UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1984
September Term, 2013

No. 2697
September Term, 2013

and

No. 0877
September Term, 2014

DAVID MYRON SUIRE

v.

STATE OF MARYLAND

Meredith,
Woodward,
Friedman,

JJ.

Opinion by Meredith, J.

Filed: May 19, 2016

Appeals from the judgments entered in three separate cases tried before juries in the Circuit Court for Wicomico County, all resulting in convictions of David Myron Suire, appellant, have been consolidated for consideration in this Court. Because some of the questions on appeal are common to more than one of these cases, the three cases have been briefed in a consolidated manner.

QUESTIONS PRESENTED

Appellant presents eight questions for our review:

1. Are the charges in Case No. 810 barred by double jeopardy?

2. Did the court lack jurisdiction over all of the charges because the State's Attorney lacked authority to charge by information?

3. Should the convictions under Counts 7, 8, and 10 in Case No. 411 be merged into Count 11, or in the alternative be merged into one conviction?

4. Should the charges be dismissed because Mr. Suire was denied his right to counsel in his initial appearances before the court commissioner?

5. Did the trial court in Case No. 411 err in denying Mr. Suire's motion for mistrial?

6. Did the trial court in Case No. 411 err in denying Mr. Suire's motion for new trial?

7. Was there insufficient evidence to sustain the convictions for counterfeiting and uttering in Case No. 411?

8. Was there insufficient evidence to sustain the convictions for theft in Case No. 810?

Although we conclude that appellant is entitled to some relief with respect to merger of sentences in Case No. 411 (the issue raised in question 3), we answer "no" to the remaining questions, and affirm the balance of the judgments in all other respects.

FACTS AND PROCEDURAL HISTORY

As noted, these three appeals were generated by three separate trials in the Circuit Court for Wicomico County. In all three cases, Suire was the defendant; in each case, he had been hired to perform home improvement work for the elderly persons who were the victims of theft. For clarity's sake, we will describe the cases in the order in which they were tried.

Appeal No. 2697, Sept. Term 2013/Circuit Court Case No. K13-0411 ("Case No. 411")

In Case No. 411, the State alleged, in an 11-count charging document, that, "between the 18th day of March and the 5th day of April, 2013," Suire committed various forgery, fraud, and theft crimes against 92-year-old Melvin Bradley.[1] Mr. Bradley had hired appellant to

[1]On June 4, 2013, by criminal information "filed pursuant to Maryland Rule 4-212," the State charged appellant in Case No. 411 with committing the following offenses:

(1) Obtaining property of a vulnerable adult, over $500, in violation of Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 8-801(b);
(2) Identity fraud, in violation of CL § 8-301(b);
(3) Identity fraud, in violation of CL § 8-301(c)(2)(i);
(4) Identity fraud, in violation of CL § 8-301(b);
(5) Identity fraud, in violation of CL § 8-301(c)(2)(i);
(6) Theft ($1,000 to under $10,000), in violation of CL § 7-104;
(7) Forgery and counterfeiting, in violation of CL § 8-601(a);
(8) Issuing a false document, in violation of CL § 8-602;
(9) Forgery and counterfeiting, in violation of CL § 8-601(a);
(10) Issuing a false document, in violation of CL § 8-602; and
(11) Theft under $1,000, in violation of CL § 7-104.

The legality of charging appellant via this method is the subject of appellant's second appellate question. At trial, the State entered Counts 1-5 *nolle prosequi*. Appellant's motion for judgment of acquittal as to Count 6 was granted. Following the denial of the balance of appellant's motion for judgment of acquittal, the court submitted Counts 7-11 to the jury.

perform some work on his house, which was to include installing a new roof. Trial occurred in Case No. 411 on October 1, 2013, and the evidence was as follows.

Mr. Bradley testified that, sometime in early February 2013, appellant approached him in his yard and "wanted to know if I had any carpentry work or roofing work or anything like that." Mr. Bradley and appellant agreed, informally, to a series of different repairs to be performed by appellant. Mr. Bradley wrote appellant a check for $972.17 "immediately," so that appellant could get started. Over time, Mr. Bradley started to feel that "the price was getting a little high," so he kept a list of checks he wrote to appellant, with check numbers, dates, and amounts. This list was marked for identification at trial as State's Exhibit 4. It showed that, according to Mr. Bradley's tally, he had written appellant checks totaling in excess of $39,000 during the four-week span between February 28 and March 30, 2013. This sum struck Mr. Bradley as being "a little high" for the work appellant had done.

The main focus of the State's case was two checks, numbered 8255 and 8256, drawn on Mr. Bradley's account at M & T Bank. Check 8255 was dated "5 Apr 2013," and was made payable to the appellant in the amount of $2,000. Check 8256 was dated "April 2, 2013," and likewise was made payable to the appellant in the amount of $2,000. Both memo lines indicated the checks were for roof work. Copies of the front and back of both checks were admitted together as State's Exhibit 6. Mr. Bradley testified that he did not sign either of those checks, nor did he authorize appellant to either sign his name or to take any checks from his checkbook. Mr. Bradley was also shown a check that was admitted into evidence as State's Exhibit 7. He testified that Exhibit 7 was a check that appellant brought to him,

told him it had gotten wet, and asked Mr. Bradley to write a replacement check, which Mr. Bradley did. It was not until later that Mr. Bradley looked at the "wet check" appellant had given him, and realized that he had not signed that check either.

Admitted into evidence as State's Exhibit 8 were certified records of M & T Bank pertaining to Mr. Bradley's checking account. Those records were replete with exemplars of Mr. Bradley's signature. State's Exhibit 3 was a paper Mr. Bradley signed in front of the jury as an example of his signature. The differences between the signatures of the drawer on Exhibit 8 and the signatures on Exhibit 6 were pointed out for the jury's consideration.

Cpl. Durbin Hamilton, of the Wicomico County Bureau of Investigations, testified that she interviewed appellant on April 18, 2013, following his arrest on the previous day. After Cpl. Hamilton gave appellant *Miranda* warnings, the officer recorded an interview of appellant, which was admitted, in redacted form, as State's Exhibit 2. Appellant was questioned about his involvement in the thefts of checks from Mr. Bradley, as well as in the other two cases on appeal here. As pertinent to Case No. 411, the interview provided the following information:

> Q. [BY CPL. HAMILTON] Okay. Okay. Let's talk about, let's talk about Mr. Bradley. What happened there at that house?
>
> A. [BY APPELLANT] Nothing. I worked on it. Got the job done. The job's done. All's I've got to do is put a cap on it. Mexican were [sic] supposed to have went and finished it.
>
> Q. Okay. What about the two checks you stole from his house?
>
> A. I didn't steal no checks from his house.
>
> Q. Okay. Then why did you end up cashing them at a bank?

A. I didn't cash them at no bank.

Q. Well, you cashed them at Ace Cash Checking [sic].

A. That ain't no bank.

Q. It's a bank to me.

A. And first of all, they had to verify with him whether or not he wrote the check, so don't tell me I stole some checks from him. He wrote the fucking checks.

Q. Well, that's not his signature and it's not his writing.

A. Well, then, if it's not his signature then why did he fucking tell them (inaudible words).

Q. David, you're not telling me the truth here. I already know the truth. I'm not going to play this game with you. What did I tell you? What is your purpose of being in this room right now?

A. What did I tell you? I told you I'd tell you the truth. He wrote the fucking checks and I went and cashed them. The guy at Ace — the check cashing place has to call to verify whether or not you wrote the checks.

Q. **The two that were for $2,000 a piece, he did not write those. So how about that?**

A. All right. How about that?

Q. Did you do those? **Did you steal those?**

A. **No.**

Q. So they just miraculously showed up at the Ace Check Cashing place?

A. No, ma'am. He wrote them and I took them to get cashed.

Q. Okay.

A. And he verified that — I had them call to verify that he wrote them for me.

Q. He didn't call and verify those.

A. Oh, yeah, they did. Ace will not cash a check without verifying. Don't tell me.

Q. But unfortunately, you even took his duplicate copies. That's not something, he does.

A. I took his duplicate copies? What the fuck are you talking about, duplicate copies?

Q. Were you just so high you didn't know what you were doing?

A. Maybe.

Q. I mean, is that, is that your out?

A. I don't know. Honest to God, I don't know what the fuck you're talking about. I mean, the checks that he wrote me I took and cashed.

Q. Okay. So you're telling me —

(Inaudible words.)

A. I'm telling you the work that we done he paid us for; that's what I'm telling you.

[REDACTED FOR TRIAL]

Q. **And Mr. Bradley, you did the thing?**

A. **I did.**

Q. Are you forgetting that your girlfriend's in a cell too; right? We're forgetting that, right?

A. No, ma'am. **I said I did that**.

Q. Okay.

A. **Yes, ma'am, I did that**.

Q. Okay. **And Mr. Bradley, we stole the checks to [sic], right?**

A. I understand. **Yes, ma'am**.

(Emphasis added.)

Julie Cody, a teller manager at M & T Bank, testified that she was familiar with both Mr. Bradley and appellant. Although appellant had cashed checks at her bank before, he did not cash the checks in State's Exhibit 6 there. Rather, he cashed those checks at Ace Check Cashing. Ms. Cody indicated that the signatures on the checks in Exhibit 6 did not appear to be Mr. Bradley's. Appellant objected to her testimony in this regard, but the State proffered, at a bench conference, that it was Ms. Cody's "suspicion that they were not Mr. Bradley's signature and accordingly she contacted Mr. Bradley to find out whether or not he had written those checks."

In Case No. 411, the jury convicted appellant of Count 7 (forgery and counterfeiting, in violation of CL § 8-601(a)); Count 8 (issuing a false document, in violation of CL § 8-602); Count 10 (issuing a false document, in violation of CL § 8-602); and Count 11(theft under $1,000, in violation of CL § 7-104). The jury acquitted him of Count 9.[2] Sentencing took place on January 30, 2014. Appellant argued that, for sentencing purposes, all the convictions should merge into the theft under $1,000 conviction (Count 11). The

[2]Counts 7 and 8 pertained to the making of Check 8255. Count 10 pertained to the making of Check 8256. Count 11 pertained to the theft from Ace Check Cashing of $2,000, which occurred when Ace cashed the counterfeit check. It is not clear from the record why this theft was charged as theft under $1,000, but that is not an issue raised on appeal.

State agreed that Count 11 merged into Count 10, but argued at the time of sentencing that Counts 7 and 8 did not merge. The court sentenced appellant to ten years' imprisonment on Count 7, with no time suspended; ten years, concurrent, on Count 8; and ten years, consecutive, on Count 10. The court imposed no sentence on Count 11 because the court concluded that the conviction on that count merged into the conviction on Count 10 for purposes of sentencing.

Appeal No. 1984, Sept. Term 2013/Circuit Court Case No. K13-0410 ("Case No. 410")

In Case No. 410, appellant was charged via a six-count criminal information. Count 1 alleged that appellant violated CR § 8-801(b) by wrongfully obtaining the property of a vulnerable adult, and Count 2 alleged that appellant engaged in a conspiracy with his girlfriend, Stacey Scott, to commit that offense. Count 3 alleged that appellant committed theft under $1,000 by stealing the property of Kelsie Mattox and/or Bertha Waller, and Count 4 alleged that appellant engaged in a conspiracy with Stacey Scott to commit that offense. Count 5 was the same as Count 3, and Count 4 was the same as Count 6, except the victim alleged in Counts 5 and 6 was only Bertha Waller. Each count of the charging document asserted that the offenses occurred "on or about the 11th day of April, 2013[.]" Trial in Case No. 410 occurred on November 13, 2013.

Bertha Waller's testimony established that she was 89 at the time of trial (born on February 6, 1924), and lived with her daughter, Kelsie Mattox. Ms. Mattox testified that she was 71 years old at the time of trial (in November 2013), and had contracted with appellant

in October of 2012 to put a new roof on her home. She testified that she stored her jewelry, along with some pieces of her mother's jewelry, in a free-standing jewelry box in the hallway of her house. Appellant "seemed like a very nice gentleman" to her: "He would say, [']God bless you['] whenever he called me, and that he was just coming home from church or something like that, so he seemed trustworthy to me." Ms. Mattox testified that appellant "frequently" had access to the interior of her home: "He would come in, go up to the attic to look for things. He would come in and use the bathroom. In fact, I gave him lunch, made him a cake a couple of times."

On April 13, 2013, while dressing for a social event, Ms. Mattox realized that her rings and her mother's rings were missing from her jewelry box. Earlier that day, appellant had been at her house, ostensibly to perform work. Appellant had arrived at Ms. Mattox's house that morning with his girlfriend, Stacey Scott, who remained in the car the entire time appellant was at the house. Appellant asked Ms. Mattox to go to Lowe's and "pick up some things for him to replace the gutter." While she was at Lowe's, appellant called her to tell her he was leaving, and, she testified, "[t]hat's the very last time I saw him." After Ms. Mattox returned home, she discovered the jewelry was missing.

Jerry Cullen, a pawnbroker at Crazy Louie's Pawn Shop in Salisbury, authenticated certain of the pawn shop's business records, which were admitted into evidence as State's Exhibit 1. These records revealed that, on April 11, 2013, Stacey Scott sold the pawn shop three rings for $100.

Cpl. Durbin Hamilton of the Wicomico Bureau of Investigation testified that, on April 19, 2013, she retrieved from Crazy Louie's six rings belonging to Ms. Waller and Ms. Mattox. Her testimony included the following:

> [BY THE STATE]: Did there come a time when you had occasion to investigate the alleged theft of jewelry from Kelsie Mattox and/or Bertha Waller?
>
> [BY CPL. HAMILTON]: Yes, I did.
>
> Q. And were you able to retrieve that jewelry?
>
> A. Yes, I was.
>
> Q. Can you describe what items of jewelry you retrieved and where you retrieved it from, please?
>
> A. On April 19th at 10:30, I retrieved a gold band with four diamonds in a setting missing the middle stone, and that was Kelsie Mattox'[s] ring.
>
> That was located at Crazy Louie's on North Salisbury Boulevard.
>
> Again, on that same date at Crazy Louie's North, I located a gold band with a single diamond, and that was Miss Bertha Waller's, and then on the same date, the 19th at 10:30, I located a gold wedding band at Crazy Louie's North that was identified as Miss Bertha Waller's.
>
> I also located on the same date at Crazy Louie's South a white gold band with four diamonds in the middle and five on each side, and that was Kelsie Mattox'[s]. On that same date at Crazy Louie's South, I located a gold band with a teardrop cubic Zirconium, and that was Miss Bertha Waller's.
>
> On the same date at Crazy Louie's South, I located a gold ring with a cubic Zirconium on the top, and that was identified as Miss Bertha Waller's.
>
> Q. And did you take any photographs of those items?
>
> A. No, I did not.

Q. Okay.

And what, if anything, did you do with those items after you retrieved them from Crazy Louie's?

A. I brought them back to the Wicomico County Sheriff's Office, and I contacted Miss Bertha Waller and Kelsie Mattox, and I had them come to the Sheriff's Office to retrieve their jewelry.

Q. And did they — were they able to identify their jewelry?

A. Yes, they did.

I showed them the jewelry, and they were able to identify that as theirs, and then I released it back to them.

Cpl. Hamilton also testified about her April 18, 2013, interview with appellant, a portion of which was admitted into evidence as State's Exhibit 3. Referring to Kelsie Mattox, Cpl. Hamilton asked appellant:

Q. Did you steal the jewelry from her house?

A. No, ma'am.

Q. No? So your girlfriend just ended up (inaudible words)?

A. No, ma'am. I stole the jewelry.

Q. Okay.

Then why don't you just come clean with everything?

A. I just come clean. I just told you I did.

Stacey Scott, appellant's former girlfriend, testified pursuant to a subpoena from the State, but asserted that she was not testifying pursuant to any particular deal with the State. At a District Court trial, she had entered an *Alford* plea to theft under $1,000 for having

stolen the rings at issue here. She was sentenced to 18 months, all suspended in favor of probation before judgment. Scott testified that she and appellant were arrested on April 17, and that she had gotten the rings she later sold to Crazy Louie's Pawn Shop from appellant "about two weeks before" her arrest. Scott testified that appellant told her the rings had been left to him by his mother.

Appellant's motion for judgment of acquittal was granted on Counts 1 and 2, and the State entered Counts 5 and 6 *nolle prosequi*. The jury convicted appellant of Count 3, theft under $1,000, and acquitted him of Count 4, conspiracy to commit theft. The court sentenced appellant to eighteen months.

Appeal No. 877, Sept. Term 2014/Circuit Court Case No. K13-0810 ("Case No. 810")

The third case, Case No. 810, was tried on June 23, 2014. This case concerned the theft of checks from Ms. Waller and Ms. Mattox. Appellant was charged, via charging document served on December 3, 2013, with fourteen theft and conspiracy offenses, all alleged to have occurred in April 2013. When the trial began, the State entered Counts 1-8 *nolle prosequi*, and proceeded with trial on Counts 9-14.[3]

Kelsie Mattox testified that she and her mother, Bertha Waller, share a joint checking account at Hebron Savings Bank, but Ms. Mattox stated that she does not let Ms. Waller write checks. Ms. Waller was ninety years old at the time of trial, and had dementia. Ms.

[3]Just prior to the start of the trial, appellant made a motion to dismiss, contending that the court lacked jurisdiction. The denial of that motion is appellant's second issue on appeal, and we discuss it below.

Mattox had been "managing all of her accounts and things for about three years" at the time of trial. Ms. Mattox purposely kept the checkbook in her room so that her "mother will not write checks." As far as the bank was concerned, Ms. Waller technically retained authority to write checks as a joint account holder — because Ms. Mattox did not want to offend her mother's dignity by removing her from the account — but Ms. Mattox testified unequivocally that Ms. Waller did not write the checks at issue here. In fact, she testified that Ms. Waller did not even know where the checkbook was stowed.

In April 2013, Ms. Mattox was notified of an overdraft on the checking account she and Ms. Waller shared. She learned that the account had been overdrawn because of two checks written to, and cashed by, Stacey Scott. Introduced as State's Exhibit 1 was check #1037, drawn on the Hebron Savings Bank account shared by Ms. Waller and Ms. Mattox. Check #1037 was dated "4/12/2013," and was made payable to Stacey Scott, in the amount of $1,000. State's Exhibit 2 was check #1038, dated "4-13-2013," and made payable to Stacey Scott in the amount of $534.[4] Both checks were allegedly signed by "Bertha Waller," although Ms. Mattox testified that neither check bore her mother's true signature:

> [BY THE STATE]: Is that your mother's signature?
>
> [BY MS. MATTOX]: No, it isn't, and the reason I say so is because what I did when I found out the checks were — had overdrawn her account I went down to the bank. They gave me copies of the checks. I compared them to the signatures on her driver's license — identification card which I had made in

[4]In the colloquy with the State's Attorney, Ms. Mattox identified Exhibit 1 as the check for $534, and Exhibit 2 as the check for $1,000, but we have used the exhibit numbers that appear on the original exhibits in the record.

December and on her Social Security cards, the one she had when she changed her name and on her medicare card, and there are differences in the signatures.

The T's are looped. My mother does not loop her T's. The A's have little curly — like curly Q's. The Waller has a little curly Q on it. My mother — my mother was married before, and my maiden name is Jolley. My mother's first husband's name was Jolley. She signed everything Berth[a] J. Waller. She wanted to retain the Jolley so her children would not be deemed to not be her children. So it is — for her not to put the J in there and everything that I have here has Bertha J. Waller, and I immediately compared them.

* * *

Q. Now, what was it about the T, you said there was a problem with the T on this check?

A. My mom — I flunked penmanship when I was in elementary school. My mother makes her T's straight. She doesn't loop them. Those T's are looped. Everything that I have with the signature on has no loops on the T's. And W has a little, has a little curly Q on the side of it which she does not do.

Q. When you or your mother — who paid David Suire, the defendant for the work that he performed on your house?

A. I did.

Q. And how did you write the check? How did you make them out? Did you make them out to David Suire?

A. Yes, he asked me to make them out to him personally.

Q. Okay.

Did you ever [sic] at any occasion ask you to make them out to Stac[e]y Scott?

A. No.

Q. Did he ever claim that you owed him money outside of what was contracted for?

A. No.

Q. Did he ever ask you to write checks made payable to Stac[e]y Scott for any reason during the course of his [sic] relationship with him?

A. No.

Admitted into evidence as State's Exhibit 5 was a redacted transcript of the interview Cpl. Hamilton conducted with appellant on April 18, 2013. The following exchange occurred when Cpl. Hamilton asked appellant about the theft of the checks at issue in Case No. 810:

[BY CPL. HAMILTON]: So how about those two checks that your girlfriend's name ended up on?

[BY APPELLANT]: I wrote her name on them.

Q. Did you steal them also?

A. No, ma'am.

Q. What happened with those?

A. The lady wrote them and gave them to me. She signed them.

Q. She signed them, but she didn't fill in the rest of it?

A. Yes, she did.

[REDACTED]

Okay. I filled out the dollar amounts.

Q. You stole those checks from her.

A. Then why would I steal them then if she signed them?

Q. [REDACTED] too?

A. No, ma'am.

Q. No? So your girlfriend just ended up (inaudible words)?

A. No, ma'am. I stole the [REDACTED]

Q. [REDACTED] the checks?

A. Yes, ma'am [REDACTED] the checks.

Q. Then why don't you just come clean with everything?

A. I just come clean. I just told you I did.

Stacey Scott testified that she never met Bertha Waller. She had been to Ms. Mattox's house, but only once, and she remained outside in the car. Her testimony on this point was as follows:

> [BY THE STATE]: Could you explain to the ladies and gentlemen what were the circumstances in which you came into possession of checks given to you by the [appellant]?
>
> [BY MS. SCOTT]: David told me that he lost his ID and he needed to start a job for Ms. Mattox so she wrote him out a check. And he said since he didn't have his ID Ms. Mattox wrote it out to me, so I cashed it for him. It was already wrote out, the only thing I did was sign my name to the back like you would do normally.
>
> Q. I'm handing you what's been entered into evidence as State's Exhibit 1. Can you take a look at that document?
>
> A. Uh-huh, yes.
>
> Q. Do you recognize that document?
>
> A. Yes.
>
> Q. What is it?
>
> A. It's the check that David gave me.
>
> Q. When did he give you that check?

A. It looks like on April 12th.

Q. Do you remember how long after the time that you met Ms. Mattox in her driveway did David give you that check?

A. It was either that day or the next day, it was shortly after.

Q. Did you see David fill out the check?

A. No.

Q. So he gave it to you completely filled out?

A. He gave it to me just like this, yes.

Q. I'm handing you what's been entered as State's Exhibit 2. Can you look at this document for me? Do you recognize that document?

A. Yes.

Q. What is that document?

A. This is the check he gave me when he said he finished the job.

Q. Okay. And when did he give you that check?

A. The very next day, April 13th.

Q. And what did he tell you to do with that check?

A. To cash it.

Q. Did he say why he wanted you to cash the check that day?

A. Because he said he didn't have an ID to cash it himself.

Q. So the next day he still didn't have an ID?

A. Yeah. He got pulled over driving and the cops took his ID.

Q. Okay. And have you cashed any other checks related to his business for him?

A. No.

Q. Other than these two checks?

A. No.

Q. And where did you cash the checks? First of all — strike that.

Just to be clear for the record. Showing you what's been marked and entered as State's 1, State's 1 is a $1,000 check. Where did you cash that check?

A. I believe it was at the bank on Mt. Hermon Road, there used to be — right next to the Rite Aid on Mt. Hermon Road, I'm not sure exactly what that bank is called. I believe, if my memory is correct, that's where I cashed it.

Q. Is that your bank?

A. No.

Q. Did you have an account at that bank?

A. No.

Q. Did the defendant have an account at that bank?

A. I don't think so.

Q. Okay. I'm handing you what's marked or entered as State's Exhibit 2. This is a check for $534. Where did you take that check to be cashed?

A. I believe the same place.

Q. Why did you take it there?

A. Why did I take it there?

Q. Yes.

A. Because that's where he told me to take it. I mean he's the one that took me there to do it.

Q. With State's Exhibit 1, which is a $1,000 check, once you cashed the check did the [appellant] go in the bank with you?

A. No.

Q. Where was he when you cashed the check?

A. He was parked right out front in the car, like literally right in front of the door.

Q. And then what did you do with the cash?

A. Gave it to him.

Q. All of the cash?

A. Yes.

Q. Did you keep any of the money?

A. No.

Q. Did he give you any of the money?

A. No.

Q. State's Exhibit No. 2, when you cashed that where was he? Did he go in the bank with you?

A. No.

Q. Where was he?

A. He was in the car waiting.

Q. Okay. And when you came back out, what did you do with the money?

A. I gave it to him.

Q. All $534?

A. Yes.

Q. You didn't keep any of the money yourself?

A. No.

Q. When is the last time you spoke with the [appellant]?

A. The day he went to jail, April 17, 2013.

Admitted into evidence as State's Exhibit 3 were certified records of Hebron Savings Bank, pertaining to the joint account of Ms. Waller and Ms. Mattox. Those records show that Check #1037 posted to the account on April 12, 2013, and Check #1038 — which overdrew the account — posted on April 15, 2013.

At the conclusion of the State's case, it entered the conspiracy counts (Counts 10, 12, and 14) *nolle prosequi*. Appellant's motion for judgment of acquittal was denied. Appellant did not testify, but called Bertha Waller to the stand in his case. Her testimony was brief, and included the following:

> [BY APPELLANT'S COUNSEL]: I just have one question for you. Can I get you to sign this piece of paper for me?
>
> [BY MS. WALLER]: After I read it.
>
> Q. Well, it doesn't say anything, I just want your signature is all.
>
> A. You want me to sign it but don't read it?
>
> Q. No, you can read it but there's nothing on there. Feel free to read it.
>
> A. That's tricky. Where do I put it?
>
> Q. Anywhere you want to is fine. Thank you.
>
> A. What will you do with that?
>
> Q. We're going to admit it into evidence, ma'am.

A. Evidence, that sounds ominous.

The paper signed by Ms. Waller was admitted as Defense Exhibit 3. Consistent with Ms. Mattox's testimony, Ms. Waller signed her name "Bertha J. Waller" — not "Bertha Waller" as the name appeared on the disputed checks.

The jury convicted appellant on the three charges that remained against him: Count 9 (theft scheme: $1,000 to under $10,000), Count 11 (theft: $1,000 to under $10,000, for Check No. 1037), and Count 13 (theft under $1,000, for Check No. 1038.) Appellant was sentenced to ten years on Count 9, consecutive to any sentence he was then serving. Counts 11 and 13 merged into Count 9 for sentencing.

DISCUSSION

I. Pretrial Issues

In support of his second question presented on appeal, appellant contends that the circuit court never had jurisdiction over him in any of the cases because the State's Attorney lacked the authority to file the charging documents. In support of appellant's fourth question presented, he contends that the charges should all be dismissed because appellant was denied his right to counsel at the initial-appearance stage in all three cases. The State contends that neither of these claims is preserved. In appellant's reply brief, appellant responds to the State's preservation arguments in part by asking this Court to exercise plain error review.

A. Charging via charging document

The State's prosecutions of appellant in Cases No. 410 and 411 originated in District Court. The initial statement of charges filed in Case No. 410 in the District Court of

Maryland for Wicomico County on April 19, 2013, asserted that appellant had violated the common law and CR § 7-104. Appellant concedes that he was not entitled to a preliminary hearing in Case No. 410 because the charges in that case were within the exclusive original jurisdiction of the District Court pursuant to Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 4-301, which provides in subsection (b) that "the District Court . . . has exclusive original jurisdiction in a criminal case in which a person at least 18 years old . . . is charged with: . . . (2) violation of § 7-104 . . . of the Criminal Law Article, whether a felony or a misdemeanor."

Appellant contends, however, that he was entitled to a preliminary hearing in Case No. 411, and that he was never notified of his right to one. He also contends that he was entitled to a preliminary hearing in Case No. 810, but was never advised of his right to one in that case. The substance of appellant's argument in this regard in his brief is:

> The State's Attorney lacked any authority to file charges in these cases by information. Accordingly, the charging documents in all three cases were invalid and the trial court lacked jurisdiction. . . .
>
> * * *
>
> The trial of these cases on informations in the absence of any preliminary hearings is a jurisdictional defect. A trial cannot proceed in any court except on a valid charging document. . . .
>
> * * *
>
> Because the defect is jurisdictional, this Court should reverse Mr. Suire's convictions without regard to whether the issue was properly raised in the courts below.

