

Circuit Court for Baltimore City
Case Nos: 196162016,17,18

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3008

September Term, 2018

DAVID T. CREAMER

v.

STATE OF MARYLAND

Wright,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 30, 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.

In 1998, David T. Creamer, appellant, was convicted by a jury in the Circuit Court for Baltimore City of first-degree felony murder, robbery with a deadly weapon, third-degree burglary, and use of a handgun in the commission of a felony. The court imposed a life sentence for the murder. This Court affirmed the judgments. *Creamer v. State*, No. 787, September Term, 1998 (filed March 15, 1999).

In 2015, Mr. Creamer filed a motion to correct an illegal sentence in which he challenged the validity of the conviction for murder based on his assertion that the indictment for first-degree murder was “constructively amended without his knowledge or consent” to include felony murder and hence, his sentence to life imprisonment was illegal. In 2018, the circuit court denied relief after concluding that the indictment charging first-degree murder encompassed the charge of felony murder. Mr. Creamer appeals that ruling. We shall affirm because the circuit court is correct.

Mr. Creamer was charged with murder using the “short form” indictment, a “formula” first established by the legislature in 1906. *See Ross v. State*, 308 Md. 337, 342-43 (1987). Specifically, the charge read as follows:

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that the aforesaid DEFENDANT, late of said City, heretofore on or about the date of offense set forth above, at the location set forth above, in the City of Baltimore, State of Maryland, feloniously, willfully and of deliberately premeditated malice aforethought did kill and murder John Wesley Charles; contrary to the form of the Act of the Assembly, in such case made and provided, and against the peace, government and dignity of the State.

In 1987, years before Mr. Creamer was indicted, the Court of Appeals in *Ross* noted that a “charge of murder” using the short form indictment for murder “may be made out by

proof of premeditated murder or proof of felony murder[.]” 308 Md. at 347. The Court further stated that, although “murder in the first degree may be proved in more than one way[,] [t]here is no requirement [] that a charging document must inform the accused of the specific theory on which the State will rely.” *Id.* at 344. Accordingly, the Court rejected the petitioner’s claim that the State’s use of the short form indictment for murder deprived him of his constitutional right of fair notice and due process when the State successfully tried him for felony murder. *Id.* at 347.

As *Ross* makes clear, there is no merit to Mr. Creamer’s claim that he was wrongfully convicted of felony murder because the indictment charging him with first-degree murder did not include the words “felony murder.” Moreover, as the State points out, based on a hearing prior to trial it is clear that the defense anticipated that the State would pursue a prosecution based on felony murder and it requested a jury instruction relevant to that offense.

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