Circuit Court for Montgomery County
Case Nos. 131877C & 132607C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2072

September Term, 2017

RAMECE BOWERS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by, Thieme, J.

Filed: March 14, 2019

*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.

Ramece Bowers, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of 12 charges related to human trafficking. He was subsequently sentenced by the court to a total of 55 years of imprisonment, ten years suspended in favor of five years of supervised probation.[1] Appellant raises three questions on appeal, which we have slightly rephrased:

I. Did the trial court err by not merging appellant's various convictions under Maryland's three theories of merger?

II. Did the trial court err when it admitted appellant's accomplice's testimony because the testimony was not sufficiently corroborated?

III. Did the trial court err when it admitted into evidence certain bad acts?

For the reasons that follow, we shall affirm the convictions, vacate the sentences and remand for re-sentencing.

FACTS

The State's theory of prosecution was that between January 1 and April 10, 2017, appellant and his then girlfriend, E.K., sexually trafficked S.M., an 18-year-old woman with significant developmental delays and mental health issues. E.K. and her grandfather, two police officers with the Montgomery County Police Department, and both of S.M.'s

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[1] Appellant was convicted of two counts each (first act and last act) of felony human trafficking, Md. Code Ann., Criminal Law ("CL") §11-303(b)(2); benefitting financially from felony human trafficking, CL §11-303(e)(1); misdemeanor felony human trafficking, CL §11-303(a); benefitting financially from misdemeanor human trafficking, CL §11-303(e)(1); conspiracy to violate felony human trafficking law; and receiving earnings from a prostitute, CL §11-304.

parents testified for the State. The State also introduced evidence of electronic communications between appellant, E.K., and S.M. from several social media accounts, email accounts, and texts, as well as telephone calls appellant made from jail following his arrest. The theory of defense was E.K., not appellant, trafficked S.M., and S.M. was a willing participant in consensual sexual conduct. The defense produced no witnesses. Viewing the evidence in the light most favorable to the State, the following was elicited at appellant's trial.

E.K. testified that she met appellant when she was around 17 years old. She explained that she and her friend Monet had just been "kicked out" of her godmother's house, and Monet took her to live with appellant, who was Monet's friend. While the three lived together, both E.K. and Monet worked as prostitutes for appellant -- he advertised them on websites and they gave him the money they earned. Shortly thereafter, E.K. and appellant began an intimate relationship, and she and appellant moved into her grandfather's house. She became pregnant with his child. E.K. testified that appellant taught her how to find "dates" and recruit other women from websites on which appellant had several online accounts. Appellant also found dates for her, and he set the prices for different sex acts. At some point, appellant wanted her to get a large tattoo with his name across her chest because "I belong to him," so E.K. did. Although neither one of them had jobs, she sometimes made enough money prostituting to support herself and appellant, and they received money from other young women they recruited to work for them.

At the end of December 2016, she and appellant found S.M. on Facebook and invited her to E.K.'s grandfather's house where they smoked marijuana and asked if she

wanted to work for them. She agreed. A couple of days later, they set her up on a date, and E.K. testified about the first time S.M. had sex with a customer for money.

E.K. described how she and appellant found men for S.M. to have sex with, how appellant took naked pictures of E.K. and S.M. so he could post them on websites to find customers, and the process by which she brought customers to the house. Specifically, appellant told her to give the dates an address of a house a few down from her grandfather's house where she met them and then brought them to the house. She testified that appellant said "he wouldn't go get them because he wasn't supposed to be at the house and he didn't want to see my grandfather see him come out of the house." She further testified that once in the basement she would collect money from the men, after which S.M. would have sex with the men while E.K. was in another room of the basement. Sometimes appellant was present in the basement too. E.K. testified that appellant gave S.M. drugs, specifically cocaine and ecstasy, before the sexual encounters because he said "it will make her more willing." After the sexual encounters, E.K. gave the money to appellant.

During the time S.M. worked for E.K. and appellant, E.K. noticed that S.M. was really "all over the place" and "that made both of us mad because we couldn't figure out what was wrong with her." E.K. testified that appellant coerced her and S.M. to stay in the prostitution business by taking their shoes so they could not leave the house. Appellant also hit and threatened E.K., sometimes in S.M.'s presence, if she did not make money or find a customer. S.M. told E.K. that she was afraid of appellant, and at one point she wanted to go home. E.K. testified: "[Appellant] didn't want her to leave. He was like she needs to work. . . . She needs to make money to stay here[.]" E.K. testified that at some

point, she stole S.M.'s cell phone and gave it to appellant, explaining: "Because [appellant] said if we don't have her then you just have to make money. . . . So I was like I have her phone and he was like all right. Give it to me. So I did." E.K. testified that many nights she had sex with S.M. because appellant said, "we need to get her ready . . . for her dates[.]" At one point, they had two other young women who she and appellant wanted to work for them, Diamond and Aisha, but according to E.K., that arrangement did not work out because the two women wanted to "manage" S.M. for themselves.

Phillip K., E.K.'s grandfather, confirmed that E.K. moved into the basement of his house shortly after she met appellant. The basement had its own entrance through a sliding glass door. E.K. and appellant stayed at his house on and off throughout 2016. Between February and April of 2017, E.K. returned to her grandfather's house but appellant was not allowed to stay. Phillip K. testified that from late March until early April 2017, E.K. charged several hundred dollars-worth of pornographic movies to his credit card without his knowledge. On April 10, 2017, the police came to his house and retrieved a young woman named S.M. from his basement.

S.M.'s mother testified that she and her husband adopted S.M. from Guatemala when she was around seven years old. S.M. did not initially speak English and was placed in special education classes because of learning and emotional disabilities. S.M. took several prescribed medications and had been hospitalized ten times in the four years preceding appellant's trial. At the time of appellant's trial, S.M. was in a drug rehabilitation facility out of state.

From 2015 until 2017, S.M. lived at a residential educational facility for children with learning and emotional disabilities. Around March 17, 2017, when S.M. was 18 years old, she was placed in an independent living facility but failed to follow the rules and after a few days ran away. S.M.'s mother testified that sometime thereafter, S.M. returned home to live for several days, but on April 3rd, S.M. and two other young women (Diamond and Aisha) left the house together. S.M. was hospitalized on an emergency petition a few days later, and when S.M.'s mother visited her, S.M. was dirty, disheveled, not wearing any shoes, very angry, and disoriented. S.M.'s mother testified that S.M. was not taking her prescribed medication when she was not living at the independent living facility or at home. S.M. returned home again but after a few days ran away. S.M.'s parents identified several email addresses and cell phone numbers belonging to S.M. Using a cell phone tracking app, S.M.'s father determined that during the relevant time period she was generally at two locations: either E.K.'s grandfather's house or a motel by the Laurel racetrack.

Deputy Robert Balser testified that on April 10, 2017, he executed an emergency petition order for S.M. that her parents obtained. He and other officers arrived at E.K.'s grandfather's house and found her and E.K. hiding in the basement, barely clothed and wearing no shoes. Appellant was discovered hiding in another room of the basement. S.M. was taken to a hospital. The police did not arrest appellant or E.K. that day.

Detective Robert Johnson testified as an expert in the field of human trafficking and detection. He interviewed S.M. at the hospital where she told him what had happened at E.K.'s grandfather's house. The detective noted that S.M. "jumped around a lot in her conversation" and had "a very hard time recalling specifics[.]" He set up an electronic

surveillance of E.K.'s grandfather's house for several days and noted "a lot of people coming and going from the house at all hours." Appellant and E.K. were arrested leaving a motel on May 1, about three weeks after the police retrieved S.M. from the house. At the police station, appellant waived his *Miranda* rights[2] and, when asked about his relationship to E.K. and S.M., he told the police that he was "like a mentor to them[,]" that both women were "not smart" and had "mental health issues."

Detective Johnson spoke about common characteristics of a human trafficking ring, testifying that traffickers will often refer to themselves as mentors or parent-like figures to their worker-victims. He testified it was not uncommon for a sex worker to have her trafficker's name tattooed on her body or have "crown" tattoos. He also described, among other things, the hierarchy within a trafficking scheme and how sexual transactions are often facilitated. He explained that there is often a young woman who is most favored, trusted, and has been working the longest, and that she often takes on the responsibility of arranging "dates" so the trafficker can avoid detection. Ironically, she is also typically the most physically and emotionally abused by the trafficker to send a coercive message to the other sex workers.

During their investigation, the police obtained six cell phones, two from appellant, one from E.K., and three from E.K.'s grandfather's house. The police also executed search warrants for the many social media accounts of E.K., appellant, and S.M. Detective Johnson testified that based on information given to him by S.M., the user names and email

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

addresses associated with the accounts, and the profile picture on the accounts, he reviewed four social media accounts that belonged to appellant, three that belonged to E.K., and one that belonged to S.M. Detective Johnson testified that the communications on the accounts consisted of, among other things, arranging "dates with customers" and recruiting others into prostitution. S.M.'s Facebook cover photo showed two people holding hands with crown tattoos on their wrists. Based on the content on the cell phones and social media accounts, Detective Johnson believed that appellant and E.K. operated a human trafficking ring, setting up "dates" for S.M., who made money for them by having sex with the dates.

Calls appellant made from jail following his arrest were also introduced into evidence. In the calls, appellant speaks to various people about, among other things: deleting all of his online accounts; taking S.M. out to dinner, "work [some] magic on her," to "extort" a promise from S.M.; and stopping S.M. from going to court.

DISCUSSION

I.

Appellant argues that the trial court erred when it failed to merge his 12 convictions. He sets forth six merger arguments. We shall first set out the applicable law and then address each argument in turn.

A. Merger Law

Md. Rule 4-345(a) provides that a "court may correct an illegal sentence at any time." Under that Rule, "[a] failure to merge a sentence is considered to be an illegal sentence[.]" *Pair v. State*, 202 Md. App. 617, 624 (2011) (quotation marks and citations omitted), *cert. denied*, 425 Md. 397 (2012). The illegality of not merging convictions

derives from the double jeopardy prohibition of the Fifth Amendment to the United States Constitution and Maryland common law. *Brooks v. State*, 439 Md. 698, 737 (2014) (citation omitted). Whether a sentence is illegal is a question of law subject to non-deferential appellate review. *State v. Crawley*, 455 Md. 52, 66 (2017) (citation omitted).

In Maryland, merger of convictions for sentencing purposes is based on one of three grounds: "(1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness." *Carroll v. State*, 428 Md. 679, 693-94 (2012) (quotation marks and citations omitted). The principal test for determining merger is the required evidence test, also known as the "*Blockburger* test."[3] *Washington v. State*, 200 Md. App. 641, 653 (2011) (quotation marks and citation omitted). The Court of Appeals recently reiterated the rules of the required evidence test, if each offense: "requires proof of a fact which the other does not, the offenses are not the same and do not merge. However, if only one offense requires proof of a fact which the other does not, the offenses are deemed the same, and separate sentences for each offense are prohibited." *Twigg v. State*, 447 Md. 1, 13 (2016) (quotation marks and citations omitted).

The second ground for merger, the rule of lenity, is "a common law doctrine that directs courts to construe ambiguous criminal statutes in favor of criminal defendants." *Alexis v. State*, 437 Md. 457, 484-85 (2014). When evaluating a claim for lenity:

> we look first to whether the charges "arose out of the same act or transaction," then to whether "the crimes charged are the same offense," [] and then, if the offenses are separate, to whether "the Legislature intended

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[3] *See Blockburger v. United States*, 284 U.S. 299 (1932).

> multiple punishment for conduct arising out of a single act or transaction which violates two or more statutes."

Id. at 485-86 (citations omitted). "It is a tool of last resort, to be rarely deployed and applied only when all other tools of statutory construction fail to resolve an ambiguity." *Oglesby v. State*, 441 Md. 673, 681 (2015) (citation omitted). It "serves only as an aid for resolving an ambiguity and it may not be used to create an ambiguity where none exists." *Tribbitt v. State*, 403 Md. 638, 646 (quotation marks and citation omitted), *cert. denied*, 555 U.S. 823 (2008).

The third ground for merger, fundamental fairness, requires us to look to whether the two crimes are "part and parcel" of one another, such that one crime is connected integrally to the other. *Monoker v. State*, 321 Md. 214, 223 (1990) (holding that although solicitation to burglarize is not always a lesser included offense of conspiracy to burglarize, under the circumstances presented, the crimes were "part and parcel" of each other and therefore merged under the doctrine of fundamental fairness). "This inquiry is 'fact-driven' because it depends on considering the circumstances surrounding a defendant's convictions, not solely the mere elements of the crimes." *Carroll*, 428 Md. at 695 (citation and footnote omitted). Finding merger under fundamental fairness is rare. *Id*. (footnote omitted). *See Latray v. State*, 221 Md. App. 544, 558 (2015) (noting "only two cases in Maryland that have required merger based solely on the principles of fundamental fairness — *Monoker*[, *supra*,] and *Marquardt v. State*, 164 Md. App. 95 (2005)").

B. Relevant Statutes

The two relevant statutes are CL §§ 11-303 and 11-304. The first statute, §11-303, is titled "**Human trafficking**" and provides:

> (a)(1) A person may not knowingly:
>
> (i) take or cause another to be taken to any place for prostitution;
>
> (ii) place, cause to be placed, or harbor another in any place for prostitution;
>
> (iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
>
> (iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
>
> (v) engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious physical harm[.]
>
> * * *
>
> **Minor status of victim**
>
> (b)(1) A person may not violate subsection (a) of this section involving a victim who is a minor.
>
> (2) A person may not knowingly take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to . . . perform a sexual act, sexual contact, or vaginal intercourse.
>
> **Penalty**
>
> (c)(1)(i) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the misdemeanor of human trafficking and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $5,000 or both.
>
> (ii) A person who violates subsection (a) of this section is subject to § 5-106(b) of the Courts Article.

> (2) A person who violates subsection (b) of this section is guilty of the felony of human trafficking and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding $15,000 or both.
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> * * *
>
> **Persons who benefit from participation or aiders or abettors to violations**
>
> (e)(1) A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection.
>
> (2) A person who knowingly aids, abets, or conspires with one or more other persons to violate any subsection of this section is subject to the same penalties that apply for a violation of that subsection.

The second statute, §11-304, is titled "**Receiving earnings of prostitute**" and provides:

> (a) A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to:
>
> (1) promote a crime under this subtitle;
>
> (2) profit from a crime under this subtitle; or
>
> (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle.
>
> **Penalty**
>
> (b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $10,000 or both.

C. Facts

Appellant was charged with 12 violations relating to the trafficking of S.M. between January 1, 2017 and April 10, 2017. Six counts relate to the first time appellant engaged

in trafficking of S.M. and six counts relate to the last time appellant engaged in trafficking of S.M. Specifically,

> Count 1 – felony human trafficking take/cause prostitution by force or coercion. CL §11-303(b)(2) (first act)
>
> Count 2 – felony human trafficking take/cause prostitution by force or coercion. CL §11-303(b)(2) (last act)
>
> Count 3 – benefitting financially from participating in a venture that violates subsection (b) of CL §11-303, a felony human trafficking law. CL §11-303(e)(1) (first act)
>
> Count 4 – benefitting financially from participating in a venture that violates subsection (b) of CL §11-303, a felony human trafficking law. CL §11-303(e)(1) (last act)
>
> Count 5 – misdemeanor human trafficking take/cause prostitution. CL §11-303(a) (first act)
>
> Count 6 - misdemeanor human trafficking take/cause prostitution. CL §11-303(a) (last act)
>
> Count 7 – benefitting financially from participating in a venture that violates subsection (a) of CL §11-303, a misdemeanor human trafficking law. CL § 11-303(e)(1) (first act)
>
> Count 8 – benefitting financially from participating in a venture that violates subsection (a) of CL §11-303, a misdemeanor human trafficking law. CL § 11-303(e)(1) (last act)
>
> Count 9 – conspiracy to violate human trafficking law, CL §11-303(a), take/cause prostitution. (first act)
>
> Count 10 – conspiracy to violate human trafficking law, CL §11-303(a), take/cause prostitution. (last act)
>
> Count 11 – receive earnings from a prostitute. CL §11-304(a) (first act)
>
> Count 12 – receive earnings from a prostitute. CL §11-304(a) (last act)

Appellant was convicted of all 12 counts and sentenced to a total of 55 years of active incarceration, specifically: 25 years of imprisonment on count 1; a concurrent 25 years on count 2; a concurrent ten years on count 3; a concurrent ten years on count 4; a consecutive ten years on count 5; a concurrent ten years on count 6; a consecutive ten years on count 7; a concurrent ten years on count 8; a consecutive ten years on count 9; a concurrent ten years on count 10; a consecutive ten years all suspended on count 11; and a concurrent ten years all suspended in lieu of five years of probation on count 12.

We now turn to appellant's merger arguments.

1.

Appellant's first merger argument concerns all 12 counts. Appellant argues that because neither CL §§ 11-303 nor 11-304 indicate that "each violation demands a separate penalty[,]" the rule of lenity requires that his six statutory convictions relating to the first time he trafficked S.M. merge into the same six statutory convictions relating to the last time he trafficked S.M. Appellant argues this is particularly true because the counts allege the same victim and the same location. The State disagrees, as do we.

We can quickly dispose of this argument. The first step in a lenity claim is to look to whether the charges "arose out of the same act or transaction." *Alexis*, 437 Md. at 485. Even though the dates on which the first and last act of sex trafficking occurred are not specified in the criminal information, the first time appellant trafficked S.M. did not arise out of the last time he trafficked S.M. Therefore, under the rule of lenity appellant's last act convictions (the even numbered counts) do not merge into appellant's first act convictions (the odd number counts).

We note that counts 9 and 10 are common law conspiracy counts but their penalties are codified at CL §11-303(e)(2). The rule of lenity is a rule of statutory construction and does not apply if both crimes are common law crimes. *See Monoker*, 321 Md. at 219 ("That rule [of lenity] is a rule of statutory construction, and since both solicitation and conspiracy are common law crimes, it is illogical and improper to couch our decision in terms of a rule designed as an aid to statutory interpretation."); *McGrath v. State*, 356 Md. 20, 25 (1999) ("The rule of lenity, *applicable to statutory offenses* only, provides . . ." (emphasis supplied). We shall further address counts 9 and 10, however, in part **I.C.6.**, *infra*.

2.

Appellant's next merger argument focuses on counts 3, 4, 7, and 8, each of which allege violations of CL §11-301(e)(1). Appellant argues that under the rule of lenity or fundamental fairness count 7 merges into count 3 and count 8 merges into count 4. We are unable to follow the strained reasoning appellant advances to support his merger argument. Rather than try to wade through the confusion, we shall follow Alexander the Great and slice the Gordian knot and agree, as does the State, that under the rule of lenity those counts merge for the following reason.

As stated above, CL §11-303(e)(1) provides that: "A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection." Counts 3 and 4 allege violations described in subsection (b) (which criminalizes felony human trafficking) while counts 7 and 8 allege violations described in subsection (a) (which criminalizes

misdemeanor human trafficking). As the State concedes, count 7 arises out of the same act (first act) as count 3 (first act), and count 8 arises out of the same act (last act) as count 4 (last act). Because it is unclear whether the legislature intended to punish a violation of CL §11-303(e)(1) separately from the underlying violation (either subsection (a) or (b)), the rule of lenity operates to merge those convictions. Therefore, for sentencing purposes appellant's conviction on count 7 merges into his conviction on count 3, and his conviction on count 8 merges into his conviction on count 4.

3.

Appellant's next merger argument focuses on counts 5, 6, 7, and 8. Appellant argues that under the doctrine of fundamental fairness his sentence on count 7 merges into count 5, and his sentence on count 8 merges into count 6. Citing *Pair*, 202 Md. App. at 625, the State argues that appellant has not preserved his fundamental fairness argument for our review because he did not raise it below, but in any event, appellant's argument is meritless because the acts underlying the convictions on counts 7 and 8 are different and separate from the acts underlying the convictions on counts 5 and 6. We are persuaded that the argument is preserved but agree that it is meritless.

Contrary to the State's argument, appellant's merger argument under fundamental fairness is preserved for our review. In *Pair*, *supra*, we declined to review an argument raising merger by fundamental fairness where the argument was brought as an appeal from a motion to correct an illegal sentence, a collateral proceeding allowed under Md. Rule 4-345(a). *Pair*, 202 Md. App. at 649. An appellant may, however, raise for the first time in a direct appeal an illegal sentence argument under the fundamental fairness test. *See Potts*

v. State, 231 Md. App. 398, 414 (2016) ("Although a defendant may attack an illegal sentence by way of direct appeal, the fundamental fairness test does not enjoy the same 'procedural dispensation of [Md.] Rule 4-345(a)' that permits correction of an illegal sentence without a contemporaneous objection.") (footnote omitted) (quoting *Pair*, 202 Md. App. at 649)). *See also Latray*, 221 Md. App. at 555 (holding that appellant's fundamental fairness argument is preserved for our review where raised for the first time on direct appeal). Even though appellant's fundamental fairness argument is preserved for our review, appellant's argument is meritless because the crimes are not "part and parcel" of each other.

Counts 5 and 6 allege violations of CL §11-303(a), that appellant took or detained S.M. for the purpose of engaging in prostitution. Counts 7 and 8 allege violations of CL §11-303(e)(1), that appellant benefitted financially from a venture that includes acts described in CL §11-303(a). As the State correctly points out, each section criminalizes different acts and each has a required element that the other does not. CL §11-303(a) is directive and requires that appellant take or detain another whereas CL §11-303(e)(1) requires that appellant benefit financially from a prostitution venture but does not require that appellant direct anything in that venture. Because the charges are not part and parcel of each other, merger under fundamental fairness is unwarranted.

4.

Appellant's next merger argument focuses on counts 7, 8, 11, and 12. Appellant argues that under the required evidence test his convictions for receiving money from the earnings of a person engaged in prostitution (counts 11 and 12 under CL §11-304) merge

into his convictions for benefitting financially from a venture that involves prostitution (counts 7 and 8 under CL §11-303(e)(1)). The State agrees, as do we.

As set out above, count 7 charged appellant with benefitting financially from participating in a venture that violates the misdemeanor human trafficking laws based on the first time appellant trafficked S.M., and count 8 charged appellant with the same crime based on the last time he trafficked S.M. Count 11 charged appellant with receiving earnings from the first time S.M. engaged in prostitution, and count 12 charged appellant with the same crime based on the last time S.M. engaged in prostitution. The transactions in counts 7 and 11 (first act) and counts 8 and 12 (last act) are the same. Because each of the elements in counts 11 and 12 are wholly consumed in counts 7 and 8, the State concedes, as do we, that count 11 merges into count 7, and count 12 merges into count 8.