Appellant did not raise the issue at all in Case Nos. 410 or 411, and only raised it in Case No. 810 on the morning of trial, as jury selection was about to begin. At that time, the trial court found that the argument was of a procedural, rather than jurisdictional, nature, and had been waived as not timely raised. We conclude that the objection was not timely raised in any of the cases, and we reject appellant's contention that the alleged defect was one that deprived the circuit court of jurisdiction.

Appellant seemingly recognizes that *Powell v. State*, 324 Md. 441 (1991), is contrary to his position, but he contends that *Powell* is "not dispositive" of his argument that the failure to provide him with preliminary hearings was a jurisdictional defect not waived by his failure to raise it in pre-trial motions.

In *Powell*, the petitioner made an argument regarding jurisdiction that was, in essence, the same argument that appellant makes in this case. The Court of Appeals rejected the argument in *Powell*, stating:

> Petitioner's position is quite simple. The circuit court, he maintains, never acquires jurisdiction over a case which is initially filed in the District Court and in which one of the charges is a felony not within the District Court's jurisdiction, until the defendant waives a preliminary hearing or a preliminary hearing is held. Whether a waiver has occurred depends, petitioner asserts, on the accused having been advised of the right to one, which the record must reflect. He maintains that there can be no waiver by inaction.
>
> Petitioner interprets Rules 4-201(c) and 4-213(a)(4) as affecting the circuit court's fundamental jurisdiction, that is, its "power to act with regard to a subject matter which 'is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.'" *Pulley v. State*, 287 Md. 406, 416, 412 A.2d 1244, 1249 (1980), quoting *Cooper v. Reynolds, Lessee*, 77 U.S. (10 Wall) 308, 316, 19 L.Ed. 931 (1870). *See First Federated, Com. Tr. v. Commissioner*, 272 Md. 329, 335, 322 A.2d 539, 543 (1974) ("If by that law

which defines the authority of the court, a judicial body is given the power to render a judgment over that class of cases within which a particular one falls, then its action cannot be assailed for want of subject matter jurisdiction."); *Stewart v. State*, 287 Md. 524, 526-27, 413 A.2d 1337, 1338 (1980).

Circuit courts of this state, including the Circuit Court for Anne Arundel County, derive their jurisdiction from Maryland Constitution, Art. IV, § 20. They are courts of original general jurisdiction, *see Birchead v. State*, 317 Md. 691, 697, 566 A.2d 488, 491 (1989), *First Federated Com. Tr.*, 272 Md. at 335, 322 A.2d at 543, authorized to hear all actions and causes, other than those particularly prescribed by statute or constitutional provision for other fora. *Id.* More particularly, pursuant to Maryland Cts. & Jud. Proc. Code Ann. § 1-501 (1973, 1989 Repl.Vol.), they are

> the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.

The felonies as to which petitioner complains he did not receive a preliminary hearing are either common-law-armed robbery and robbery, *see Whack v. State*, 288 Md. 137, 140-41, 416 A.2d 265, 266-67 (1980), appeal dismissed, 450 U.S. 990, 101 S.Ct. 1688, 68 L.Ed.2d 189 (1981) or statutory-assault with intent to rob, see Maryland Code Ann. Art. 27 § 12 (1957, 1987 Repl.Vol.). **All are within the fundamental jurisdiction of the circuit courts. Section 592 and Maryland Rules 4-201(c) and 4-213(a)(4) address a procedural matter: the regulation of the movement of cases from the District Court, in which the preliminary hearing process is lodged, to the circuit court; they do not control the fundamental jurisdiction of the circuit courts.** Thus, we have frequently refused to overturn convictions for failure to hold preliminary hearings. *See Ferrell v. Warden*, 241 Md. 432, 435-436, 216 A.2d 740, 743 (1965); *Petrey v. State*, 239 Md. 601, 603, 212 A.2d 277, 279 (1964); *Hardesty v. State*, 223 Md. 559, 563, 165 A.2d 761, 763 (1960); *Pritchard v. Warden*, 209 Md. 662, 664, 121 A.2d 696, 698 (1955).

Id. at 445-46 (emphasis added).

We view *Powell* as dispositive of appellant's contention that "[t]he trial of these cases on informations in the absence of any preliminary hearings is a jurisdictional defect."

Nor do we find any merit in appellant's argument that "[t]he more directly applicable authority is the decision of the Court of Appeals in *State v. Johnson*, 427 Md. 356, 375 (2012)." As the State points out, *Johnson* concerned the denial of a motion to correct an illegal sentence in a case in which the defendant had been convicted of a crime that was not charged in the indictment. We do not agree with appellant's argument that *Johnson* supports his plea for us to overlook his lack of timely preservation here.

Finally, because we reject appellant's claim that this alleged procedural defect deprived the circuit court of jurisdiction to adjudicate these cases, we decline to conduct any further plain error review of his unpreserved objections to the charging documents. We are not persuaded that appellant is raising an unpreserved claim of error that is "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *State v. Hutchinson*, 287 Md. 198, 203 (1980). We decline to exercise our discretion to overlook appellant's failure to timely raise the issue in the circuit court.

B. Right to counsel at initial appearance

Appellant asserts that he was entitled to, but deprived of, the assistance of counsel at "his initial appearances," and accordingly, "the charges should all have been dismissed and . . . this Court should therefore vacate his convictions." We note that there was no initial appearance in Case No. 810 because the charges in that case were initiated by serving appellant with a summons and charging document while he was incarcerated in the

Wicomico County Detention Center following his convictions in Cases Nos. 410 and 411. The right to counsel issue was not timely raised in any of those cases.

The State points out that, "at the time that Suire initially appeared on April 20, 2013, there was no right of an indigent [defendant] to any State-provided attorney." (Footnote omitted.) This is because April 20, 2013, fell between the Court of Appeals's rulings in *DeWolfe v. Richmond*, 434 Md. 403, filed January 4, 2012 ("*DeWolfe I*"), and *DeWolfe v. Richmond*, 434 Md. 444, filed September 25, 2013 ("*DeWolfe II*"). The *DeWolfe I* opinion established that *bail determinations* could not be made unless an indigent defendant had waived or been provided counsel. The Court said in *DeWolfe I*:

> In sum, we hold that the bail hearing that occurs at the initial appearance before a Commissioner, held pursuant to Maryland Rules 4–213(a) and 4–216, is a stage of the criminal proceeding under § 16–204(b) of the Public Defender Act. Consequently, if a defendant qualifies for public defender representation, **a bail hearing may not occur at the initial appearance unless the defendant has been afforded appointed counsel or waived the right to counsel. We do not mean by our holding that the Commissioner is foreclosed from carrying out all of the other duties attendant to the initial appearance, pursuant to Rule 4–213(a), if counsel is not present**. What we do mean is that, whenever a person purporting to be indigent has not waived public defender representation at the initial appearance, the Commissioner may not proceed to the bail determination in the absence of a public defender who has assumed representation. If a public defender is not immediately available to assume representation, then the Commissioner must delay the bail hearing until such representation can be provided or is waived by the defendant.
>
> Moreover, notwithstanding that **the present case deals only with bail hearings** before Baltimore City Commissioners, our holding applies with equal force to initial appearances before Commissioners throughout Maryland. That is to say, **no bail determination can be made concerning an indigent person without the presence of counsel at any initial appearance** in Maryland, unless such representation has been waived. It also follows quite naturally from our holding that there is an entitlement to public defender

> representation at the subsequent District Court bail review hearing, pursuant to Maryland Rule 4–216(f).

434 Md. at 439-40 (emphasis added; footnote omitted).

While motions for reconsideration of *DeWolfe I* were pending, the Court of Appeals stayed the effect of its mandate, *see* 434 Md. at 471, and the General Assembly passed emergency legislation amending the Public Defender Act to make it clear that, under that statute, "[r]epresentation is *not* required to be provided to an indigent individual at an initial appearance before a District Court commissioner." (Emphasis added.) The amendment took effect on May 22, 2012.

The motions for reconsideration of *DeWolfe I*, together with supplemental questions regarding the impact of the General Assembly's May 2012 amendment to the Public Defender Act, were decided by the Court of Appeals in an opinion issued on September 25, 2013, in *DeWolfe II*. In that opinion, the Court of Appeals expanded the right to counsel it had recognized in *DeWolfe I*, and held (for the first time in the history of this State) that, "under [the Due Process component of] Article 24 of the Maryland Declaration of Rights, an indigent defendant is entitled to state-furnished counsel at an initial hearing before a District Court Commissioner." 434 Md. at 464 (footnote omitted). The Court again stayed its mandate until July 1, 2014. *See Clyburn v. Richmond*, 438 Md. 690, 691 (2014). We perceive no indication in *DeWolfe II* that the Court of Appeals intended to hold that all convictions in cases in which the defendants had, prior to July 1, 2014, appeared at an initial hearing before a District Court Commissioner without counsel were invalid.

In the present cases, there was, as of April 2013 — *i.e.*, the time of appellant's "initial appearances" — no order from the Court of Appeals providing that indigent defendants were entitled to State-provided counsel at initial appearances. We therefore conclude that he is not entitled to have his judgments of conviction in these cases vacated on this basis.

II. Appellate issues as to Case No. 411

Appellant raises several issues with respect to Case No. 411. Appellant asserts that the court erred in denying his motion for mistrial, and in denying his motion for new trial. Appellant also contends that there was insufficient evidence to support his convictions for "counterfeiting and uttering in Case No. 411." Finally, he argues that the court erred at sentencing in failing to properly merge the convictions on Counts 7, 8, and 10. Appellant contends that those convictions should either have merged into the conviction on Count 11, or that the convictions on Counts 7, 8, and 10 should have merged into one conviction.

