [*v. State*], 277 Md. [383,] 395 [(1986)]. Both the United States Supreme Court and this Court have adopted the "same evidence" test for resolving sameness of law questions and have declined to accept the same transaction test. *Cousins*, 277 Md. at 393, 394. The same evidence test "focuses upon the elements of each offense; if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter." *State v. Jenkins*, 307 Md. 501, 517 (1986). Described differently, the same evidence test is when "each offense requires proof of a fact which the other does not, [then] neither multiple prosecutions nor multiple punishments are barred by the prohibition against double jeopardy even though each offense may arise from the same act or criminal episode." *Cousins*, 277 Md. at 388-89. The same evidence test "focuses on the relationship between the offenses, rather than on whether the multiple offenses arise from the same conduct or incident. . . ." *Anderson v. State*, 385 Md. 123, 132 (2005).

Id. at 536-37 (parallel citations omitted).

Only when offenses charged are essentially the same offense does double jeopardy bar separate prosecutions. *In re: Michael W.*, 367 Md. 181, 186 (2001). Here, appellant concedes that the charges in the theft case do not involve the "same offense" as the charges in the drug case for purposes of double jeopardy. He seizes, however, upon language set forth in *dicta* in *Cousins*, 277 Md. at 397, stating that "there may be situations where the required evidence test, coupled with the principle of collateral estoppel, might not be adequate to afford the protection against undue harassment embodied in the purpose of the

prohibition against double jeopardy." The Court concluded, however, that it was "not presented with such a case" because the prosecutions were

> neither arbitrary nor particularly burdensome. The prosecution in the district court for assault on Ronald Wood was based upon a warrant. The remaining charges are all contained in a single indictment. There is no evidence that the separate prosecutions were for the purpose of harassing or 'wearing down' Cousins, or in expectation of procuring a harsher penalty, evils which the double jeopardy clause was intended to prevent.

Id.

Similarly, here, appellant conceded at oral argument that no evidence was presented to show that the separate prosecutions "were for the purpose of harassing or 'wearing down' [appellant], or in expectation of procuring a harsher penalty." *Id.* He suggests, however, that this Court, and the circuit court, could infer that the separate prosecutions were for the purpose of harassment because, "when all criminal charges that could be prosecuted as a result of one criminal transaction or event are actually known to the prosecutor in ample time to proceed with them in one criminal trial, there is no reason not to do so." *Id.*

We disagree. Initially, inferring such intent, without any evidence, would essentially be adopting the same transaction test, which Maryland has declined to do. Moreover, in this case, the State proffered, without dispute by appellant, that two different police agencies, the Charles County Sheriff's Office and the La Plata Police Department, independently investigated the drug charges and the theft charges, operating at different paces, which resulted in one set of charges being filed before the other. The prosecution stated that he doubted that the Sheriff's Department was aware of the resolution of the

marijuana charge when it filed the theft charges. On this record, we cannot infer any improper motive by the State.

In sum, we reject appellant's argument that the test is whether the prosecutor had constructive knowledge of all of the offenses and could have joined them in one trial. Rather, the test is whether the offenses charged in the drug case share the same elements and require the same proof as the offenses charged in the theft case. Because there is no dispute that the offenses charged in the theft case are not the same as those charged in the earlier drug case, the prosecution of appellant's theft case did not violate double jeopardy. Accordingly, the circuit court properly denied appellant's motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLANT.