

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2163

September Term, 2014

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MARTINEZ BROWN

v.

STATE OF MARYLAND

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Graeff,  
Wright,  
Rodowsky, Lawrence F.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: October 20, 2015

\*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.

After a four-day jury trial, Martinez Brown, appellant, was convicted in the Circuit Court for Baltimore City of first-degree murder, use of a handgun in the commission of a felony or crime of violence, and wearing or carrying a handgun. On June 12, 2006, the court imposed a life sentence for the first-degree murder offense and twenty years consecutive for the handgun offense. On August 22, 2014, Brown filed with the lower court a motion to correct an illegal sentence under Md. Rule § 4-345(a). The motion was denied without a hearing on October 28, 2014.

On November 25, 2015, Brown filed this appeal, asking whether the circuit court erred when it denied his motion to correct an illegal sentence, when the court rendered separate sentences for first-degree murder and using a handgun in the commission of a crime of violence. We answer his question in the negative and affirm the circuit court's judgment.

### **Standard of Review**

Md. Rule § 4-345(a) provides: “The court may correct an illegal sentence at any time.” “If a sentence is ‘illegal’ within the meaning of the rule, the defendant may file a motion in the trial court to ‘correct’ it . . . and, if the trial court denies relief in response to such a challenge, the defendant may appeal from that denial and obtain relief in an appellate court.” *Chaney v. State*, 397 Md. 460, 466 (2007).

Md. Rule § 8-131(c) provides that “[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will

give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” “The clearly erroneous standard does not apply to legal conclusions.” *Gray v. State*, 388 Md. 366, 374-75 (2005) (citation omitted). “When the trial court’s order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.” *Id.* (citation omitted). In reviewing an adverse ruling concerning a double jeopardy claim, we give no deference to the lower court’s resolution of the matter and perform a review *de novo*. *Jones v. State*, 222 Md. App. 600, 608 (2015).

### **Discussion**

On appeal, Brown argues that his sentence is illegal because his sentence violates the prohibition against double jeopardy. Specifically, Brown asserts that he was placed in double jeopardy when the circuit court erred in not merging his convictions and sentencing him to multiple punishments for the same offense. He contends that his convictions of first-degree murder and use of a handgun in the commission of a crime of violence should have merged under the required evidence test because the same evidence was used to support both convictions.<sup>1</sup>

In response, the State argues that there was no error in rendering separate sentences for Brown’s two convictions because the crimes do not merge under the required evidence test. Specifically, the State notes that each crime contains at least one element that the other does not. To prove a crime of murder requires the unlawful killing

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<sup>1</sup> Brown notes that the proper remedy to correct his “illegal sentence” is to vacate his life sentence.

of a victim, while the crime of the use of a handgun in the commission of a crime of violence requires the use of a handgun. When applying the test, each of the offenses requires proof of a fact or circumstance not required by the other, thus precluding a merger and avoiding the double jeopardy bar. Further, the State focuses our attention to the statute defining use of a handgun in the commission of a crime of violence, CR § 4-204, as having a specific anti-merger provision.<sup>2</sup> Therefore, the State maintains that Brown's sentences should stand.

We agree with the State that rendering separate sentences for Brown's two convictions is not illegal nor does it place him in double jeopardy. The Fifth Amendment, applicable to the states through the Fourteenth Amendment, *Benton v. Maryland*, 395 U.S. 784, 787 (1969), and Maryland common law protect a person from being twice put in jeopardy for the same offense. *See State v. Woodson*, 338 Md. 322, 328 (1995); *Flaherty v. State*, 322 Md. 356, 365 (1991); *Gianiny v. State*, 320 Md. 337, 342 (1990); *Randall Book Corp. v. State*, 316 Md. 315, 323 (1989). This protection against double jeopardy prohibits three distinct abuses: the second prosecution for the same offense after acquittal, the second prosecution for the same offense after conviction therefor, and the imposition of multiple punishments for the same offense. *State v. Jones*, 340 Md. 235, 242 (1995) (citation omitted); *see also State v. Griffiths*, 338 Md. 485, 489 (1995). In *Blockburger v. United States*, 284 U.S. 299, 304 (1932), the Supreme Court

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<sup>2</sup> CR § 4-204(c)(1)(i) states, “[a] person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.”

set forth the general test for determining whether two offenses should be deemed the same for double jeopardy purposes:

The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not . . . .

Brown's contention that he has been put in double jeopardy by the imposition of multiple punishments for the same offense is without merit. The applicable standard under Maryland common law, "... has made clear that under both federal double jeopardy principles and Maryland merger law, the usual test for determining whether two offenses are the same is the required evidence test." *Snowden v. State*, 321 Md. 612, 616 (1991) (citations omitted). "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." *Robeson v. State*, 39 Md. App. 365, 382 (1978) (quoting *Newton v. State*, 280 Md. 260, 268 (1977)).

The elements of first-degree murder are (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of or an attempt to perpetrate [a heinous crime].<sup>3</sup> CR § 2-201. The use of a

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<sup>3</sup> The commission or attempt of a heinous crime includes: (i) arson in the first degree; (ii) burning a barn, stable, tobacco house, warehouse, or other building that: 1. is not parcel to a dwelling; and 2. contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco; (iii) burglary in the first, second, or third degree; (iv) carjacking or

(continued...)

handgun in the commission of a crime of violence is proven when a firearm was used during a crime of violence. CR § 4-204. Each offense has at least one mutually exclusive element. First-degree murder requires the killing of a victim, whereas the latter offense requires only proving a handgun was used in an act of violence. As such, the crimes do not merge under the required evidence test because each contains an element which the other does not, thus precluding merger.

This is not a matter of first impression. In *Robeson*, 39 Md. App. at 382, this Court held that convictions of murder and use of a handgun in the commission of a crime of violence do not merge: “[I]t is obvious that each of the offenses requires proof of a fact or circumstance not required by the other, thus precluding a merger.”

Finally, the General Assembly has specifically authorized an anti-merger provision in the statute defining the use of a handgun in the commission of a crime of violence. CR § 4-204(c)(1)(i). “[A] person who violates this section is guilty of a misdemeanor and, *in addition to any other penalty imposed for the crime of violence or felony*, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.” (Emphasis added). When the legislative intent is clear by the passage of anti-merger provisions, we should abide by the direction of the General Assembly. *Alexis v. State*, 437 Md. 457, 490 (2014).

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armed carjacking; (v) escape in the first degree from a State correctional facility or a local correctional facility; (vi) kidnapping under 3-502 or 3-503(a)(2) of this article; (vii) mayhem; (viii) rape; (ix) robbery under 3-402 or 3-403 of this article; (x) sexual offense in the first or second degree; (xi) sodomy; or (xiii) a violation of 4-503 of this article concerning destructive devices. CR § 2-201(a)(4).

For all of the foregoing reasons, we affirm the circuit court's judgment.

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