A. Denial of appellant's motion for mistrial

In appellant's statement to Cpl. Hamilton, appellant asserted that the two checks he cashed at Ace Check Cashing were genuine, and that "[t]he guy at Ace — the check cashing place has to call to verify whether or not you wrote the checks." Appellant asserted: "I had them [Ace] call to verify that he wrote them for me." And, appellant told Cpl. Hamilton: "Ace will not cash a check without verifying."

When Mr. Bradley testified, he was asked on direct examination if Ace Check Cashing had called him to verify the checks, and he replied that he did not recall if they had.

But, on cross examination, Mr. Bradley testified that he thought it was his bank calling him, and that he did not find out until after the fact that the caller was from Ace Check Cashing.

In his closing argument, appellant made a missing witness argument to the jury, arguing that the State did not call any witness from Ace Check Cashing to contest appellant's statement (made during Cpl. Hamilton's recorded interview) that Ace Check Cashing had called Mr. Bradley and verified that the checks being presented by appellant were legitimate. After telling the jury to look at appellant's statement to Cpl. Hamilton, appellant's counsel argued:

> [BY APPELLANT'S COUNSEL]: Read it for yourself. Read it in all context. This is not a forgery. There is no evidence of a forgery. This is not an uttering.
>
> **Where's Ace Check Cashing? It's the State's burden**. Where's the handwriting analysis? Where's any — where's the video? Ace Check Cashing called. He said they called. They wanted to know the check number. They wanted to know the check name. Ace Check Cashing is not handing out money on a personal check.
>
> It's what David said. They verify it. He's angry because he thinks he paid too much. His bookkeeping is such that you can't keep track of it.
>
> This is not uttering. This is not counterfeit. This is not forgery. This is not theft.

(Emphasis added.)

In its rebuttal closing argument, the State responded:

> [BY THE STATE]: **Now, as far as the, you didn't hear anybody, anything from Ace Check Cashing today, the State's got the burden of proof, where is Ace Check Cashing**? Ladies and gentlemen, **the defense has got the same right to subpoena witnesses that the State has**. I can subpoena the witnesses that I want. The defense can subpoena the witnesses they want. **And I would**

> **reverse that argument and say the same thing, where is Ace Check Cashing?**

(Emphasis added.)

At that point, appellant objected, and a bench conference was held, at which the following colloquy ensued:

> [BY APPELLANT'S COUNSEL]: The defense has put on no evidence. I believe **the State has shifted the burden. I'm going to move for a mistrial**.
>
> [BY THE COURT]: Do you wish to be heard?
>
> [BY THE STATE]: Your Honor, I think it's completely appropriate to point out that the defense, in this case responding to what their argument was, that we should have brought them in, I think it is completely appropriate for me to point out that they have the same right to subpoena witnesses that I have. I'm not trying to shift the burden by any stretch of the imagination, only to point out that they have the same ability that I have.
>
> [BY THE COURT]: Okay.
>
> [BY APPELLANT'S COUNSEL]: **He just said, I'll ask the same question, where is Ace Check Cashing[?] Which clearly points to the Defendant's burden to produce the evidence and it's impermissible.**
>
> [BY THE COURT]: Okay. Anything further from anyone?
>
> [BY APPELLANT'S COUNSEL]: No, Your Honor.
>
> [BY THE COURT]: All right. Do you have any law on the reasonableness of that argument?
>
> [BY THE STATE]: Not off the top of my head, Your Honor. I'd have to do some research, which I know the Court doesn't have time for right now.
>
> [BY THE COURT]: Okay. Well, so why don't I do this? What I'll do is, **I'm going to re-instruct them on the burden of proof and that the Defendant does not have to, or is not required to introduce any evidence**.
>
> [BY APPELLANT'S COUNSEL]: Okay.

[BY THE COURT]: **And ask you to discontinue that line of argument**.

[BY THE STATE]: **Yes, Your Honor**.

[BY APPELLANT'S COUNSEL]: **Does the Court deny my motion?**

[BY THE COURT]: **I deny your motion**.

(Emphasis added.)

The court the re-instructed the jury, stating:

> Ladies and gentlemen, I'm just going to reinstruct you, that **the Defendant is presumed innocent of the charges and this presumption remains with the Defendant throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.** The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. This burden remains on the State throughout the trial. **The Defendant is not required to prove his innocence**. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence. A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs.
>
> However, if you are not satisfied of the Defendant's guilt to that extent, then reasonable doubt exists, and the Defendant must be found not guilty.

(Emphasis added.)

The State then resumed its rebuttal argument:

> [BY THE STATE]: Thank you, Your Honor. And **I apologize for that, to Mr. Suire and to [defense counsel], I didn't mean to indicate that I was trying to shift the burden to the defense**.
>
> Here is what I'm trying to point out to you, ladies and gentlemen. Look at the evidence that is there, okay? Now, we know that this check was presented to Ace Check Cashing, as I said before, because on the reverse of

> both of these checks you can see it's written, for deposit only Ace Check Cashing, or Ace Check Express, Incorporated. Okay?
>
> Now, what I want you to notice in addition to that is that there are no notations on there whatsoever by the clerk who would have cashed the check, that a call or an attempt to make a call to Mr. Bradley was made for authorization.
>
> The only thing we know about Ace Check Cashing's policy to clear all checks before they will cash them comes from the [appellant's] interview with Corporal [Hamilton]. But then later on he goes on and admits that he stole the checks, which really makes no sense. Why would he steal a check that he could then cash?
>
> And again, why would he take the check to Ace Check Cashing as opposed to taking it to M & T Bank where we know he had been numerous times before because the teller told you that she had seen him in there numerous times before. And I told you the reasonable inference of that earlier.

(Emphasis added.)

On appeal, appellant contends that the court erred in denying his motion for mistrial because the curative re-instruction given by the court was not sufficient to "cure the prejudice."

The State responds that, as a preliminary matter, the argument was not preserved, because appellant's counsel acquiesced in the court's suggestion that it would re-instruct the jury on the burden of proof, and did not further object after the re-instruction was concluded. We disagree that the issue was not adequately preserved. A defendant is not required to take exception to a court's ruling on a motion. *See* Maryland Rule 4-323(d) ("A formal exception to a ruling or order of the court is not necessary."). And simply saying "okay" after a judge announces her ruling does not constitute acquiescence in the adverse ruling or waiver of

previously-articulated objections. Nor was the appellant obligated to renew the motion to preserve the issue for appeal.

On the merits of the mistrial issue, the State contends that appellant's closing argument opened the door to a response by the State on the issue of Ace Check Cashing's absence from trial, and that the State's response was a "narrow and tailored" response to that issue. Further, the State contends that, even if the prosecutor's remarks were improper, they caused no prejudice.

In *Whack v. State*, 433 Md. 728 (2013), the Court of Appeals reversed this Court's affirmance of Whack's second-degree murder conviction, holding that the prosecutor made improper remarks during closing argument that mischaracterized the DNA evidence and likely misled the jury to the defendant's prejudice. Therefore, a mistrial should have been granted in that case, and a new trial was warranted. Commenting on closing arguments and rhetorical flourish, the Court of Appeals observed:

> Closing arguments serve an important purpose at trial. Counsel use that portion of the trial to "sharpen and clarify the issues for resolution by the trier of fact in a criminal case" and "present their respective versions of the case as a whole." *Lee v. State*, 405 Md. 148, 161, 950 A.2d 125 (2008) (quoting *Herring v. New York*, 422 U.S. 853, 862, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975)). "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Lee*, 405 Md. at 162, 950 A.2d 125 (quoting *Herring*, 422 U.S. at 862, 95 S.Ct. 2550). Accordingly, we grant attorneys, including prosecutors, a great deal of leeway in making closing arguments. "The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Spain v. State*, 386 Md. 145, 152, 872 A.2d 25 (2005) (quoting *Degren v. State*, 352 Md. 400, 429–30, 722 A.2d 887 (1999)).

> This "liberal freedom" has limits, but "not every ill-considered remark made by counsel . . . is cause for challenge or mistrial." *Wilhelm v. State*, 272 Md. 404, 415, 326 A.2d 707 (1974). Whether a reversal of a conviction based upon improper closing argument is warranted "depends on the facts in each case." *Id*. Generally, the trial court is in the best position to determine whether counsel has stepped outside the bounds of propriety during closing argument. *Ingram v. State*, 427 Md. 717, 726, 50 A.3d 1127 (2012). "As such, **we do not disturb the trial judge's judgment in that regard unless there is a clear abuse of discretion that likely injured a party**." *Id*. (citing *Grandison v. State*, 341 Md. 175, 225, 670 A.2d 398 (1995)). **In deciding whether there was an abuse of discretion, we examine whether the jury was actually or likely misled or otherwise "influenced to the prejudice of the accused" by the State's comments**. *Wilhelm*, 272 Md. at 415–16, 326 A.2d 707 (quoting *Reidy v. State*, 8 Md. App. 169, 172, 259 A.2d 66 (1969)). **Only where there has been "prejudice to the defendant" will we reverse a conviction**. *Rainville v. State*, 328 Md. 398, 408, 614 A.2d 949 (1992) (quoting *State v. Hawkins*, 326 Md. 270, 276, 604 A.2d 489 (1992)).

