Circuit Court for Baltimore City
Case No. 823305006

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0116

September Term, 2024

TIMOTHY HOUSER

v.

STATE OF MARYLAND

Leahy,
Reed,
McDonald, Robert N.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 22, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The instant appeal arises from a physical altercation that took place at a traffic light in Baltimore City. Appellant was originally charged with one count of first-degree assault and two counts of second-degree assault in the District Court of Maryland sitting in Baltimore City. Appellant made a demand for a trial, and the case was transferred to the Circuit Court for Baltimore City. Appellant validly waived his right to a jury trial, the State dropped the first-degree assault charge, and on January 16, 2024, a bench trial was conducted on the two counts of second-degree assault in the Circuit Court for Baltimore City.

In bringing his appeal, Appellant presents one question for appellate review,[1] which we rephrase as follows:

I. Was Appellant's charge of second-degree assault of Ms. Fitzgerald-Watson duplicitous and thus unconstitutional?

For the following reasons, we affirm the judgment of the Circuit Court for Baltimore City.

FACTUAL & PROCEDURAL BACKGROUND

A. Factual Background

Around 4 p.m. on July 12, 2023, Ms. Arbe Fitzgerald-Watson and her daughter

[1] In his brief, Appellant poses the question, verbatim as:

"Whether the court erred under *Kirsner* and *Cooksey's* double jeopardy principles by permitting the State to pursue a pick and choose approach of presenting two different factual theories to prove a single assault count."

By contrast, Appellee provides the question presented, verbatim as:

"Is Houser's conviction for second-degree assault non-duplicitous?"

drove to pick up Mr. Anthony Watson from the Baltimore City Police Headquarters, located at 601 E. Fayette Street, Baltimore, Maryland, where he was employed as a dispatcher. Ms. Fitzgerald-Watson testified that it was their "normal regular everyday routine" to pick up Mr. Watson, her husband, from work to all go home for the evening. On this particular day, on their way to pick up Mr. Watson, Ms. Fitzgerald-Watson and her daughter stopped at Burger King to get a cheeseburger for Mr. Watson. When Mr. Watson came outside, Ms. Fitzgerald-Watson moved into the passenger seat, Mr. Watson took the driver seat, and the family began to drive home.

The family stopped at a red light at the intersection of President Street and Fayette Street when a van, driven by Appellant, pulled up behind them and blared its horn "like crazy." Ms. Fitzgerald-Watson and Mr. Watson both testified that Appellant screamed and cursed at them, telling them to turn and to move. Appellant repeatedly called them "n****rs," called the women in the car "bitches," and threatened to "beat your ass, n****r." In response, Mr. Watson "scooch[ed] [the car] up a little bit" and held up his middle finger to Appellant. When Appellant continued to yell, Mr. Watson got out of his car and attempted to throw his cheeseburger at Appellant's windshield. Before the cheeseburger was thrown, Appellant got out of his van and began fighting Mr. Watson. The exact details of this physical altercation were disputed at trial, including whether Mr. Watson ever struck Appellant.[2] Mr. Watson testified that Appellant was wearing brass

[2] Mr. Watson testified that he "never had the chance" to hit Appellant. However, immediately after the incident, when the police asked Mr. Watson who swung first, he replied, "Honestly, I don't know. I wouldn't put it passed me swinging first, but I honestly don't know."

knuckles when Appellant punched him.

While the fight ensued, Ms. Fitzgerald-Watson ran to the police station to get help. Ms. Fitzgerald-Watson testified that when she returned, Mr. Watson was on the ground and Appellant was "on top of [Mr. Watson] banging him, beating him in his face." Ms. Fitzgerald-Watson further testified that Appellant screamed at her daughter that he would hit her too. As Ms. Fitzgerald-Watson told Appellant to get off Mr. Watson, Appellant "[came] right up to [her] and cold-cocked [her] in [her] chest, bang[ed] [her] in [her] chest," which caused her to fall backwards.

