

Circuit Court for Baltimore County  
Case No. 03-K-15-3262

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2876

September Term, 2015

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WESLEY JOHN MOORE, JR.

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Beachley,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: October 2, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore County, Wesley John Moore, Jr., appellant, was convicted of home invasion, robbery with a dangerous weapon of Phillip Binder, first-degree assault of Binder’s wife Norma, and false imprisonment of Mrs. Binder. Moore contends that the court erred in imposing separate sentences for the convictions of first-degree assault and false imprisonment, and in admitting DNA evidence. For the reasons that follow, we affirm.

On May 28, 2015, Mrs. Binder heard her doorbell ring. Opening her front door, Mrs. Binder saw Moore, who was wearing a mask and holding a gun. Moore opened the storm door, entered the home, and struck Mrs. Binder three to four times on her head with the gun. After stating “I’m going to put you in the closet,” Moore forced Mrs. Binder into the hallway closet and closed the closet door behind her. When Mr. Binder emerged from his den, Moore struck him on his head with the gun and asked for the key to his Lexus automobile. Mr. Binder retrieved the key and gave it to Moore, who ordered Mr. Binder to open the garage door. After Mr. Binder “hit the button” for the garage door, Moore “took off,” and Mr. Binder called 911.

Following Moore’s arrest, police discovered blood on his left shoe and on the Lexus. Testing revealed that the DNA profile of the blood on the shoe was consistent with Mrs. Binder’s DNA, and the DNA profile of the blood on the Lexus matched Mr. Binder’s DNA.

Following the swearing of the jury, Moore moved *in limine* to exclude the DNA evidence on the ground that the State failed to provide him with the evidence at least thirty days prior to trial as required by Md. Code (1974, 2013 Repl. Vol., 2014 Supp.), § 10-915(c)(2) of the Courts and Judicial Proceedings Article (“CJP”). Defense counsel argued:

I would object. I wanted jeopardy attached before that, because the reason for my objection is that I believe that the notice requirements were not met, and the State could simply ask for a one-month postponement. They would then meet the requirements and be able to offer the DNA. It's my position that they have not met it.

I would indicate to the [c]ourt there's no doubt in my mind that [the prosecutor] forwarded the materials to me as quickly as she got them. The problem is that was, if I remember correctly, she sent them to me by email one week ago today, last Thursday. . . . My point is that even that one week is insufficient. The State is required to give me one month notice. They did not meet that requirement, and I am therefore objecting to the introduction of the DNA.

The court subsequently denied the motion.

The following day, defense counsel asked to “put [on the record] a little bit of history as far as the DNA is concerned.” Defense counsel stated:

In this case, I had heard or saw in the discovery or something, I was under the impression that the State was running DNA tests, so I did not wait for the notice. I immediately filed several months ago a demand for the entire packet thinking that when the person was preparing the report, they could just prepare the whole packet and submit it all at the same time.

The court declined to “revisit [its] earlier ruling,” and subsequently admitted the DNA evidence.

Following the close of the evidence, Moore was convicted of the offenses. The court subsequently sentenced him to 25 years' incarceration for the home invasion, a concurrent 20 years' incarceration for the robbery with a dangerous weapon, a concurrent 25 years' incarceration for the false imprisonment, and a consecutive 15 years' incarceration for the first-degree assault.

Moore first contends that the court erred in imposing separate sentences for the convictions of first-degree assault and false imprisonment, because “[u]nder the

circumstances of this case, the two sentences merge both under the rule of lenity[] and as a matter of fundamental fairness.” We disagree.

In *Howard v. State*, 232 Md. App. 125, *cert. denied*, \_\_\_ Md. \_\_\_, 162 A.3d 842 (2017), this Court stated that the rule of lenity “does not apply to two common law crimes,” and “false imprisonment and assault in any degree, including first-degree assault, are common law crimes.” 232 Md. App. at 171. This Court also stated that the doctrine of fundamental fairness does not require the merger of a conviction for false imprisonment into a conviction for first-degree assault where “the assault occurred first in time, followed by the false imprisonment,” and “the acts supporting [the] conviction for false imprisonment were not part and parcel or an integral component of those forming the basis for [the] conviction for first-degree assault.” *Id.* at 172-73 (quotations omitted). Here, Moore’s assault of Mrs. Binder occurred first in time, followed by the false imprisonment, and the forcing of Mrs. Binder into the closet was not part and parcel, or an integral component of, Moore’s striking of Mrs. Binder on her head with the gun multiple times. Hence, the court did not err in imposing separate sentences for the convictions.

Moore next contends that the court erred in admitting the DNA evidence for the following reasons:

DNA evidence and the underlying science are extraordinarily complex. The materials listed in [CJP] § 10-915(c) require substantial time and effort to comprehend, and in many cases an attorney served with a notice of intention to rely upon such materials will find it necessary to retain and schedule an expert. Due to the time-consuming nature of preparation for a case involving DNA evidence, it is of particular importance that compliance with the notice provision of the statute be enforced. The strongest reasonable disincentive for failure to comply is exclusion of the evidence. [E]xclusion of DNA

evidence for failure to afford sufficient notice would send the message that the statute means what it says, and adequate notice must be afforded.

In *Ross v. State*, 78 Md. App. 275 (1989), this Court stated:

The discovery law is not an obstacle course that will yield a defendant the windfall of exclusion every time the State fails to negotiate one of the hurdles. Its salutary purpose is to prevent a defendant from being surprised. Its intention is to give a defendant the necessary time to prepare a full and adequate defense.

*Id.* at 286. *Accord Thomas v. State*, 397 Md. 557, 574-75 (2007).

Here, defense counsel did not contend that he was surprised by the DNA evidence, that he did not comprehend the evidence, that he intended to retain and schedule an expert to review the evidence, or that he had insufficient time to prepare a full and adequate defense. Indeed, defense counsel admitted that he had been aware for some time “that the State was running DNA tests.” The court was not required to give Moore the windfall of exclusion solely because the State failed to negotiate the hurdle set by CJP § 10-915(c)(2), and hence, the court did not abuse its discretion in admitting the evidence.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**