433 Md. at 742-43 (emphasis added).

In *Whack*, the Court of Appeals held that the prosecutor "went too far in stating emphatically that [Whack's] DNA was present in the truck." The Court recognized the wide leeway generally given to counsel with respect to closing arguments, but the Court emphasized that DNA evidence exerts an unusually powerful influence on jurors: "The prosecutor's error must be considered within the larger context in which DNA evidence is treated and perceived by jurors." 433 Md. at 747. Given the fact that "[t]he public places a great deal of weight on the reliability and accuracy of DNA evidence," the Court held that "counsel have a responsibility to take extra care in describing DNA evidence, particularly when it comes to statistical probabilities." *Id*. at 748.

Unlike the prosecutor's misleading argument in *Whack*, the comments made by the prosecutor during rebuttal in the present case were not directed at pivotal evidence. Here, the

presence or absence of Ace Check Cashing at the trial was not a central issue. Appellant, at one point during his recorded interview, had arguably confessed to having stolen Mr. Bradley's checks. Mr. Bradley denied that he signed Checks No. 8255 and 8256, and the jury had copies of those checks and other exemplars of Mr. Bradley's signature to compare. It was appellant who had contended, during his interview with Cpl. Hamilton, that Ace Check Cashing had called Mr. Bradley to verify the checks before cashing them, and that it was Ace Check Cashing's policy to operate in that manner. But this was not an element the State needed to prove as part of its prima facie case if the jury believed Mr. Bradley, and the failure (of either party) to produce a witness from Ace Check Cashing was first raised as an issue during appellant's closing argument.

Although it was certainly not appropriate for the prosecutor to argue that he "would reverse that argument" and ask why appellant had not produced a witness from Ace Check Cashing, we are satisfied that any possible shifting of the burden of proof was effectively cured by the promptly given instructions from the judge and the apology of the prosecutor. *Cf. Mitchell v. State*, 408 Md. 368, 393 (2009) ("Under the circumstances, the prosecutor's remarks during rebuttal argument constituted a reasonable reply to arguments made by defense counsel in closing argument. The trial judge did not abuse his discretion in allowing the State's rebuttal argument, and the trial judge's ruling did not unfairly prejudice Mitchell or shift to him the burden of proof."). *See also Spain v. State*, 386 Md. 145, 159 (2005) ("When assessing whether reversible error occurs when improper statements are made during closing argument, a reviewing court may consider several factors, including the severity of

the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused.").

Despite our conclusion that some of the State's remarks about a witness from Ace Check Cashing were improper (as noted above), we find no abuse of discretion in the court's decision to deny appellant's motion for mistrial and promptly reinstruct the jury on the burden of proof.

B. Denial of appellant's motion for new trial

On October 18, 2013, appellant, acting *pro se*, filed a handwritten letter, addressed to the trial judge, that was treated by the court as a motion for new trial in Case No. 411. The document does not expressly request a new trial, but contains the words "Motion for New Trial" in the handwritten "certificate of service" which reads:

> I Hereby certify that 8th day of OCT, 2013 a copy of this "Motion for New Trial" & Drug Evaluation was mailed, postal-prepaid, I declare under the penalty of perjury the above motion is true to the best of my ability.

It was signed by appellant. On October 28, 2013, the court denied the motion, and explained: "[T]he Defendant has not complied with Maryland Rule 1-321, which requires a copy of the Motion be served on the State's Attorney's Office."[5]

[5]Maryland Rule 1-321(a) provides:

> (a) Generally. Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it

(continued...)

In his brief, appellant argues:

> Rule 1-321 states only that service must be made on other parties. Rule 1-322 [sic] states that the Clerk shall not accept a pleading without a certificate stating the manner of service. Neither rule prescribes precise language for a certificate of service.
>
> Mr. Suire did certify in his motion that he mailed a copy of his motion. He simply did not say to whom. Under the circumstances, the trial court could and should have presumed that Mr. Suire complied with the rules and mailed a copy to the State's attorney.

Appellant asserts, therefore, that the trial court's denial of the motion for new trial was an abuse of discretion. We do not perceive any abuse of discretion in the court's conclusion that the certificate of service was insufficient because it did not confirm that a copy of the motion had been served upon the State's Attorney.

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[5](...continued)
to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

At the time appellant filed his motion, Maryland Rule 1-323 provided:

> **The clerk shall not accept for filing any** pleading or other **paper requiring service**, other than an original pleading, **unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service**. A certificate of service is prima facie proof of service.

(Emphasis added.)

Rule 1-321(a) clearly states: "[E]very pleading and other paper filed after the original pleading shall be served upon each of the parties." The State is a party, and any motion for new trial or other relief had to be served on the State. Further, the movant was required to certify that the State had been served. Rule 1-323. Consequently, the trial court did not err in ruling that the motion was not properly filed.

Moreover, even if the court had addressed the substance of appellant's motion, there was no merit. Appellant's letter was not a model of clarity, but it complained generally about appellant having been "deprived of my wittness [sic]," apparently because his counsel had subpoenaed the "wrong wittness" from Ace Check Cashing. At trial, both parties informed the judge that a potential witness, Lindsay Timmons, could not be located. Appellant's counsel proffered during trial that Ms. Timmons would have testified that she had called Mr. Bradley prior to cashing the checks, pursuant to Ace Check Cashing's policy, and had gotten his approval. But appellant's post-trial motion did not represent that he could produce Ms. Timmons as a witness, let alone that she would provide testimony that would conceivably alter the outcome of the case if the court granted a new trial. Under the circumstances, we can envision no possibility that the trial judge would have granted a new trial on the basis of appellant's letter/motion even if it had been properly served.

C. Sufficiency of evidence

Appellant disputes the sufficiency of the evidence to support the convictions of counterfeiting and uttering in Case No. 411. His argument, in essence, recasts the evidence adduced at trial in the light most favorable to appellant. That, however, is not the appropriate

standard for appellate review of sufficiency of the evidence. Rather, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Here, there was evidence that appellant confessed to having stolen the checks from Mr. Bradley. Although appellant claims that his confession "is not borne out by the transcript of the interview," it was sufficiently borne out for the jury to believe it.[6] Moreover, Mr. Bradley testified that he did not authorize appellant to take any checks from him, and that he did not sign Check No. 8255 or 8256. The jury had the opportunity to examine copies of those checks and to compare them against exemplars of Mr. Bradley's signature. Accordingly, there was evidence from which a rational trier of fact could have found the essential elements of the crime of counterfeiting and issuing a counterfeit check beyond a reasonable doubt.

D. Merger issues at sentencing

Appellant was convicted of Count 7 (*possessing counterfeit* check #8255, on or about April 5, 2013, in violation of CR § 8-601(a)); Count 8 (*issuing* to Ace Check Cashing counterfeit check #8255, on or about April 5, 2013, in violation of CR § 8-602); Count 10 (*issuing* to Ace Check Cashing counterfeit check #8256, on or about April 2, 2013, in

[6][BY CPL. HAMILTON]: Okay. And Mr. Bradley, we stole the checks to [sic]; right?

[BY APPELLANT]: I understand. Yes, ma'am.

violation of CR § 8-602); and Count 11 (*theft* under $1,000, by "steal[ing] U.S. Currency, the propert[y] of Ace Check Cashing" on or about April 2, 2013, in violation of CR § 7-104). At sentencing, the court imposed a sentence on Count 7 of 10 years (concurrent to the sentences in Case No. 410); a sentence on Count 8 of 10 years, concurrent with the sentence on Count 7; a sentence of 10 years, consecutive, for the conviction on Count 10; and the court then merged the conviction on Count 11 (a conviction under the general theft statute) into the conviction on Count 10.

Appellant complains that he was improperly given separate sentences on his convictions on Counts 7, 8, and 10; he asserts that his sentences for those offenses should have either merged into his sentence on Count 11, or into each other.[7]

Appellant points out that "the charging document for Count 11 specifies the date of the alleged offense only to the extent of 'on or about April 2, 2013.' . . . [T]his count was not limited to one particular check." He further asserts: "[N]either the trial court's instructions nor the verdict sheet limited the theft count in any way, . . . [and] the jury could have convicted Mr. Suire of theft under Count 11 for cashing either or both of the checks." Based on that, appellant contends: "The counterfeiting and issuing convictions merge into theft, because theft is an over-arching offense of which obtaining money by counterfeiting and issuing are merely forms."

[7]The appellant's brief and reply brief state on several occasions that the sentences imposed on "Counts 8, 9, and 10 merge" into Count 11. It is clear, however, that appellant was acquitted of Count 9, and no sentence was imposed on Count 9. We will interpret appellant's merger argument to be that Counts 7, 8, and 10 should merge into Count 11, or, in the alternative, that Counts 7, 8 and 10 should merge "into each other."

Appellant asserts in his brief: "[C]ounterfeiting and issuing are the same offense as theft for merger purposes under *Blockburger v. United States*, 284 U.S. 299, 304 (1932)." And appellant contends that counterfeiting and issuing merge into theft because, he contends, the counterfeiting statutes under which he was charged — CR §§ 8-601 and 8-602 — "amount to nothing more or less tha[n] theft by one particular means among all the possible means covered by the general theft statute [CR § 7-104(a)]." He therefore urges us to conclude that Counts 7, 8, and 10 should have merged into the conviction on Count 11 for sentencing purposes.