5.

Appellant's next merger argument concerns counts 1 through 8 and all three merger theories. Specifically, appellant argues that each of his CL §11-303(e)(1) convictions (counts 3, 4 and 7, 8) merge into the section those convictions reference, either CL §§11-303(a) or (b) (counts 1, 2 or 5, 6, respectively). Specifically, appellant argues that count 3 merges into 1, count 4 merges into count 2, counts 7 merges into count 5, and count 8 merges into count 6. The State disagrees, as do we.

We addressed part of appellant's argument in section **I.C.3.**, *supra*. In that section we held that counts 5 and 6 do not merge into counts 7 and 8 under the doctrine of fundamental fairness because counts 5 and 6 allege violations of CL §11-303(a), that appellant took or detained S.M. for the purpose of engaging in prostitution, and counts 7

and 8 allege violations of CL §11-303(e)(1), that appellant benefitted financially from a venture that includes acts described in CL §11-303(a). As we reasoned above, because CL §11-303(a) is directive and requires that appellant specifically take or detain another whereas CL §11-303(e)(1) requires that appellant benefit financially from a prostitution venture but does not require that appellant direct anything in the prostitution venture, the charges do not merge under the theory of fundamental fairness as we stated above, or under the required evidence test or rule of lenity.

The above reasoning also applies to counts 1 through 4. Counts 1 and 2 allege violations of CL §11-303(b), that appellant took or detained S.M. for the purpose of engaging in prostitution by force or coercion, and counts 3 and 4 allege violations of CL §11-303(e)(1), that appellant benefitted financially from a venture that includes acts described in CL §11-303(b). Because CL §11-303(b) is directive and requires that appellant specifically take or detain another by force or coercion to engage in prostitution whereas CL §11-303(e)(1) requires that appellant financially benefit from a prostitution venture but does not require that appellant direct anything in the prostitution venture or that appellant do so by force, the charges do not merge under the required evidence test, rule of lenity, or fundamental fairness.

6.

Appellant's last merger argument concerns counts 5, 6, 9, and 10. Appellant argues that under the rule of lenity his convictions for conspiring to violate CL §11-303(a) (counts

9 and 10) should merge into his convictions for the consummated violations of those conspiracies (counts 5 and 6). The State disagrees, as do we.

Conspiracy is defined "as the combination of two or more people to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Monoker*, 321 Md. at 221. "The gist of conspiracy is the unlawful agreement" rather than each of its criminal objectives. *Id.* "Maryland appellate courts have consistently declined to merge a conviction for conspiracy with a conviction for the substantive offense under the required evidence test or the rule of lenity." *Carroll*, 202 Md. App. at 516 (quotation marks and citations omitted). Therefore, appellant's argument that his conspiracy counts should merge into their consummated violation is without merit.

Although not raised by appellant, the State concedes that appellant's conspiracy convictions do merge with each other. We agree.

"It is well settled in Maryland that only one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit." *McClurkin v. State*, 222 Md. App. 461, 490 (quotation marks and citations omitted), *cert. denied*, 443 Md. 736, *cert. denied*, 136 S. Ct. 564 (2015). *See also Mason v. State*, 302 Md. 434, 445 (1985) (a "conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy."). It is "necessary to analyze the nature of the agreement to determine whether there is a single conspiracy or multiple conspiracies." *Mason*, 302 Md. at 445 (citation omitted). It is the State's burden to prove more than one conspiracy. *Savage v. State*, 212 Md. App. 1, 14-15 (2013) (citations omitted).

Here, the State proved a conspiracy to exploit S.M. for sex trafficking purposes. The State proved only one continuous conspiracy that was evidenced by the multiple acts or agreements done in furtherance of it. Accordingly, appellant's conspiracy convictions must merge. "Where a defendant is found guilty of conspiracy to commit two crimes, the crime that carries the more severe penalty is the guideline offense for purposes of sentencing." *Campbell v. State*, 325 Md. 488, 507 n.11 (citation omitted). Appellant was sentenced to a consecutive ten-year term of imprisonment on count 9 and a concurrent ten-year term of imprisonment on count 10. Accordingly, we shall merge appellant's sentence on count 10 into his sentence on count 9.

7.

In summary, appellant's convictions that do not merge for sentencing purposes are counts 1-6 and 9. Citing *Twigg v. State*, 447 Md. 1 (2014), the State asks us to remand to the circuit court for resentencing and allow the circuit court to preserve appellant's originally intended sentence of 55 years of active incarceration plus five years of probation following his release from prison.

