

Circuit Court for Baltimore City
Case No. 105055024, 105055026, 105055028, 105055032, 105055034

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1317

September Term, 2021

DERRICK S. TAYLOR

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Shaw,

JJ.

Opinion by Shaw, J.

Filed: May 10, 2022

* 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.

Appellant, Derrick Taylor, appeals from an order issued by the Circuit Court for Baltimore City denying his Motion to Correct Illegal Sentence and Request for Rehearing.

He presents two questions for our review, which we have reordered:¹

1. Are Mr. Taylor's three life sentences for felony murder inherently illegal since he was neither charged with nor convicted of any underlying felony?
2. Does the circuit court's finding of waiver disregard Mr. Taylor's right to challenge his inherently illegal sentence "at any time" under Maryland Rule 4-345(a)?

For reasons set forth below, we affirm.

BACKGROUND

On January 10, 2005, two men broke into a home for recovering addicts in Baltimore City. One of the men held four of the home's residents, Antwon Arthur, Steven Matthews, Nathan Gulliver, and Shawn Brown, at gunpoint, apparently angered that Arthur owed him money. The home's manager, Jerome Moreland, eventually came downstairs and was also held at gunpoint. Gulliver offered to go to an ATM and withdraw money to pay what the men said that Arthur owed them. The man without the gun went with Gulliver to an ATM, and Gulliver gave them money when they returned. The man with the gun demanded more money, but no one had any, and the man then shot and killed Arthur, Matthews, and Gulliver. Brown was shot three times but managed to escape. Mooreland was not shot. Brown eventually identified appellant as the shooter, and he was arrested on January 13, 2005. The second suspect was later identified as Corey McMillan.

¹ See *Taylor v. State*, No. 412, Sept. Term 2007 (Apr. 23, 2009).

In the Circuit Court for Baltimore City, appellant was charged in seven indictments, including three counts of murder. On February 27, 2007, a jury found appellant guilty of first-degree felony murder of Steven Matthews, first-degree felony murder of Antwon Arthur, first-degree felony murder of Nathan Gulliver, second-degree murder of Antwon Arthur, five counts of use of a handgun in a crime of violence, and five counts of wearing, carrying, and transporting a handgun. The remaining counts were nolle prossed. The court imposed a sentence of three terms of life without parole plus 100 years imprisonment. Appellant appealed, and on April 23, 2009, this Court reversed and vacated four of the five counts of use of a handgun in a crime of violence, and four of the five counts of wearing, carrying, and transporting a handgun. We affirmed the remainder of the circuit court’s judgment. Appellant filed a petition for a writ of certiorari, which was denied on August 24, 2009.

Appellant filed a Motion to Correct Illegal Sentence and Request for Rehearing in the Circuit Court for Baltimore City on September 21, 2021. On October 20, 2021, the court issued an order denying his motion, and this appeal followed.

STANDARD OF REVIEW

“Whether a sentence is an illegal sentence is a question of law that is subject to *de novo* review.” *Arias-Rivera v. State*, 246 Md. App. 500, 506 (2020). *See also Bonilla v. State*, 443 Md. 1, 6 (2015); *Meyer v. State*, 445 Md. 648, 663 (2015); *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

DISCUSSION

I.

Appellant argues the court erred in denying his motion to correct an illegal sentence. According to him, because he was not specifically charged with felony murder or any underlying felony, he could not be convicted of the crime of felony murder and therefore no sentence could be imposed. The State responds that appellant was properly charged and that a defendant need not be convicted of an underlying felony in order to be convicted of felony murder in Maryland.

A.

The Criminal Law (“CL”) Article of the Maryland Code provides a statutory short-form indictment for use by the State in charging various murder counts, including felony murder. It states:

(a) An indictment for murder or manslaughter is sufficient if it substantially states:

“(name of defendant) on (date) in (county) feloniously (willfully and with deliberate premeditated malice) killed (and murdered) (name of victim) against the peace, government, and dignity of the State.”.

(b) An indictment for murder or manslaughter, or for being an accessory to murder or manslaughter, need not set forth the manner or means of death.

Md. Code Ann. CL § 2-208. In *Dishman v. State*, the Court of Appeals held that the short-form indictment “charges each of the homicide offenses, even if it is couched in terms of first degree murder.” 352 Md. 279, 303 (1998). Use of the statutory short form is sufficient to charge a defendant with felony murder. *See also Nicholson v. State*, 239 Md. App. 228, 256 (2018), *cert. denied*, 462 Md. 576 (2019).

Here, the State charged appellant with multiple counts of murder using the statutory short form. The indictments all used the following language, changing only the name of each victim:

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that the aforesaid DEFENDANT(S), late of said City, heretofore on or about the date of offense set forth above, in the City of Baltimore, State of Maryland, feloniously, willfully, and with deliberately premeditated malice killed and murdered ANTWON ARTHUR; against the peace, government and dignity of the State.

The indictments mirror the statutory short form and comply with the requirements set out in CL§ 2-208. Appellant was properly charged with felony murder under Maryland law.

B.

In prosecuting a charge of felony murder, the State must prove the elements of the underlying felony and that death occurred while the felony was occurring. *Wagner v. State*, 160 Md. App. 531, 560 (2005). The State may charge the underlying felony, but there is no requirement that they do, so long as the State proves its elements beyond a reasonable doubt. *Mumford v. State*, 19 Md. App. 640, 643 (1974); *see also McMillan v. State*, 181 Md. App. 298, 351 (2008) (citing *Adams v. State*, 8 Md. App. 684, 689-90) (“[T]he State’s decision not to charge appellant with the underlying robbery did not deprive the court of jurisdiction to try him for felony-murder.”), *rev’d on other grounds*, 428 Md. 333 (2012).