The Court of Appeals discussed the merger of offenses for sentencing purposes in *Abeokuto v. State*, 391 Md. 289, 352-54 (2006), and explained the mechanics of the required evidence test:

> The doctrine of merger of offenses for sentencing purposes is premised in part on the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution, applicable to state court proceedings via the Fourteenth Amendment. *Dixon v. State*, 364 Md. 209, 236, 772 A.2d 283, 299 (2001) (Citations omitted). The applicable standard for determining whether one offense merges into another is what is often called the "required evidence test," *McGrath v. State*, 356 Md. 20, 23, 736 A.2d 1067, 1068–69 (1999) (Citations omitted); but, it is also known as the "same evidence test," "Blockburger test," or "elements test." *Dixon*, 364 Md. at 237, 772 A.2d at 299–300. In *McGrath, supra*, we summarized the required evidence test as follows:
>
> > The required 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. Stated another way, the required evidence is that which is minimally necessary to secure a conviction for each [ ] offense. If each offense requires proof of a fact which the other does not, or in other words, if each offense contains an element which the

> other does not, there is no merger under the required evidence test even though both offenses are based upon the same act or acts. But, where only one offense requires proof of an additional fact, so that all elements of one offense are present in the other, and where both offenses are based on the same act or acts, . . . merger follows . . . .
>
> * * *
>
> When applying the required evidence test to multi-purpose offenses, *i.e.*, offenses having alternative elements, a court must examine the alternative elements relevant to the case at issue. (Internal quotations and citations omitted).

McGrath, 356 Md. at 23–24, 736 A.2d at 1068–69 (quoting *State v. Lancaster*, 332 Md. 385, 391–392, 631 A.2d 453, 456–57 (1993)). When a merger is required, separate sentences are normally precluded; instead, a sentence may be imposed only for the offense having the additional element or elements. *See, e.g.*, *Dixon*, 364 Md. at 237, 772 A.2d at 299 (citing *Nightingale v. State*, 312 Md. 699, 702, 542 A.2d 373, 374 (1988)); *McGrath*, 356 Md. at 24, 736 A.2d at 1069 (Internal quotations omitted). "[W]here there is a merger of a lesser included offense into a greater offense, we are not concerned with penalties — the lesser included offense generally merges into and is subsumed by the greater offense regardless of penalties." *Dixon*, 364 Md. at 238, 772 A.2d at 300 (citing *Spitzinger v. State*, 340 Md. 114, 125, 665 A.2d 685, 690 (1995) and *Simms v. State*, 288 Md. 712, 722–23, 421 A.2d 957, 963 (1980)) (Emphasis in original); *see also State v. Lancaster*, 332 Md. at 404–07, 631 A.2d at 463–64.

In *Moore v. State*, 198 Md. App. 655 (2011), we observed that whether merger is mandated by the required evidence test "'is generally determined by reviewing the charging documents rather than the actual trial evidence.'" *Id*. at 700 (quoting *Ingram v. State*, 179 Md. App. 485, 492 (2008)). In *Moore*, we said: "When applying the required evidence test, it is clear that the crimes of issuing counterfeit United States currency and theft are not the 'same offense,' nor is uttering and attempted theft." *Id*.

The theft charged in Count 11 in this case appears to fall within CR § 7-104(b), which provides: "A person may not obtain control over property by willfully or knowingly using deception, if the person: (1) intends to deprive the owner of the property; . . . ."

The counterfeiting offense charged in Count 7 was based upon CR § 8-601(b), which provides: "A person may not knowingly, willfully, and with fraudulent intent possess a counterfeit of any of the items listed in [§ 8-601(a), which includes a "check" as listed in § 8-601(a)(2)]." Clearly, these two offenses each require proof of at least one element that the other does not require. The offense charged in Count 11 requires proof of obtaining control over property with intent to deprive the owner (which is not a required element of Count 7); and the offense charged in Count 7 requires proof of possession of a counterfeit item, in this case a counterfeit check (which is not a required element of Count 11). Counts 7 and 11 do not merge under the required evidence test.

Count 8 charged appellant with "issu[ing] to Ace Check Cashing as true, a counterfeit M&T Bank check #8255 from Melvin Bradley's account" on or about April 5, 2013, in violation of CR § 8-602(a), which provides: "A person, with intent to defraud another, may not issue or publish as true a counterfeit instrument or document listed in [CR § 8-601(a)]." As with Count 7, the offense charged in Count 8 included an element — issuing a counterfeit instrument as true with intent to defraud — that was not required for proof of theft as charged in Count 11. And Count 11 required proof of obtaining control over property with intent to deprive the owner (which is not a required element of Count 8). Consequently, Counts 8 and 11 do not merge under the required evidence test.

But Count 7 *does* merge into Count 8 under the required evidence test because all of the elements required to prove a violation of CR § 8-601(b) are necessarily required to prove a violation of CR § 8-602. Count 8 required proof of "issuing as true" the counterfeit item in addition to all of the elements required under Count 7 (proof of possession of a counterfeit item with fraudulent intent).[8]

When the merger is required under the required evidence test, the lesser included offense merges into the greater offense, and a sentence is imposed only for the offense having an additional element or elements, regardless of the penalties carried by the respective offenses. *Dixon v. State*, 364 Md. 209, 238 (2001)(and cases cited therein); *McGrath v. State*, 356 Md. 20, 24 (1999); *Cortez v. State,* 104 Md. App. 358, 369 (1995). Consequently, under the required evidence test, because there are more elements to be proved for the offense charged in Count 8, the trial court should have imposed a sentence on that count and then merged the conviction of the offense charged in Count 7 for sentencing purposes. After merger, no additional sentence — not even a concurrent sentence — should have been imposed with respect to Count 7. To correct appellant's sentences on these two counts, we shall vacate the sentence on Count 7, and the sentence that was imposed on Count 8 remains of record.

[8]In its brief, the State, applying a different analysis, agrees that "there should only be one sentence for the convictions on Counts 7 and 8." Without expressly analyzing whether these two counts merge under the required evidence test, the State cites our holding in *Stewart-Bey v. State*, 218 Md. 101, 129 (2014), and argues that the counts support only one sentence because "they arose from the same transaction."

Count 10, like Count 8, charged appellant with a violation of CR § 8-602(a), which provides: "A person, with intent to defraud another, may not issue or publish as true a counterfeit instrument or document listed in [CR § 8-601(a)]." As we explained above (relative to Count 8), a conviction of violating this statute does not merge with the Count 11 theft conviction under the required evidence test.

But we concluded in *Moore* that it was "necessary to merge [Moore's] convictions for uttering . . . into her conviction for attempted theft . . . for sentencing purposes under the rule of lenity." *Id*. at 703. That appears to be the reason the trial court concluded that Count 11 merges into Count 10 for sentencing purposes. We agree that these two counts merge under the rule of lenity.

In contrast to the merger rule applicable to mergers under the required evidence test, in cases where the merger is required by the rule of lenity, the Court of Appeals has focused on the maximum penalty rather than the number of elements to determine which count merges into the other. When the rule of lenity applies, the offense carrying the lesser maximum penalty ordinarily merges into the offense carrying the greater maximum penalty. *Miles v. State*, 349 Md. 215, 229 (1998). The *Miles* Court explained, *id*. at 221:

> When merger is not based upon the required evidence test, and therefore neither offense is the greater in terms of elements, the offense carrying the highest maximum authorized sentence is ordinarily considered to be the greater offense. Thus, "the offense carrying the lesser maximum penalty merges into the offense carrying the greater penalty." *Williams v. State, supra*, 323 Md. at 322, 593 A.2d at 676.

In this case, the maximum penalty for a violation of CR § 7-104 when the property has a value of less than $1,000.00 (as charged in Count 11) is imprisonment of up to 18

months pursuant to CR § 7-104(g)(2), unless the enhanced penalty applicable pursuant to CR § 7-104(g)(5) — for a defendant who has multiple prior convictions — increases the maximum penalty to 5 years. The maximum penalty for a violation of CR § 8-602 (as charged in Count 10) is imprisonment of 10 years. Consequently, the trial court correctly merged the conviction on Count 11 into the conviction on Count 10 for sentencing purposes and imposed no additional penalty with respect to Count 11.

Appellant argues, in the alternative, that all of the convictions should have merged for sentencing purposes because there was insufficient evidence to establish that the offenses relative to check #8255 arose from a transaction distinct from the conduct that supported the charges relative to check #8256. The State responds that the copies of the checks from the records of M&T Bank reflect separate dates, and that supports a finding that the two checks were cashed on two separate occasions. In appellant's reply brief, he asserts that "[t]he State's argument here rests on [a] fundamentally invalid premise: its reliance on State's Ex. 5. This exhibit was marked for identification only and was never introduced into evidence."

Appellant is correct that State's Exhibit 5 was not admitted. State's Exhibit 6 was admitted, however, and it includes photocopies of the front and back of both checks 8255 (dated April 2, 2013) and 8256 (dated (April 5, 2013). The State asserts that there was sufficient evidence to support a finding that the check that was the basis of Count 10 was presented on a separate date from the check that was the basis of Counts 7 and 8, and therefore, the evidence supports two separate sentences. We agree with the State that the evidence, although minimal, was sufficient to establish that Counts 8 and 10 related to

different checks and conduct undertaken by appellant on different days; consequently, those convictions do not merge for sentencing purposes.

III. Appellate issues as to Case No. 810

Appellant contends that the charges in Case No. 810 — which was tried subsequent to his convictions in Case No. 410, in which the theft victims were the same persons — were barred by double jeopardy, and also that there was insufficient evidence to support his theft convictions in that Case No. 810.