In *Twigg*, the Court of Appeals addressed two re-sentencing concerns. First, after analyzing Md. Rule 8-604, which provides the authority for an appellate court to remand for resentencing where it reverses a judgment for a sentencing error, the Court explicitly approved of the "propriety of resentencing on a greater offense upon merger for sentencing purposes of a lesser included offense." *Twigg*, 447 Md. at 20. We have addressed this point in section **I.C.6.**, *supra*, where we determined that appellant's two conspiracy

convictions merge and merged the lesser sentence (count 10) into the greater sentence (count 9).

Second, after analyzing Md. Code Ann., Cts. & Jud. Proc. Art., §12-702(b), which states that on remand, "[the court] may not impose a sentence more severe than the sentence previously imposed for the offense[,]" the *Twigg* Court held that this statute applies "not simply [to] one count in a multi-count charging document, but rather [to] the entirety of the sentencing package that takes into account each of the individual crimes of which the defendant was found guilty." *Id*. at 26-27. The Court reasoned and directed that "[a]fter an appellate court unwraps the [sentencing] package and removes one or more charges from its confines, the sentencing judge, herself, is in the best position to assess the effect of the withdrawal and to redefine the package's size and shape (if, indeed, redefinition seems appropriate)." *Id*. at 28 (quotation marks and citations omitted). The *Twigg* Court concluded that an appellate court could vacate all of the sentences so as to provide maximum flexibility on remand. The Court wrote:

> We do not intend this opinion to be read as precluding, in the appropriate case, vacation of all sentences originally imposed on those convictions and sentences left undisturbed on appeal, so as to provide the court maximum flexibility on remand to fashion a proper sentence that takes into account all of the relevant facts and circumstances. The only caveat . . . is that any new sentence, in the aggregate, cannot exceed the aggregate sentence imposed originally.

Id. at 30 n.14.

Appellant was originally sentenced to a total active sentence of 55 years of imprisonment and five years of probation upon his release from prison. After merging appellant's convictions for sentencing purposes, appellant's total active sentence is 45

years of imprisonment – 25 years of imprisonment on count 1, consecutive ten-year sentences on counts 5 and 9, and no probation. Under *Twigg*, we shall vacate all of appellant's sentences so as to provide the lower court with "maximum flexibility" to fashion a proper sentence, so long as it does not exceed the original aggregate sentence.

II.

Appellant argues that we must reverse his convictions because the testimony of his accomplice, E.K., was not sufficiently corroborated. Specifically, appellant argues that E.K. improperly authenticated the documentary evidence of various social media messages and jail calls, because corroborating evidence of an accomplice's testimony must be authenticated by a source independent of the accomplice. The State argues that the documentary evidence, even if authenticated by E.K., was sufficient to corroborate her testimony, but even if we were to discount that evidence, her testimony was still sufficiently corroborated. We agree with the State and find no error by the trial court in ruling that E.K.'s testimony was sufficiently corroborated.

"The longstanding law in Maryland is that a conviction may not rest on the uncorroborated testimony of an accomplice." *In re Anthony W.*, 388 Md. 251, 264 (2005) (quotation marks and citation omitted). Maryland courts have "steadfastly adhered" to this rule since its adoption in 1911. *Woods v. State*, 315 Md. 591, 616 (1989). The reason for this rule is the belief that an accomplice's testimony is "contaminated with guilt" and his testimony should be regarded with caution because a defendant's life or liberty may be taken away by an accomplice who may have an ulterior motive for falsely testifying, such as seeking a reduced sentence or charge. *McCray v. State*, 122 Md. App. 598, 605 (1998).

Despite these concerns, we do not require the State to produce corroboration of all of the evidence. "[O]nly slight corroboration is required." *Id.* *See Miller v. State*, 380 Md. 1, 46 (2004) (the corroboration evidence "may be small in amount[.]") (quotation marks and citations omitted). Nonetheless, the corroborative evidence "must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself[.]" *McCray*, 122 Md. App. at 605 (quotation marks and citation omitted). "If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced." *Woods*, 315 Md. at 617 (quotation marks and citation omitted).

