UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0815

September Term, 2014

EDWIN PILE

v.

STATE OF MARYLAND

Hotten,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 13, 2015

Appellant Edwin Pile was tried three times in the Circuit Court for Baltimore County (spawning three separate prior appeals to this Court) in connection with the armed robbery and murder of a known drug dealer on December 23, 1991. More than 16 years after a jury convicted Appellant of first-degree murder, felony murder, two counts of armed robbery, and other related offenses in his third trial, he filed a motion to correct illegal sentence, arguing, for the first time, that his conviction and sentence for first-degree murder were in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. Appellant asserted that because the docket entries in his court file reflect that, at his first trial, the circuit court granted his motion for judgment of acquittal as to *second-degree* murder and manslaughter, double jeopardy barred his later conviction and sentence for first-degree murder. The circuit court denied the motion, and Appellant filed a timely appeal. He raises two questions for our review, which we have consolidated into one:

> Did the Circuit Court err in denying Appellant's Motion to Correct an Illegal Sentence, particularly by disregarding the docket entries because they "make no sense" and seem "illogical"?

Pursuant to the principles espoused in *Ingram v. State*, 179 Md. App. 485 (2008), we conclude that a motion to correct illegal sentence under Maryland Rule 4-345(a) was not the correct vehicle to raise an improper second prosecution for the same offense following acquittal. Accordingly, we need not reach the merits. We affirm.

BACKGROUND

Factual and Procedural History

On December 23, 1991, four men entered the home of Robert Stephen Collins. According to Bonnie Green (Collins's girlfriend), the men stole several items from the house and then forced her, her cousin (Eric Green), and Collins into the basement. Collins was bound by his hands and feet, assaulted, and then fatally shot once in the back of his head. On April 19, 1993, Appellant was indicted in connection with these events, and charged as follows:

Count 1:	First-degree murder of Robert Stephen Collins
Count 2:	Robbery of Robert Stephen Collins with a dangerous weapon
Count 3:	Robbery of Bonnie Green with a dangerous weapon
Count 4:	Assault of Bonnie Green
Count 5:	Assault of Eric Green
Count 6:	Use of a handgun in commission of a felony

Appellant's first jury trial for these charges occurred on October 5-6, 1993, in the Circuit Court for Baltimore County. The docket entry for October 6, 1993 provided:

> OCT. 6, 1993 JURY TRIAL RESUMED, TESTIMONY TAKEN. AT END OF STATE'S CASE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL – GRANTED AS TO COUNT 1, AS TO 2ND DEGREE MURDER AND MANSLAUGHTER ONLY. OVERRULED AS TO BALANCE OF COUNTS. AT END OF ENTIRE CASE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL – OVERRULED.

The remaining charges, including First Degree Murder, were submitted to the jury, but the jury was unable to reach a unanimous decision. After trial, the clerk filed a report noting that the "jury failed to agree on a[] unanimous decision. Juror withdrawn. Mistrial declared by the Court and case continued." The docket entry reflected the same.

Appellant's second jury trial began on November 9, 1993. After several days of trial, the jury found Appellant guilty of all charged offenses as well as felony murder, but acquitted him of the assault of Eric Green. The court sentenced Appellant to life imprisonment plus five years, and Appellant appealed. Appellant did not object to the indictment nor did he object to the sentence imposed. In an unreported opinion, this Court reversed the judgments of conviction based on an evidentiary error and remanded for a new trial.[1] *Pile v. State*, No. 696, Sept. Term 1994 (filed Feb. 15, 1995) (per curiam).

After remand, Appellant stood trial for the third time on November 29-December 1, 1995. The jury convicted Appellant of all charges, including felony murder, and the court sentenced Appellant to life imprisonment and a consecutive term of 20 years. Appellant appealed, challenging, *inter alia*, the court's imposition of a greater sentence than the one imposed at his second trial. In an unreported opinion, we affirmed Appellant's convictions and sentences. *Pile v. State*, No. 529, Sept. Term 1996 (filed Feb. 14, 1997). The Court of Appeals denied Appellant's petition for writ of certiorari.

On December 2, 2005, Appellant filed his first motion to correct illegal sentence, contending, *inter alia*, that certain convictions and sentences should have merged. The circuit court denied this motion, and Appellant appealed, raising the single question of

[1] In that appeal, Appellant alleged the circuit court erred in restricting Appellant's cross-examination of a key witness, and we agreed the error violated Appellant's Sixth Amendment right to confrontation. We did not address the remaining issues on appeal. We note, however, that although Appellant also contended that his conviction and sentence for robbery with a deadly weapon should have merged with his conviction and sentence for felony murder, he did not challenge the felony murder sentence.

whether the felony murder and first-degree murder convictions should have merged. In an unreported opinion, we held that there was no double jeopardy violation on that basis. *Pile v. State*, No. 2300, Sept. Term 2005 (filed May 16, 2007).[2]

The 2012 Motion to Correct Illegal Sentence

On December 4, 2012, Appellant filed his second motion to correct illegal sentence, which is at issue in the instant appeal. Appellant argued that his conviction and sentence for first-degree murder are illegal because he was acquitted of second-degree murder (a lesser-included offense) following his motion for judgment of acquittal at his first trial. He asserted that a sentence is inherently illegal under Maryland Rule 4-345(a) if the circuit court was not authorized to impose it, and that a court is not authorized to impose a sentence in violation of the Double Jeopardy Clause. Appellant therefore requested that the court "vacate the conviction and sentence for murder." In its opposition to the motion, the State countered that a motion for illegal sentence is "the incorrect forum to attempt this [double jeopardy] finding." The State further asserted that the claimed double jeopardy violation does not "inhere" in the sentence itself.

The circuit court held hearings on this motion on August 28, 2013 and June 10, 2014. At the August 28, 2013, hearing, Appellant's counsel notified the court that he did not have a transcript of the first trial and requested the court to "take judicial notice of the docket entry." In favor of the motion, counsel contended that a double jeopardy violation

[2] The record reflects that thereafter Appellant filed several petitions for post-conviction relief.

results in an illegal sentence and that this issue "slipped through the cracks" because of the different attorneys involved at each trial. In response, the State argued that two judges and several experienced attorneys were involved in Appellant's prior trials and none of them proceeded as if Appellant had been acquitted of the second-degree murder charge. The State further emphasized that the State's theory of the case at that time was one of an execution-style killing and that the facts could not support any finding other than first-degree murder. As to the propriety of a Rule 4-345(a) motion, the court commented that Appellant's argument was "really essentially a post-conviction theory because it has to do with failure to raise an issue that should have been raised[.]" The State disputed whether a motion to correct an illegal sentence was the proper avenue for the issues raised. The court ultimately continued the hearing to allow counsel to try to obtain the transcript of the first trial.

At the June 10, 2014, hearing, both counsel apprised the court that they were unable to obtain the transcript despite substantial efforts. Instead, the State called the trial counsel who participated in Appellant's first trial. The former prosecutor testified that the State's theory was "either the Defendants did it and it was first degree murder or they didn't do it." The former prosecutor did not have a recollection of the judgment of acquittal. Former defense counsel testified that the theory of the case was that the victim had jilted several men in a drug deal, and four men entered the victim's home and "executed" the victim. The defense theory was that Appellant had an alibi and was not one of the four perpetrators. Former defense counsel also had no recollection of his motion for judgment of acquittal at the end of the state's case. Although he stated that he might always give the option to the

jury to convict on second-degree murder for a compromised verdict, he could not recall whether or not he did so in this case.

After hearing argument and reviewing the documents in the court file, including the verdict sheet from the first trial showing that after Appellant's motion for judgment of acquittal, the charge of First Degree Murder was submitted to the jury, the court ultimately held:

> All right. I mean, I've listened carefully to the testimony. I've looked very carefully at the court file, and that docket entry makes no sense in the context of the rest of that – of the rest of this file and these proceedings.
>
> I mean, docket entries and [former defense counsel,] I think, made the point in his testimony, there are things that the court clerk does in the courtroom, and then there are other administrative things that the court clerk does after the fact to memorialize decisions and things that occurred during trial.
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> * * *
>
> There is – I mean, the clerk goes back and makes – types up docket entries to memorialize in the docket what occurred in the Court at the time, and it's done from worksheets that are prepared in the Court. The clerk's worksheets are in this file, and I have reviewed every one of them. There is nothing in any single worksheet that reflects that a judgment of acquittal was ever granted.
>
> On the evidence of this case, it is illogical to me that one would have been made or one would have been granted as to the lesser included offenses because it would have precluded a retrial on the charges. From the verdict sheets that were prepared, from the docket entries that are – or not docket entries, from the clerk's worksheets that were contemporaneously prepared in the court room, this case was tried on the premeditated count and the first degree felony murder count.
>
> I believe the docket entry to be in error and on the basis of that find that there is no ground to correct what is alleged to be an illegal sentence. Therefore, the motion to correct is going to be denied here today.[3]

[3] The record contains a "Court Clerk's Work Sheet," dated October 6, 1993, which indicates that Appellant moved for judgment of acquittal at the end of the State's case. The work sheet, apparently not noticed by the parties or the court, reflects that the court granted the motion as to Count 1, second-degree murder and manslaughter only, and overruled the motion as to the remaining counts.

The court filed an order denying Appellant's motion to correct an illegal sentence on June 10, 2014. Appellant filed a timely appeal on June 24, 2014.

DISCUSSION

The State raises three threshold arguments that, it contends, should prevent this Court from reaching the merits of this appeal: (1) that this Court should decline review of this appeal because Appellant failed to provide the transcript of his first trial; (2) that Appellant waived his double jeopardy claim pursuant to Md. Code (2001, 2008 Repl. Vol.), Criminal Procedure Article § 7-106(b); and (3) that a motion to correct illegal sentence was the improper vehicle for raising a double jeopardy claim relating to an unconstitutional second prosecution for the same offense.

We find no merit in the State's argument that Appellant's failure to provide a transcript should bar this appeal because there is no indication that the absence of a transcript is attributable to Appellant; moreover, the lack of a transcript is largely what generated this appeal. We also disagree with the State's contention that Appellant has waived any claim under the Maryland Post Conviction Procedure Act by failing to raise the claim at trial or on direct appeal. Maryland Rule 4-345(a) permits a court to "correct an illegal sentence at any time." "If a sentence is 'illegal' within the meaning of that section of the rule, the defendant may file a motion in the trial court to 'correct' it, notwithstanding that (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal."

Chaney v. State, 397 Md. 460, 466 (2007); *accord Walczak v. State*, 302 Md. 422, 427 (1985).

We agree with the State's third argument—that the double jeopardy argument asserted was improper for a Rule 4-345(a) motion. We explain.

"The Double Jeopardy Clause of the Fifth Amendment protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense." *Randall Book Corp. v. State*, 316 Md. 315, 323 (1989) (citing *United States v. Halper*, 490 U.S. 435, 440 (1989), *abrogated on other grounds by Hudson v. United States*, 522 U.S. 93 (1997); *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969)). The parties in the instant case do not dispute that first-degree murder and second-degree murder constitute the "same offense" for double jeopardy purposes under the *Blockburger* test,[4] or that acquittal of second-degree murder, if the docket entries are deemed accurate, should have barred a second prosecution of first-degree murder. Instead, at this juncture, they dispute whether Appellant's double jeopardy claim was properly raised in a motion to correct illegal sentence.

The *scope* of the *privilege* to file a motion to correct illegal sentence under Maryland Rule 4-345(a) is narrow. *Chaney*, 397 Md. at 466. A sentence is considered "illegal" for purposes of this Rule when "the illegality inheres in the sentence itself; *i.e.*, there either has

[4] In *Blockburger v. United States*, 284 U.S. 299, 304 (1932), the Supreme Court established the test to be used in the Double Jeopardy context, which is whether each offense requires proof of a fact that the other does not.

been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful." *Id.* (citations omitted). Any other allegations of deficiency in the sentence, *i.e.* the court made impermissible considerations in imposing it, usually must be raised before the circuit court and in a timely-filed direct appeal. *Id.* at 466-67. Indeed, "a motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case." *State v. Wilkins*, 393 Md. 269, 273 (2006). In other words, as recently explained by Judge Moylan for this Court,

> There are countless illegal sentences in the simple sense. They are sentences that may readily be reversed, vacated, corrected or modified on direct appeal, or even on limited post-conviction review, for a wide variety of procedural glitches and missteps in the sentencing process. Challenges to such venial illegalities, however, are vulnerable to such common pleading infirmities as non-preservation and limitations. There is a point, after all, beyond which we decline to revisit modest infractions. There are, by contrast, illegal sentences in the pluperfect sense. Such illegal sentences are subject to open-ended collateral review. Although both phenomena may casually be referred to as illegal sentences, there is a critically dispositive difference between a procedurally illegal sentencing process and an inherently illegal sentence itself. It is only the latter that is grist for the mill of [M]aryland [R]ule 4–345(a)[.]

Carlini v. State, 215 Md. App. 415, 419-20 (2013) (emphasis and footnote omitted).

The State contends that the case of *Ingram v. State*, 179 Md. App. 485 (2008), is dispositive of the question of whether Appellant's double jeopardy claim fails to allege an illegal sentence under Rule 4-345(a), and we agree. In that case, Ingram sold cocaine to an undercover officer and then, after leaving the scene, he was pulled over and arrested for driving with a suspended license, whereupon cocaine was found in his vehicle, on June 11,

2003. *Id.* at 491. The first indictment filed on July 7, 2003, charged Ingram with, *inter alia*, possession of cocaine and possession with the intent to distribute. *Id.* at 492. After Ingram waived a jury trial, the court convicted Ingram of **possession** of cocaine and sentenced him to one year of imprisonment. *Id.* at 494. A second indictment was filed on February 2, 2004, based on the same incident that occurred on June 11, 2003, charging, *inter alia*, distribution of cocaine and possession of cocaine. *Id.* at 494-95. Ingram moved to dismiss the second indictment, but the court denied the motion. *Id.* at 496. Ingram did not file an interlocutory appeal. *Id.* at 498. After Ingram waived a jury trial, the court convicted Ingram of **distribution** of cocaine and sentenced him to twenty years of imprisonment. *Id.* at 496. Ingram did not appeal. *Id.* Several years later, however, he filed a motion to correct illegal sentence, alleging that his sentence for distribution "was illegal because he had previously been tried and convicted of a lesser included offense [of possession] arising out of the same course of conduct." *Id.* at 488. The circuit court denied the motion. *Id.* at 496.

On appeal, we affirmed. We began by recognizing that Ingram had a valid double jeopardy claim, given that possession and distribution constitute the "same offense" for double jeopardy purposes and, thus, the second prosecution violated the Double Jeopardy Clause. *Id.* at 502. Had Ingram raised this argument on direct appeal of his second conviction, we surmised that his conviction for distribution would have been reversed. *Id.* at 503 (citing *Anderson v. State*, 385 Md. 123 (2005)). Ingram did not do so; instead, he filed a motion to correct an illegal sentence. *Id.* at 504. We held that Ingram could not raise a double jeopardy claim based on an improper second prosecution for the same

offense in a motion to correct an illegal sentence, because this claim arose out of his prosecution and spoke to the merits of his conviction rather than the sentence itself. *Id.* at 488-89.

We explained that an illegal sentence claim arises "only where there is some illegality in the sentence itself or where no sentence should have been imposed." *Id.* at 505 (quoting *Evans v. State*, 382 Md. 248, 278-79 (2004)) (emphasis omitted). At the outset, we rejected the logic that because Ingram "should have never been prosecuted a second time, let alone convicted a second time, . . . 'no sentence should have been imposed' for the second conviction." *Id.* Although acknowledging the first-glance appeal of that rationale, we explained that if we sanctioned such an argument, any convicted individual could claim that his or her sentence was illegal because the conviction, for any kind of error, was illegal, and thereby obtain a belated review of his or her conviction under Rule 4-345(a). *Id.* Moreover, a broad reading of Rule 4-345(a) in order to permit review of even constitutional claims like double jeopardy would run afoul to the requirement that a defendant raise his or her double jeopardy claim for an unconstitutional successive prosecution before the circuit court in order for that claim to be preserved for review in a direct appeal. *Id.* (citing *Taylor v. State*, 381 Md. 602, 616 (2004)).

