

Circuit Court for Montgomery County
Case No. C-15-CR-22-000981

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 381

September Term, 2025

SAMMIE D. SMITH

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 26, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Montgomery County, Sammie D. Smith, appellant, was convicted of three counts of armed robbery (Counts 1, 6, 7), three counts of first-degree assault (Counts 2, 8, 9), three counts of use of a firearm in a felony or crime of violence (Counts 4, 11, 12), two counts of conspiracy to commit armed robbery (Counts 5, 13), and one count of theft under \$100 (Count 3). These convictions were based on appellant's involvement in two armed robberies, the first of which occurred at an AT&T store in Bethesda and involved one victim, and the second of which occurred at an AT&T store in Rockville and involved two victims. The court imposed an aggregate sentence of 20 years' imprisonment, followed by 5 years' probation. Appellant raises two issues on appeal: (1) whether his sentences for first-degree assault should merge into his sentences for armed robbery, and (2) whether his sentence for theft under \$100 should merge into one of his sentences for armed robbery. The State concedes that merger is required in both instances. For the reasons that follow, we shall vacate appellant's sentences for theft of property under \$100 and all three counts of first-degree assault. Otherwise, we affirm.¹

Appellant first contends that his convictions for first-degree assault should merge into his convictions for armed robbery for sentencing purposes. We agree. Where convictions for first-degree assault based on the use of a firearm and armed robbery arise

¹ Relying on *Twigg v. State*, 447 Md. 1 (2016), the State requests that we exercise our discretion and order a remand for resentencing so that the circuit court may reconsider its sentencing package. However, vacating appellant's sentences for first-degree assault and theft under \$100 does not disrupt the court's sentencing package as appellant's sentences for each of those offenses are concurrent to his 10-year sentence for armed robbery on Count 1. Consequently, we decline to remand the case for resentencing.

out of the same act, the assault must merge into the armed robbery conviction for sentencing purposes. *See Morris v. State*, 192 Md. App. 1, 39-40 (2010). Where the two acts are distinct, however, the offenses do not merge. *Id.* at 40. The State bears the burden of proving distinct acts for purposes of separate units of prosecution. *Id.* at 39. If a jury could have based multiple convictions on the same conduct, but it is not clear whether it actually did so, “we must resolve the ambiguity in favor of appellant and assume that the jury based all of the convictions on the same conduct.” *Jones v. State*, 175 Md. App. 58, 88 (2007). Thus, where “neither the charging document nor the jury instructions [make] clear that the charge[] of [first-degree] assault [is] based upon [a] separate and distinct act[] from [that] upon which the robbery charge[] [is] based[,]” the charges must merge. *Morris*, 192 Md. App. at 44.

Here, neither the indictment, the jury instructions, nor the verdict sheet advised the jury that to find appellant guilty of first-degree assault it must find an assault separate and distinct from the robbery. Moreover, the prosecutor did not make that distinction clear in closing. Because it is not clear from the record whether the jury convicted appellant of each count of first-degree assault based on his conduct during the robbery, we must resolve that ambiguity in his favor. Consequently, his sentences for first-degree assault in Counts 2, 8, and 9 must be vacated.

Appellant also contends that his sentence for theft of property should merge with his sentence for armed robbery in Count 1 under the required evidence test. We need not determine whether merger is appropriate under the required evidence test, however, as appellant’s sentences merge under the rule of lenity. In *Jackson v. State*, 141 Md. App.

175, 198 (2001), we held that, where convictions for theft and robbery were “predicated on the taking of the same property from the same victim in a single incident[,]” merger was required under the rule of lenity because it was unclear that “the legislature intended cumulative punishment” under those circumstances. So too here. Because appellant’s theft of property conviction and armed robbery conviction were based on his taking of the same property from the same victim during the same incident, merger of those sentences is required. Thus, we shall vacate appellant’s sentence for theft under \$100.

CASE REMANDED WITH INSTRUCTIONS TO VACATE APPELLANT’S SENTENCES FOR FIRST-DEGREE ASSAULT AND THEFT OF PROPERTY UNDER \$100. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE PAID BY MONTGOMERY COUNTY.