Evidence tending to identify the defendant with the perpetrators of the crime, however, must be sufficiently proximate in time and location to the crime to constitute corroboration. *Foxwell v. State*, 13 Md. App. 37, 39-41 (1971). *Compare Wright v. State*, 219 Md. 643, 650-52 (independent evidence that the defendant had been with the accomplices throughout the night in question provided the necessary corroboration), *cert. denied*, 361 U.S. 851 (1959) and *Boggs v. State*, 228 Md. 168, 171 (1962) ("[T]hat appellant and [the accomplice] were, by appellant's own admissions, in the vicinity of the crime in apparent companionship may also sufficiently connect the accused with the commission of the crime so as to furnish the necessary corroboration.") (citation omitted), with *Foxwell*, 13 Md. App. at 40-41 (a defendant's admission that he had been with the alleged accomplice at least several hours before the crime and several blocks away is "too remote in time and place from the commission of the crime to be adequate corroboration

under all the circumstances.”). Additionally, the corroboration evidence “must be independent of the accomplice’s testimony.” *Turner v. State*, 294 Md. 640, 646-47 (1982) (holding “therefore, [] in order to satisfy the rule of independent corroboration of accomplice testimony, the proffered evidence must consist of something more substantial than the extrajudicial comments of the accomplice himself.”). *See also* Commentary, *Corroboration of Accomplice Witness by Objective Evidence Authenticated by Same Accomplice*, 96 A.L.R.2d 1185 (1964, 2019 Cumm. Supp.) (noting that “cases which have specifically considered the question are in substantial agreement that objective evidence authenticated solely through the testimony of an accomplice cannot serve to corroborate such accomplice with regard to his testimony connecting the defendant with the commission of an offense”). Nonetheless, the slight corroboration required can come from any number of non-accomplice sources, including a defendant’s own testimony. *Boggs*, 228 Md. at 171; *Mulcahy v. State*, 221 Md. 413, 427-28 (1960).

The State argues that “[d]ocumentary evidence is sufficient to corroborate an accomplice’s testimony, even if it is authenticated by the accomplice.” This is contrary to the law cited above that requires that the corroboration be independent from the accomplice’s testimony. Nonetheless, we agree with the State that E.K.’s testimony was sufficiently corroborated by testimony independent from her testimony.

The corroborating evidence here included Detective Johnson’s testimony that when the police executed the emergency petition and found S.M. and E.K. in E.K’s grandfather’s basement barely clothed and with no shoes, appellant was also found hiding in the basement. Independent evidence that the defendant “was in the vicinity of the crime at the

time it was committed or that he was in the company of the perpetrator . . . either shortly before or shortly after the crime constitutes legally sufficient corroborative evidence." *Wise v. State*, 8 Md. App. 61, 63 (1969). Although there was no allegation that the crimes were occurring at the time appellant was discovered hiding in the basement, given the continuing nature of appellant's criminal enterprise of human trafficking, we are persuaded that his presence at the scene where the crimes occurred with those persons involved in the crimes while the enterprise was still ongoing was sufficient evidence of corroboration.

Additional corroborating evidence again came from the detective's testimony. The detective, who was admitted as an expert in the field of human trafficking and detection, testified about several social media accounts he attributed to appellant, E.K., and S.M. based on information given to him by S.M., the user names and email addresses associated with those accounts, and the profile pictures on those accounts. He reviewed those accounts and concluded that the communications consisted of arranging "dates with customers" for S.M. and recruiting others into prostitution. Given the above and the slight amount of corroboration needed to satisfy the accomplice corroboration rule, we are persuaded that the trial court did not err in finding that there had been sufficient corroboration to submit the counts to the jury.

III.

Appellant argues that the trial court abused its discretion in admitting certain testimony by E.K. about how she came to know appellant because the testimony constituted inadmissible prior "bad acts" of appellant under Md. Rule 5-404. Without any citation to the transcript, appellant argues that the prior bad acts evidence consisted of E.K. "running

away from home, homelessness, her children being removed from her care and [a]ppellant offering her a place to stay, posting advertisements for prostitution involving [E.K.] online and taking the proceeds of these transactions[.]" The State argues that we should not consider appellant's argument because he does not identify where in the record the "offending" evidence was admitted. In his reply brief, appellant responds to the State's argument and argues that we should look to his "detailed" statement of facts section that refers to "a number of prior bad acts" of appellant.

We agree with the State and decline to review appellant's argument because it is not sufficiently briefed. "We cannot be expected to delve through the record to unearth factual support favorable to appellant[.]" *Van Meter v. State*, 30 Md. App. 406, 408 (citation omitted), *cert. denied*, 278 Md. 737 (1976). *See also Ubom v. SunTrust Bank*, 198 Md. App. 278, 285 & n.4 (2011) (collecting cases dismissing claims for failure to properly cite authority or reference the record). Citing to an eight-page statement of facts is insufficient to adequately inform of us of where in the record appellant believes E.K.'s answers to the State's questions were admitted in error or determine whether appellant's arguments are properly preserved for our review.

ALL SENTENCES VACATED AND REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR RE-SENTENCING CONSISTENT WITH THIS OPINION; ALL CONVICTIONS OTHERWISE AFFIRMED.
COSTS TO BE PAID 60% BY APPELLANT AND 40% BY MONTGOMERY COUNTY.