We then turned to review circumstances under which our courts have held that "no sentence should have been imposed," as in the case where the defendant had been acquitted of a charge, but the court sentenced the defendant on that charge anyway, *id.* at 506 (citing *Ridgeway v. State*, 369 Md. 165, 171 (2002)), or where the defendant had been charged and convicted under an inapplicable statute, *id.* (citing *Moosavi v. State*, 355 Md. 651, 662

(1999)). Ingram, however, had not been acquitted of the exact offense for which a sentence had been imposed, nor was he convicted under an inapplicable statute. *Id.* at 507.

Most notably, we recognized that a double jeopardy claim based on multiple *punishments* for the same offense may be raised under a Rule 4-345(a) motion because the sentence itself is illegal and constitutes an error committed at the time of sentencing; accordingly, failure to raise that claim on direct appeal does not constitute waiver. *Id.* at 507-09 (citing *Randall Book Corp. v. State*, 316 Md. 315 (1989)). However, we distinguished a "multiple punishment" double jeopardy claim from a double jeopardy claim based on second *prosecution* for the same offense. The latter claim relates only indirectly to the sentence itself, because the alleged error occurred prior to the imposition of his sentence when he was prosecuted a second time, not at the time of sentencing. *Id.* at 507, 509. In other words, at the crux of our holding was the distinction "between double jeopardy issues which inhere in the sentence and those issues that arise prior to sentencing." *Id.* at 510.[5] The latter instance simply does not allege an error that "inheres in the sentence itself." *Id.* at 511. Therefore, because Ingram's double jeopardy claim was based on an improper second prosecution, we affirmed the circuit court's denial of the defendant's

[5] We distinguished cases like *State v. Griffiths*, 338 Md. 485 (1995), which involved a defendant who raised the successive prosecution double jeopardy claim before the circuit court at the time of his second prosecution and on direct appeal. *Id.* at 509-10. Although the Court of Appeals in that case cited Rule 4-345(a) as authority for the circuit court to vacate the *prior* sentence, the Court cited that Rule in the context of a direct appeal and therefore did not stand for the "proposition that any double jeopardy claim of successive prosecutions may be raised at any time by way of a motion to correct an illegal sentence." *Id.* at 510; *see also, e.g., Jones v. State*, 384 Md. 669, 686 (2005) (citing Rule 4-345(a) in the context of a direct appeal, wherein the defendant argued that the failure to announce the verdict or hearken the jury removed the court's power to convict and sentence him).

motion to correct illegal sentence. *Id.* We noted, however, that Ingram may have a remedy in the post-conviction context. *Id.* at 501-02.

The instant case is analogous. Like Ingram, Appellant challenges the second prosecution of a greater offense that occurred after disposition of a lesser-included offense: Ingram was tried again for the greater crime of distribution after he was convicted of the lesser-included crime of possession; Appellant was tried again for the greater crime of first-degree murder after he was acquitted, as reflected by the docket entries, of the lesser-included crime of second-degree murder. Appellant has failed to articulate, and we cannot otherwise draw, a distinction between first being convicted of a lesser-included offense as opposed to first being acquitted that would be material under *Ingram*'s reasoning as to render *Ingram* distinguishable from the instant case. Both cases involve claims arising out of the defendants' prosecutions, not their sentences.

Appellant attempts to distinguish *Ingram* on a couple grounds. First, Appellant emphasizes that *Ingram* involved two indictments: the first one charging the lesser-included offense of possession and the second one charging the greater offense of distribution, which was thereby flawed *ab initio*. This case, on the other hand, involved only one, valid indictment charging premeditated murder. Although this factual divergence is accurate, it is immaterial. Jeopardy does not attach at the time of indictment; it attaches when the defendant is "put to trial before the trier of facts." *Blondes v. State*, 273 Md. 435, 444 (1975) (quoting *United States v. Jorn*, 400 U.S. 470, 479 (1971)). Thus, regardless of how the second prosecution was initiated—whether by indictment, mistrial, or reversal—

the double jeopardy predicament is the same: a second prosecution for the greater offense following disposition of the lesser-included offense.