As the police approached, Appellant got back in his van. Ms. Fitzgerald-Watson stepped in front of his vehicle to read his license plate number, Appellant struck her with his car, pulled around her, and drove away. Ms. Fitzgerald-Watson testified that she remembers "flying up on the hood" and "back into the street." Ms. Fitzgerald-Watson was transported to the hospital where she was treated for her injuries. She sustained injuries to her feet, knees, and elbows, and needed physical therapy for about four months as a result. Additionally, Mr. Watson suffered a busted lip, a contusion above his eye, cuts, and bruises from this incident. Notably, bystanders recorded this incident on cell phones.

B. Procedural Background

Appellant was charged in the District Court of Maryland for Baltimore City with one count of first-degree assault and two counts of second-degree assault, one for Ms. Fitzgerald-Watson and one for Mr. Watson. Appellant made a demand for a jury trial, and the case was transferred to the Circuit Court for Baltimore City. Appellant validly waived his right to a jury trial, opting instead for a bench trial. The State dropped the first-degree

assault charge, and on January 16, 2024, a bench trial was conducted on the two counts of second-degree assault in the Circuit Court for Baltimore City. At the close of the State's case, Appellant's counsel moved for judgment of acquittal on both counts of second-degree assault. Notably, in the motion for acquittal on the count of second-degree assault of Ms. Fitzgerald-Watson, Appellant's counsel stated:

> I'm not even clear what the actual assault is cause she testified how like a ton of different assaults, and so I don't even necessarily know which, which assaults the State is proceeding on with her. So, I would move for judgment of acquittal on her.

In response, the State argued that distinguishing the different assaultive acts was not necessary and, viewing the evidence in the light most favorable to the State, Appellant assaulted Ms. Fitzgerald-Watson. Specifically, the State argued:

> As to which assault took place, it is not necessary for there to have been separate assault or separate charges. The State laid the foundation and proven that the vehicle was driven into Ms. Fitzgerald-Watson and that she was assaulted in such a manner that this was not consented to. It was obviously harmful and as well as offensive touching that was caused by [Appellant], that has been [testified] to by herself and also the person that witnesses this happen at the time.

The court denied Appellant's motion for acquittal on both counts. During the State's rebuttal closing argument, the court inquired whether the count of second-degree assault of Ms. Fitzgerald-Watson was based on Appellant punching her or hitting her with his car, to which the State responded the charge was based on Appellant hitting her with the vehicle.

Following closing arguments, the trial court ruled that Appellant was not guilty of second-degree Assault of Mr. Watson but found Appellant guilty of second-degree assault

of "the vehicle assault with Ms. Fitzgerald-Watson." On March 11, 2024, the court sentenced Appellant to four years of incarceration with credit for the ten days of jail time he already served. On the same day, Appellant filed this timely appeal.

STANDARD OF REVIEW

On appeal before this Court, a trial court's factual determinations are afforded significant deference under a clearly erroneous standard of review. *See Riddick v. State*, 319 Md. 180, 183 (1990); *see also Trott v. State*, 138 Md. App. 89, 103–04 (2001). However, a trial court's legal conclusions are not given such deference. *See Trott*, 138 Md. App. at 103–04. Instead, this Court reviews a trial court's legal conclusions *de novo* to determine whether they are legally correct. *See id.*; *see also Riddick*, 319 Md. at 183. Therefore, *de novo* review applies in the instant appeal because it concerns the circuit court's legal conclusions, specifically whether Appellant's conviction was unconstitutionally duplicitous or whether any duplicity that arose at trial was remedied.

