

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2059

September Term, 2010

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WILLIE ANDREWS

v.

STATE OF MARYLAND

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Krauser, C.J.,  
Meredith,  
Thieme, Raymond G., Jr.  
(Retired, Specially Assigned),

JJ.

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Opinion by Krauser, C.J.

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Filed: June 22, 2016

\*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 1978, Willie Andrews entered a shoe store armed with a handgun, robbed six employees, and shot the store's manager. Andrews was subsequently convicted by a jury, in the Circuit Court for Montgomery County, of one count of assault with intent to murder, six counts of robbery, and two counts of use of a handgun in the commission of a felony. The court thereafter sentenced him to a term of thirty years' imprisonment for the assault conviction, two terms of fifteen years' imprisonment for the handgun convictions (to run consecutively to the assault sentence), and a total of twenty years' imprisonment for the six armed robbery convictions (to run consecutively to the handgun sentence). Several decades later, Andrews filed a motion to correct an illegal sentence. When the circuit court denied that motion, Andrews noted this appeal. For reasons that follow, we affirm.

### **DISCUSSION**

Andrews claims that the charge of assault with intent to murder and the charges of armed robbery were “lesser-included offenses” to the charges of use of a handgun in the commission of a felony. Consequently, he maintains that, under the Double Jeopardy Clause, his conviction for assault and his convictions for armed robbery should have merged for sentencing purposes with his convictions for use of a handgun in the commission of a felony. He further asserts that, because the Double Jeopardy Clause protects against multiple punishments for a single criminal transaction, his two handgun convictions should have merged for sentencing purposes because they were part of “one continuing offense.” We disagree.

Maryland Rule 4-345(a) allows a trial court to “correct an illegal sentence at any time.” *Id.* A sentence is considered “illegal” if the sentence itself is not permitted by law,

such as when “there either has 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[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). “A failure to merge a sentence is considered to be an ‘illegal sentence’ within the contemplation of the rule.” *Pair v. State*, 202 Md. App. 617, 624 (2011). We review the legality of Andrews’ sentence under a *de novo* standard of review. *See Blickenstaff v. State*, 393 Md. 680, 683 (2006).

“The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law.” *Brooks v. State*, 439 Md. 698, 737 (2014). “Merger protects a convicted defendant from multiple punishments for the same offense.” *Id.* “[T]he general rule for determining whether two criminal violations...should be deemed the same...is the so-called ‘same evidence’ or ‘required evidence’ test[.]” *Whack v. State*, 288 Md. 137, 141 (1980). Under this test, if a defendant is charged with two offenses, and one of the offenses contains all of the elements of the other offense, the two offenses are deemed to be the same under the required evidence test and multiple punishments are prohibited. *Id.* at 142. On the other hand, the two offenses are separate, and thus multiple punishments are permitted, when each offense “‘requires proof of an additional fact which the other does not,’ or, stated another way, if ‘[e]ach of the offenses...requires proof of a different element.’” *Id.* (internal citations omitted).

This does not mean, however, that a defendant convicted of two offenses deemed to be the same under the required evidence test is automatically entitled to only one punishment. “The imposition of multiple punishment...is often particularly dependent

upon the intent of the Legislature.” *Id.* at 143. As a result, “even though two offenses may be deemed the same under the required evidence test, separate sentences may be permissible, at least where one offense involves a particularly aggravating factor, if the Legislature expresses such an intent.” *Id.*

At the time Andrews committed the subject crimes, Section 36B of Article 27 of the Maryland Annotated Code proscribed the use of a handgun in the commission of a felony or crime of violence. *Id.* Under the statute, the Legislature clearly intended to impose a separate penalty for such an offense:

Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in § 441 of this article, shall be guilty of a separate misdemeanor and on conviction thereof shall, **in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor**, be sentenced to the Maryland Division of Correction for a term of not less than five nor more than fifteen years, and it is mandatory upon the court to impose no less than the minimum sentence of five years.

*Id.* (Emphasis added); *See also Whack*, 288 Md. at 147-48.

In *Whack*, the Court of Appeals stated that the language of the statute “confirms that there was no intent to delete by implication penalties provided by other statutes, and confirms that the penalties set forth in the handgun act were intended to be imposed, in addition to the penalties under other applicable statutes.” *Whack*, 288 Md. at 147. Moreover, the Court noted that a review of the legislative history at the time the statute was enacted “discloses that the Legislature viewed handguns as a particularly aggravating problem, and one not effectively controlled by the laws applicable to weapons generally.” *Id.* When viewed in conjunction with the plain language of the statute, “[n]othing could

more plainly show an intent to impose whatever punishment is provided for the felony plus the punishment set forth in § 36B(d).” *Id.* at 148.

Andrews was convicted of assault with intent to murder and armed robbery, both of which qualify as “any felony” under Art. 27, § 36B(d).<sup>1</sup> Therefore, the trial court did not err in failing to merge Andrews’ convictions for sentencing purposes, as a separate penalty for each offense was required under the statute. Accordingly, Andrews’ sentences for assault and armed robbery were legal, and the circuit court did not err in denying Andrews’ motion to correct an illegal sentence on these grounds.

Andrews’ final contention – that the two handgun offenses were “one transaction” – is also without merit. Although Andrews is correct that the Double Jeopardy Clause protects a defendant against multiple punishments arising from a single criminal transaction, Andrews is mistaken in his definition of “one transaction.”

“The unit of prosecution of a statutory offense is generally a question of what the legislature intended to be the act or course of conduct prohibited by the statute for purposes of a single conviction and sentence.” *Brown v. State*, 311 Md. 426, 434 (1988). Under Art. 27, § 36B(d), the “unit of prosecution” is the use of a handgun in the commission of **any** felony. *Id.* (Emphasis added). As the Court of Appeals noted in *Brown*, “the legislature’s use of the term ‘any’...is consistent with the ordinary meaning of ‘any.’ It means ‘every.’” *Brown*, 311 Md. at 435. Accordingly, a defendant may be convicted and sentenced for his use of a handgun in the commission of **every** felony, even if every felony

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<sup>1</sup> Andrews concedes that these offenses constituted felonies.

occurs at the same time. In other words, “in the context of multiple victims, nothing in the language of § 36B(d) suggests...that there can be only one handgun use offense per criminal transaction.” *Id.* at 435-36. In short, “multiple handgun use convictions and sentences are appropriate where there are multiple victims.” *Id.* at 436.

Andrews was convicted and sentenced on one charge of use of a handgun in the commission of a felony involving one victim, the store’s owner, whom Andrews shot. Andrews was also convicted and sentenced on a separate charge of use of a handgun in the commission of a separate felony involving separate victims, the store’s employees, whom he robbed. The two handgun violations were not, as Andrews suggests, part of a single transaction, but instead involved distinct offenses against distinct individuals, which in turn permitted multiple punishments. Accordingly, Andrews’ sentences on these counts were legal, and the court did not err in denying Andrews’ motion to correct an illegal sentence on these grounds.

**JUDGMENT OF THE CIRCUIT  
COURT FOR MONTGOMERY  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**