A. Double jeopardy

Appellant makes the following argument:

> In District Court Case No. 0H00068299 [which later became Cases Nos. 410 and 810], the State alleged a single act of theft. Mr. Suire was charged with theft of jewelry and checks from Mrs. Waller and Mrs. Mattox from their home on a single date, April 18th. When the State's Attorney brought these cases to the Circuit Court, however, this single case was split into two. . . .
>
> In both cases, the allegations in the charging documents as to the dates of the offenses were all stated in terms of "on or about." Indeed, in [Case No.] 810 Mr. Suire was ultimately convicted and sentenced only for a theft scheme alleged to have covered both April 12th and 13th . . . . "On or about" April 11th, 12th, or 13th, without more specificity, in two charging documents alleging theft from the same place must, for purposes of determining double jeopardy, be treated as the same date.
>
> Moreover, the proof in the two cases, as well as the genesis of both cases in the very same District Court Statement of Charges, also established at most one possible act of theft, and that was on April 13, 2013. . . .
>
> The prosecution in 810 was barred by double jeopardy as a matter of law because Mr. Suire had already been convicted of stealing property from Mrs. Waller and Mrs. Mattox's home on or about April 13, 2013. The State cannot multiply theft convictions by sequentially prosecuting a defendant for

> different items of property allegedly taken from the same people in the same place at the same time. This offends the single larceny doctrine.

Appellant's version of the facts does not consider all evidence and all inferences therefrom in a light most favorable to the prevailing party (*i.e.*, the State). Stacey Scott testified that appellant gave her the rings — that she later pawned — "about two weeks before [she was arrested on April 17]," which would support a finding that appellant gave her the rings sometime around April 3. And the pawn shop records supported a conclusion that, on April 11, 2013, Stacey Scott sold the rings stolen from Ms. Waller and Ms. Mattox. There was also evidence to support a finding that appellant had given Stacey Scott checks to cash that were purportedly signed by Ms. Waller on April 12 and April 13. Appellant's insistence that there was "at most one possible act of theft, and that was on April 13, 2013," is not supported by a view of the evidence in a light most favorable to the State, and is contradicted by evidence that the jewelry was not only stolen but also pawned by April 11. Furthermore, the District Court Statement of Charges that appellant contends is the "genesis" of these cases gave the date of theft as April 18, which was after appellant was arrested — clearly, April 18 was not the actual date of the thefts involved in Case Nos. 810 and 410.

In *Kelley v. State*, 402 Md. 745 (2008), the Court of Appeals discussed the single larceny doctrine, and the Court observed:

> The doctrine developed as a common law principle, and, as we pointed out in *White*, the issue of its application, as a common law principle, has arisen principally in three contexts:
>
> > "(1) whether a count in a charging document alleging that the defendant stole the property of several persons at the same time charges more than one offense and is therefore duplicitous; (2)

> **whether a prosecution, conviction, or sentencing for stealing the property of one person bars, under double jeopardy principles, the prosecution, conviction, or sentencing for having stolen the property of another person at the same time**; and (3) whether, when the property of different persons is stolen at the same time, the values of the separate items of property may be aggregated to raise the grade of the offense or the severity of the punishment, to the extent that either is dependent on the value of the property taken."

Kelley, 402 Md. at 749 (emphasis added) (quoting *State v. White*, 348 Md. 179, 182 (1997)).

It is the second category at issue in the instant case, according to appellant. The Court in *Kelley* further explained that the critical point of analysis is whether the takings were part of a single scheme or a continuing course of conduct. The Court stated:

> Two things are clear from *White*, and most particularly from our footnote 5 in the *White* Opinion, see *ante*. First, when considering whether the theft of multiple items of property, at the same time or at different times, from the same owner or from different owners, constitutes one offense or separate offenses (and with that, whether the value of the different items can be aggregated or not aggregated), **the ultimate criterion is whether the separate takings were part of a single scheme or continuing course of conduct.** If so, one offense must be charged and the values may be aggregated to determine whether the offense is a felony. **To the extent that is not the case, the takings constitute separate offenses** and aggregation of values is permissible only with respect to the takings included in each of the respective separate offenses.
>
> **The second lesson from *White* is that the determination of whether multiple takings were part of a single scheme or course of conduct, for any purpose other than resolving the sufficiency of the charging document, is a factual matter that must be based on evidence.** We observed there that the single larceny doctrine "rests on the notion that the separate takings are all part of a single larcenous scheme and a continuous larcenous act, and, when the evidence suffices to establish that fact, directly or by inference, most courts have had no problem applying the doctrine." *White*, 348 Md. at 188–89, 702 A.2d at 1268. (Emphasis added). The question, then, is whether the State has

> sufficiently established beyond a reasonable doubt that there was, or, in this case, was not, a single larcenous scheme or course of conduct.
>
> **This is necessarily a fact-intensive matter, and**, to the extent that it is influenced by the defendant's intent, one that, **in most instances, must be determined on the basis of inference**.

Kelley, 402 Md. at 756-57 (emphasis added) (footnotes omitted).

We, too, discussed *White* in *Dyson v. State*, 163 Md. App. 363, 376-77 (2005), where we stated:

> The Court in *White* observed that defining the single larceny doctrine is easier than determining when it applies. "[A]lthough '[t]he principles are easily stated and understood . . . application of the doctrine becomes problematic when applied to the infinite variety of circumstances that can arise.'" *Id*. at 188, 702 A.2d 1263 (quoting *Richardson v. Commonwealth*, 25 Va.App. 491, 495, 489 S.E.2d 697 (1997)). When the facts show directly or by inference that "the defendant's conduct, of taking several items of property at one time, constitutes a single criminal act," the doctrine applies. *White, supra*, 348 Md. at 189, 702 A.2d 1263.[. . .]
>
> In *White*, the Court emphasized, however, that **the single larceny doctrine does not apply "[w]here the facts clearly would have indicated that separate and distinct thefts were intended and accomplished."** 348 Md. at 192 n. 5, 702 A.2d 1263.

(Emphasis added.)

Here, the State charged appellant with committing separate thefts. In Case No. 810, the State introduced evidence that, at some time prior to April 13, 2013, appellant stole two checks from Ms. Waller and Ms. Mattox, forged Ms. Waller's signature thereon, and instructed Stacey Scott to cash the two forged checks at a bank on April 12 and April 13, 2013. According to Ms. Scott's testimony, appellant wrongfully obtained $1,534 pursuant to this theft. In Case No. 410, the State introduced evidence that, at some time prior to

April 11, 2013 (and, according to Stacey Scott's testimony, as early as April 3), appellant stole rings belonging to Ms. Waller and Ms. Mattox, and instructed Stacey Scott to sell them at a pawn shop. Based on this evidence, considered in the light most favorable to the prosecution, the State proved that the single larceny doctrine does not apply because there was clearly more than a single larceny.

It follows that double jeopardy principles did not "bar" the prosecution of appellant for stealing the checks despite the fact that he had already been prosecuted for — and convicted of — stealing the rings. Appellant's argument in his brief — that "double jeopardy as a matter of law" attached "because Mr. Suire had already been convicted of stealing property from Mrs. Waller and Mrs. Mattox's home on or about April 13, 2013" — glosses over the fact that the two cases dealt with different property, stolen at different times. The evidence was sufficient to prove that separate and distinct thefts were committed.

B. Sufficiency of evidence

Appellant contends that there was insufficient evidence in Case No. 810 to sustain his convictions for theft. In support of this claim, appellant acknowledges that "Mrs. Mattox testified that the signatures on the checks were not her mother's signature." But appellant points to Mrs. Waller's signature exemplar, admitted as defense Exhibit 3, and he contends that the exemplar "belie[d] the claim" by Ms. Mattox that the stolen checks were not actually signed by Ms. Waller.

The short answer to this contention is that the jury was obviously not persuaded by appellant's view of this evidence, and this Court does not second-guess a jury's fact determinations. As we said in *Steward v. State*, 218 Md. App. 550, 558-59 (2014):

> When a question before this Court requires our review of the sufficiency of the evidence to support a conviction, we consider, "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Bordley v. State*, 205 Md. App. 692, 716, 46 A.3d 1204 (2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)); *accord Smith v. State*, 415 Md. 174, 184, 999 A.2d 986 (2010); *see also Breakfield v. State*, 195 Md. App. 377, 392–393, 6 A.3d 381 (2010) (opining that the limited question before this Court is not "whether the evidence should have or probably would have persuaded the majority of fact finders but only whether it possibly could have persuaded any rational fact finder.") (citation omitted) (emphasis in original).
>
> This Court defers to the "unique opportunity" of the fact-finder to "view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses." *Bordley*, 205 Md. App. at 717, 46 A.3d 1204 (citing *Smith*, 415 Md. at 185, 999 A.2d 986). We further decline to second guess any reasonable inferences drawn by the fact-finder, or to reweigh the fact-finder's resolution of conflicting evidence. *Id*. "If the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt,' then we will affirm the conviction." *Bible v. State*, 411 Md. 138, 156, 982 A.2d 348 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750, 720 A.2d 323 (1998)).
>
> We independently assess the evidence presented in the instant case to determine, *de novo*, whether it was legally sufficient to sustain appellant's convictions. *See, e.g.*, *Walker v. State*, 206 Md. App. 13, 41, 47 A.3d 590 (2012)(quoting *Polk v. State*, 183 Md. App. 299, 306, 961 A.2d 603 (2008), for the proposition, "[a]n assessment of the legal sufficiency of the evidence is not an evidentiary issue but a substantive issue, with respect to which an appellate court makes its own independent judgment, as a matter of law.").

At trial, appellant invited the jury to compare the known signature exemplar of Ms. Waller with the signatures on Checks No. 1037 and 1038. *See, e.g, Miller v. State*, 421 Md. 609, 622 (2011). Clearly, that ploy did not produce a verdict favorable to appellant. But that is not a basis for appellate relief.

SENTENCE ON COUNT 7 IN CASE NO. K13-0411 VACATED; ALL OTHER JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AS TO CASE NO. K13-0411 ARE AFFIRMED.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY IN CASE NO. K13-0410 AND CASE NO. K13-0810 ARE AFFIRMED.

COSTS TO BE PAID SEVEN-EIGHTHS BY APPELLANT AND ONE-EIGHTH BY WICOMICO COUNTY.