DISCUSSION

A. Parties' Contentions

Appellant asserts that this Court should reverse and vacate Appellant's conviction. Appellant argues that the trial court "erred under *Kirsner* and *Cooksey's* double jeopardy principles by permitting the State to pursue a pick and choose approach of presenting two different factual theories to prove a single assault count." Appellant argues that duplicitous counts, meaning "the joinder of two or more distinct and separate offenses in the same count[,]" are improper and subject to pre-trial dismissal because they are contrary to double jeopardy principles. Appellant argues that his second-degree assault count against

Ms. Fitzgerald-Watson was "not facially duplicitous[,]" but rather that "duplicity ripened *during* the trial when [the State] put on evidence of both the punch and the vehicle assault." Therefore, Appellant argues that a pre-trial motion to dismiss would have been improper, and instead, the "only remedy was a motion for acquittal."

Appellant asserts that when he moved for acquittal at trial, the court was required "to either grant [Appellant's] motion for acquittal in its entirety, or force the State to choose a theory and grant the motion in part, i.e., grant acquittal on the theory the State was not pursuing." He argues that the court erred by not doing either and instead denying the motion for acquittal in its entirety. In closing, Appellant asserts that because the circuit court erred by denying the motion for acquittal, "remand for retrial is improper and violative of double jeopardy principles[,]" and instead requests this Court reverse and vacate Appellant's conviction.

The State, Appellee, argues that this Court should affirm Appellant's conviction. The State asserts that "[t]here was no duplicity issue because the charge did not combine two (or more) separate and distinct offenses in a single count." The State highlights that Appellant concedes the count was not duplicitous as charged. The State argues that under *Johnson v. State*, 477 Md. 673 (2022), the trial court "properly avoided any duplicity problem" because the trial court did in fact require the State to choose which factual theory it based the second-degree assault charge on. The State notes that *Johnson* clearly instructs that when a prosecutor presents multiple acts to prove a single count, "the prosecutor should be required to elect between the incidents, or the jury should be provided with a special instruction that it must unanimously agree as to which distinct criminal incident

underlies its decision to convict." The State argues the prosecution complied with *Johnson* by telling the court Appellant's charge was based on him hitting Ms. Fitzgerald-Watson with "the vehicle[,]" and in turn, the court properly returned a verdict based on "the vehicle assault with Ms. Fitzgerald-Watson."

The State distinguishes the present case from *Kirsner*, 183 Md. 1 (1944) and *Cooksey*, 359 Md. 1 (2000), which provide the basis for Appellant's argument on appeal. Specifically, the State asserts that in the present case, unlike in *Kirsner* and *Cooksey*, there was no duplicity in the charging document. Additionally, the State argues that "the *Johnson* Court addressed and distinguished both *Kirsner* and *Cooksey*." Thus, the State concludes that this Court should affirm.

In Appellant's reply brief, Appellant argues that the State misconstrues *Johnson*, 477 Md. 673, and maintains that this Court should vacate Appellant's conviction. According to Appellant, in *Johnson*, two separate assaults were presented at trial to prove a single assault count and the jury considered both assaults, which made it unclear which assault the ultimate conviction was based on. Thus, Appellant provides that the *Johnson* Court reversed the trial court's conviction and established that the State must either "(1) 'elect between the incidents' *or* (2) the jury must be instructed to 'unanimously agree as to which distinct criminal incident underlies its decision to convict" to resolve duplicity concerns.

Appellant asserts that in the present case, the State's clarification in its rebuttal closing argument that it was only pursuing the vehicle assault "did not remedy the duplicity-related jeopardy concerns because the 'punch' assault the prosecutor also pursued

at trial never got a disposition." Appellant claims that this would have been resolved "if [Appellant's] acquittal motion had been granted, even in part." However, Appellant maintains that because "the punch assault is unresolved[,]" Appellant's conviction should be vacated on duplicity grounds.

B. Analysis

Appellant's conviction was not unconstitutionally duplicitous because the duplicity that arose at trial was remedied according to the requirements set out in *Johnson*, 477 Md. 673. Thus, the judgment of the Circuit Court for Baltimore City should be affirmed.