Second, Appellant contends that there was only one prosecution in the instant case because there was only one indictment, even though it took several trials to reach a final, valid verdict. Appellant's argument that his case involved a single prosecution is flawed, and fully undercuts the merit of his alleged double jeopardy violation in an attempt to distinguish *Ingram.* Indeed, Appellant's double jeopardy claim is that he should not have been re-tried for the same offense of first-degree murder. In any event, although some states have viewed a second trial following a mistrial or reversal of the same charges as "continuing" the same jeopardy that attached at the first trial, *Green v. United States*, 355 U.S. 184, 189 (1957), that is not the case here. Appellant's peril of being convicted and punished (or, in other words, his state of being in jeopardy) for the crime of second-degree murder—and thus for the crime of first-degree murder—ended when the court *acquitted* him of that charge. *See id.* at 190-91. The second (and third) trial for first-degree murder placed Appellant into a new jeopardy for the same offense. *See id.*

Appellant attempts to analogize the instant appeal to two other cases. Appellant first argues that this case is more comparable to *Randall Book Corp. v. State*, 316 Md. 315, 322 (1989), in which the Court of Appeals concluded that the defendant sufficiently alleged an illegal sentence within the scope of a Rule 4-345(a) motion by contending that the circuit court imposed multiple sentences for the same offense in violation of the Double Jeopardy Clause. As already explained by this Court in *Ingram*, however, there is a distinction between a double jeopardy claim based on multiple sentences for the same offense, which

inheres in the sentence itself, and a double jeopardy claim based on a second prosecution for the same offense, which relates to the merits of the conviction. 179 Md. App. at 507-09. We find *Randall Book* has no persuasive sway in the instant case for the same reason.

Appellant also points to *Johnson v. State*, 427 Md. 356 (2012), in which Johnson was convicted of assault with the intent to murder, and the court imposed a sentence for that conviction. *Id.* at 360. Sixteen years later, Johnson filed a motion to correct illegal sentence, contending that the court lacked the power and authority to sentence for the charge of assault with the intent to murder *because that crime was never charged in the indictment*. *Id.* The Court of Appeals concluded that this claim was reviewable under a Rule 4-345(a) motion because Johnson's claim involved the court's lack of the power to render a verdict and impose a sentence for the uncharged offense. *Id.* at 370.

Although the *Johnson* Court did, indeed, permit review of an error that occurred before the sentencing, which, at first blush, seems to conflict with *Ingram*, that case is distinguishable because it involved the court's lack of *authority* or *power* to sentence a defendant for a **nonexistent** charge, of which the defendant had no notice. Here, Appellant was not convicted of an uncharged offense, and Appellant does not otherwise articulate how the court lacked the authority or power to impose the sentence. Instead, he claims that the second prosecution should not have occurred and, thus, the court should not have imposed a sentence for the resultant conviction. But the burden is on a defendant to raise a double jeopardy claim based on a successive prosecution at the time the violation occurs. *See Taylor*, *supra,* 381 Md. at 616 (declining to review a double jeopardy claim on direct appeal when the defendant failed to raise it below). Thus, it cannot be said that it is the

court's duty to raise and rectify a double jeopardy charge *sua sponte*, and it so follows that the court's failure to do so does not divest the court of its *power* to try and sentence a defendant.

In sum, we are persuaded that *Ingram* is dispositive of the issue before us. We believe there would have been merit in Appellant's claim that a subsequent prosecution for first-degree murder following acquittal of second-degree murder, if deemed to have occurred, had Appellant raised the issue before the circuit court at the time of his trials, or on direct appeal. But it is certainly not obvious that the Circuit Court was incorrect in concluding that there was some error in the record of an acquittal of the second-degree murder charge. Indeed, this Court is unable to even conjure how the first-degree murder charge could have been submitted to the jury at the first trial following the grant of Appellant's motion for judgment of acquittal for the second-degree murder charge. Regardless, a Rule 4-345(a) motion is not a substitute for an appeal. *Wilkins, supra*, 393 Md. at 273.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.