Here, appellant does not argue that the State failed to prove the underlying offense at trial. Instead, he argues because the State failed to charge and convict him of an underlying felony, his sentence is illegal. Appellant cites several cases to support this

argument. First, he cites *Moosavi v. State*, 355 Md. 651 (1999). In *Moosavi*, a defendant challenged his conviction, successfully arguing that the statute he was charged under was not applicable to his conduct. *Id.* at 666-67. Moosavi had been convicted under a statute that punished “the transmittal of false statements or rumors about the location or detonation of a bomb or explosive.” *Id.* at 653, 654. Moosavi, however, had made an actual threat to “blow up” a bank due to a disputed charge. *Id.* at 653, 654. The Court of Appeals held, as a result, he could not be properly convicted under a statute that punished the transmittal of false statements or rumors. *Id.* at 656-67.

Appellant also contends that *Fisher v. State*, 367 Md. 218 (2001) supports his argument that his sentence is illegal. There, the Court of Appeals recognized second-degree felony murder based on a predicate offense of child abuse as a crime in the State of Maryland. *Id.* at 218. Appellant points us to the following quotation:

Here, if the felony murder doctrine has no application to a homicide resulting from child abuse, then the thirty year sentences for murder in the second degree imposed on the petitioners would be similarly illegal, because, by the special jury verdict, the findings of guilty of murder were based solely on felony murder.

Id. at 240. Read in context, the Court’s discussion was focused on its decision to exercise its discretion to consider the issue of second-degree felony murder when the State argued that it was not preserved for review. The above sentence was posed as a reason why the Court of Appeals might decide to exercise its discretion to address an issue that was not preserved below. In addressing the merits of this case, the Court held that the felony murder doctrine was applicable to child abuse. We note that the Court of Appeals imposed

no requirement that in order to convict a defendant of felony murder, there must also be a conviction for the underlying offense.

Next, appellant cites *Jackson v. State*, 286 Md. 430 (1979),² where the Court of Appeals affirmed the convictions of two defendants for felony murder where a hostage taken in a robbery was killed by a law enforcement officer. Appellant quotes from the opinion, stating that “there must be a causal relationship between (the defendant’s) act and the harm sustained for which he is prosecuted.” We agree. He then argues that *Johnson v. State*, 427 Md. 356 (2012), is determinative. *Id.* at 376. The defendant in *Johnson* was convicted of, among other things, assault with intent to murder, a charge that was not included in the indictment returned by the Grand Jury. *Id.* at 362. The Court of Appeals held that the defendant’s conviction was inherently illegal because he was convicted of a charge not included in the indictment. Finally, he cites *Ridgeway v. State*, 369 Md. 165 (2002) as analogous. In *Ridgeway*, the Court of Appeals upheld a decision by the trial court to vacate the defendant’s sentences on three out of five counts of assault. *Id.* at 168-69. The Court held that sentencing the defendant on the three counts was inherently illegal because he had been acquitted on those counts. *Id.* at 171.

We observe that appellant was not convicted under any of the circumstances outlined in the cases he argued. He was not convicted of a crime that did not apply to his conduct. He was not sentenced for a crime that he was acquitted of. Nor was he convicted

² Appellant and appellee both cite *Jackson v. State*, 286 Md. 430 (1999). We cannot find such a case and presume the parties intended to cite the 1979 case we refer to above.

of a non-existent crime. As previously stated, in order to convict a defendant of felony murder, the State must prove the elements of the underlying felony and that death occurred during the course of the felony. Here, the State’s entire case centered on a robbery committed by appellant that escalated into murder, and a jury found him guilty beyond a reasonable doubt of felony murder.

C.

Appellant also claims error in sentencing because the court improperly instructed the jury on the elements of felony murder. Appellant contends the judge instructed the jury on an “uncharged offense.” The State argues that judicial error in jury instruction is not cognizable under Md. Rule 3-345. We agree.

In *Carlini v. State*, 215 Md. App. 415, 425-26 (2013), this Court held that Rule 4–345(a) is “available only for a limited species of sentence illegalities. The illegality must actually inhere in the sentence itself” See also *Colvin v. State*, 450 Md. 718, 725 (2016). In *Pitts v. State*, we stated, “even if an error in the giving of or in the failure to give a jury instruction were properly before us, it would be an error only in the antecedent trial process leading to a verdict. It would not constitute an illegality inherent in the sentence itself.” 250 Md. App. 496, 530 (2021), *cert. denied*, 475 Md. 496 (2021).

Assuming, *arguendo*, that an improper jury instruction “actually inhered in the sentence itself,” we still would not reverse because this Court has already determined that the court committed harmless error in failing to instruct the jury on the elements of

robbery with a deadly weapon.³

II.

Appellant argues the trial judge’s finding that he waived his right to file a motion to correct his illegal sentence because his counsel failed to object to the sentence was error. He asserts that under Md. Rule 4-345(a), “[t]he court may correct an illegal sentence at any time.” Appellee counters the rule is irrelevant because appellant’s sentence was legal.

We agree that the court erred when it determined that appellant had waived his right to file a motion to correct his sentence. *See Johnson v. State*, 427 Md. 356, 371 (2012) (“[A] motion to correct an illegal sentence under Rule 4-345(a) is not waived even if ‘no objection was made when the sentence was imposed’ or ‘the defendant purported to consent to it.’”). However, the error was harmless, because as we explained *supra*, the sentence imposed was legal.

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

³ We note that in Taylor’s appeal on the merits, he argued that the trial court’s failure to instruct the jury on the elements of robbery with a dangerous weapon was plain error. *Taylor v. State*, No. 412 at *8. We declined to exercise our discretion to review the issue because defense counsel failed to note an objection at trial. *Id.* at *9-10.