Duplicity is "the joinder of two or more distinct and separate offenses in the same count." *State v. Warren*, 77 Md. 121, 121 (1893); *see also Mohler v. State*, 120 Md. 325 (1913). Further, "[t]he object of all pleading, civil and criminal, is to present a single issue in regard to the same subject-matter, and it would be against this fundamental rule to permit two or more distinct offenses to be joined in the same count." *Warren*, 77 Md. at 121. In *Mohler*, 120 Md. 325, the Supreme Court of Maryland established that:

> [I]t is equally recognized that a count is not double because it charges several related acts, all of which enter into and constitute one offense, although such acts may in themselves constitute distinct offenses. If the acts alleged are of the same nature, and so connected that they form one criminal transaction, they may be joined in one count, although separately considered, they are distinct offenses. If they can be construed as stages in one transaction, and are not inherently repugnant, the count will not be bad for duplicity."

(citations omitted).

The prohibition against duplicity finds its origins in the rules of pleading. *See Cooksey v. State*, 359 Md. 1, 8 (2000). Specifically, Maryland Rule 2-303 provides that "[e]ach cause of action shall be set forth in a separately numbered count[,]" and "[e]ach

averment of a pleading shall be simple, concise, and direct." Md. Rules 2-303(a)-(b). Additionally, Rule 4-203(a) establishes that for criminal pleadings,

> [t]wo or more offenses […] may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Md. Rules 4-203(a). This limitation on what may be charged in separate counts "precludes the charging of separate offenses in a single count." *See Cooksey*, 359 Md. at 8 (citations omitted).

The principles of duplicity in criminal cases protect "several basic rights[,]" including: fundamental fairness; the right to receive reasonable notice of charges, which is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights; the right to jury unanimity, which is guaranteed by Article 21 of the Maryland Declaration of Rights; and the right not to be placed in double jeopardy, which is guaranteed by the Fifth Amendment to the U.S. Constitution and Maryland common law. *Id.* at 8-9 (citations omitted).

In many cases, the Supreme Court of Maryland and this Court have reiterated and affirmed these principles of duplicity. *See e.g. Weinstein v. State*, 146 Md. 80 (1924) (providing that the court must reach a single verdict on each count, and thus, a single count that charges multiple separate crimes is duplicitous since the court is required to reach a single verdict on a count); *Ayre v. State*, 21 Md. App. 61 (1974) (concluding that a warrant was defective because it "lumped all the offenses in one charge" instead of providing separate charges for each offense); *Robinson v. State*, 353 Md. 683, 703 (1999) (finding

that an indictment was not duplicitous because "no one count of the indictment charged more than one substantive offense").

Additionally, *Jackson v. State*, 176 Md. 399 (1939) notably provided that a count is not duplicitous when it charges "several related acts which enter into and constitute one offense, although when separately considered they are distinct offenses." *Jackson*, 176 Md. at 401 (citing *Mohler*, 120 Md. 325). In *Jackson*, the defendant was charged with the common law offense of keeping a disorderly house, and the indictment included allegations that he maintained a house for the unlawful sale of alcohol, that he kept alcohol without a license, that he allowed "idle and ill-disposed persons" to assemble there, and that he "did cause and procure, and did therein openly and unlawfully sell" alcohol to these people. *Jackson*, 176 Md. at 401. The court concluded this count was not duplicitous because "an indictment may aver any of the acts which the State might establish in order to show the character of the house." *Id.* at 402 (citations omitted).

Here, Appellant's argument primarily relies on *Kirsner v. State*, 183 Md. 1 (1944) and *Cooksey v. State*, 359 Md. 1 (2000). In *Kirsner*, the Supreme Court of Maryland held that an indictment was duplicitous as charged because it charged various violations of the Baltimore City building code in a single count. *Kirsner*, 183 Md. 1. In *Cooksey*, the Supreme Court of Maryland held that an indictment was duplicitous because it charged the defendant with committing a sexual offense by engaging in a "continuing course of conduct" over the course of a year in a single count. *Cooksey*, 359 Md. at 4, 26-27.

As argued by the State, and addressed in Appellant's Reply Brief, this appeal turns on the proper interpretation of *Johnson v. State*, 477 Md. 673 (2022). In *Johnson*, the

victim, Ms. Robin, came home and found the defendant in her attic holding her husband's rifle. *Id.* at 678. Ms. Robin ran downstairs to retrieve her handgun, the defendant followed her, and she and the defendant struggled over control of the handgun. *Id.* at 679. During the struggle, the handgun shot through Ms. Robin's hand, and the defendant fled. *Id.* The defendant was charged with first-degree burglary, first-degree assault, second-degree assault, use of a firearm in the commission of a crime of violence, and illegal possession of a firearm after conviction of a disqualifying crime. *Johnson*, 477 Md. at 677.

At trial, evidence was presented to the jury of two incidents that "could have satisfied two counts each of first or second-degree assault and use of a firearm in the commission of a crime of violence[.]" *Id.* However, the defendant was only charged and convicted of a single count of each crime. *Id.* After closing arguments, the trial court declined defense counsel's request that "the jury be instructed that it must unanimously agree as to [the defendant's] guilt for the same underlying incident to support a verdict regarding those counts." *Id.* at 677-78. The defendant was convicted of all the charges except first-degree assault. *Id.* at 681.

Following an appeal to this Court, the Supreme Court of Maryland granted *certiorari* to address the following question:

> Whether a defendant's right to a unanimous jury verdict is violated when the State presents evidence of multiple incidents at trial to prove a single charged count, in absence of an election between the incidents or a special jury instruction?

Id. at 678. *Johnson* both interpreted and distinguished *Kirsner* and *Cooksey*. Specifically, *Johnson* provided that both *Kirsner* and *Cooksey* "addressed charges that were duplicitous

on their face." *Johnson*, 477 Md. at 685 (citing *Kirsner*, 183 Md. at 6; *Cooksey*, 359 Md. at 4-5). However, in *Johnson*, the charges were *not* facially duplicitous. *Johnson*, 477 Md. at 689. Therefore, *Johnson* established that:

> In circumstances where a charge is not facially duplicitous but becomes duplicitous based on evidence of multiple distinct incidents presented at trial to prove a single charged count […] the prosecutor should be required to elect between the incidents, or the jury should be provided with a special instruction that it must unanimously agree as to which distinct criminal incident underlies its decision to convict."

Id. at 689-90. *Johnson* further provided that "[t]he likelihood that a reasonable juror will perceive multiple incidents underlying a single charged count is enhanced if the prosecutor encourages them to perceive them as distinct." *Id.* at 692-93. In *Johnson*, the Supreme Court of Maryland found that "a reasonable jury could have perceived two separate incidents […] that were not a part of a continuing course of conduct with a single objective[,]" and thus the court "[could not] know whether the guilty verdicts as to those charges were based on unanimous findings of guilt with respect to either incident." *Id.* at 703. Therefore, the convictions did not satisfy the constitutional requirements of unanimity and were vacated. *Id.* at 703 (citing MD. CONST., DECL. OF RTS. ART. 21; U.S. CONST. AMEND. VI). Appellant's second-degree assault charge of Ms. Fitzgerald-Watson stated Appellant "did assault [Ms. Fitzgerald-Watson] in the second degree in violation of CR 3-203." As both parties agree, this count was not facially duplicitous because it charged Appellant with a single offense. *See e.g. State v. Warren*, 77 Md. 121 (1893); *see also Mohler v. State*, 120 Md. 325 (1913). However, Appellant argues duplicity "ripened during trial" because the State provided evidence of both the punch assault and the vehicle assault

to prove a single count of second-degree assault. The State maintains that the count was not duplicitous.

The State correctly asserts that neither *Kirsner* nor *Cooksey* is instructive to determine whether the evidence presented at trial rendered this count duplicitous because the relevant counts in both *Kirsner* and *Cooksey* were facially duplicitous. *See Kirsner v. State*, 183 Md. 1 (1944); *Cooksey v. State*, 359 Md. 1 (2000). Rather, we must look to *Johnson* to determine whether the instant charge became duplicitous at trial.

As in *Johnson*, in the instant case, Appellant committed two acts that "could have satisfied" the second-degree assault count. *See Johnson*, 477 Md. at 677. First, the second-degree assault charge could have been satisfied by Appellant's act of punching Ms. Fitzgerald-Watson in her chest. Second, the second-degree assault charge could have been satisfied by Appellant's act of striking Ms. Fitzgerald-Watson with his car. Thus, as in *Johnson*, Appellant's second-degree assault charge of Ms. Fitzgerald-Watson was not facially duplicitous, but "became duplicitous based on evidence of multiple distinct incidents presented at trial to prove a single charged count[.]" *Johnson*, 477 Md. at 689-90. *Johnson* provides that in such circumstances when duplicity arises at trial, "the prosecutor should be required to elect between the incidents, or the jury should be provided with a special instruction that it must unanimously agree as to which distinct criminal incident underlies its decision to convict." *Id.*

Here, a bench trial was conducted, not a jury trial. Thus, the duplicity that arose at trial could not be remedied by special jury instructions, but rather the State needed to choose between the incidents that were presented as evidence of the charged count.

Johnson, 477 Md. at 689-90. When first asked to clarify which assaultive act the second-degree assault charge of Ms. Fitzgerald-Watson was based on, the State responded that "it is not necessary for there to have been separate assault or separate charges[.]" However, the State went on to provide that Ms. Fitzgerald-Watson was clearly assaulted by Appellant hitting her with his vehicle. During the State's rebuttal closing argument, the following exchange between the trial court judge and the State occurred:

> THE COURT: So, I have a question for you?
>
> [PROSECUTOR]: Yes?
>
> THE COURT: Wouldn't a punch and hitting someone with a car be two distinct assaults?
>
> [PROSECUTOR]: They would be two distinct assaults, so the State is actually –
>
> THE COURT: So which is he charged with?
>
> [PROSECUTOR]: The vehicle.
>
> THE COURT: Okay.
>
> [PROSECUTOR]: The vehicle, yes. I guess the better answer from the State might have been they could easily have been charged as separate ones, yes, but the State is charging with the vehicle.

In this exchange, the State satisfied the requirements set out in *Johnson*, that the prosecutor "elect between the incidents," by specifying that the assault charge was based on "[t]he vehicle." *Johnson*, 477 Md. at 689-90.

Furthermore, the present case complies with the constitutional requirements set out by *Johnson*. *Id.* at 703 (citing MD. CONST., DECL. OF RTS. ART. 21; U.S. CONST. AMEND. VI). Specifically, *Johnson* requires that a reasonable jury, or in this case the trial court

judge, be able to clearly attribute their decision to "unanimous findings of guilt with respect to either incident." That means that the guilty verdict must be clearly based on *either* the vehicle assault or the punch assault. The trial court judge explicitly found Appellant guilty of second-degree assault of "the vehicle assault with Ms. Fitzgerald-Watson." This clear basis for the guilty verdict, coupled with the State's clarification that "the State is charging with the vehicle" remedied the duplicity that arose at trial when the State put on evidence of both the vehicle assault and the punch assault to prove the single charged count. *Johnson,* 477 Md. at 689-90.

Therefore, the duplicity that arose at trial was remedied, and Appellant's conviction was not unconstitutionally duplicitous. The judgment of the Circuit Court for Baltimore City should be affirmed.

CONCLUSION

Accordingly, we affirm the judgment of the Circuit Court for Baltimore City.

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