UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND
(Corrected)

No. 1945

September Term, 2014

MALIK HASSAM WILKINS

v.

STATE OF MARYLAND

Woodward,
*Zarnoch,
Friedman,

JJ.

Opinion by Zarnoch, J.

Filed: November 19, 2014

* Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

On March 21, 2014, appellant Malik Hassam Wilkins was convicted by a jury sitting in the Circuit Court for Prince George's County of armed carjacking, use of a handgun in the commission of a crime of violence, second-degree assault, transporting a handgun in a vehicle on public roads, and theft of property with a value of $10,000 to $100,000. He was sentenced to a prison term of 30 years, with all but 15 years suspended, for armed carjacking; a concurrent 15 years, the first five of which were to be served without the possibility of parole, for use of a handgun in a crime of violence; and a concurrent three-year term for transporting a handgun in a vehicle. The remaining offenses were merged for sentencing purposes.

On appeal, Wilkins presents three questions for our review, which we quote:

> I. Did the circuit court abuse its discretion in denying defense counsel's motion to transfer jurisdiction to the juvenile court?
>
> II. Did the circuit court err in admitting prejudicial hearsay testimony?
>
> III. Must the sentence for transporting a handgun in a vehicle on a public road merge into the sentence for use of a handgun in a crime of violence?

For the reasons that follow, we vacate the sentence for transporting a handgun in a vehicle, but shall otherwise affirm the judgments of the circuit court.

FACTUAL BACKGROUND

On the morning of May 23, 2013, Andre Eccles was sitting in his girlfriend's Mercedes Benz which was parked outside her townhouse in District Heights. He noticed

two people in a tan or olive van parked two or three spaces to the left of the Mercedes. As he sat in the car waiting for it to warm up, he heard footsteps, and then heard someone say, "Get the fuck out of the car and get on the ground." Eccles looked up, and saw the barrel of a gun. The person holding the gun was wearing black from head to toe, and his face was covered with a ski mask.[1] The assailant repeated the demand to "get the fuck out of the car," and Eccles complied. As Eccles laid down on the ground, the van pulled off. The assailant got into the Mercedes and drove away. Eccles ran into his girlfriend's house and told her to call 9-1-1 because he had been carjacked.

Officer Bruce Brown and Officer James Robison of the Prince George's County Police Department, who were on patrol that morning, received a dispatch regarding an armed carjacking of a "pewter gold" Mercedes. Four to six minutes later, while canvassing the area for the vehicle, Officer Brown observed a Mercedes matching the vehicle description coming toward him. As the Mercedes made a left-hand turn approximately eight to ten feet in front of the patrol car, Officer Brown made eye contact with the driver, and got "a really good look at [the driver's] face." Officer Robison testified that he also got a good look at the driver's face, and described him as having "a very tight jawline and very long dreadlocks." The Mercedes then took off at a high rate of speed. At trial, both Officer Brown and Officer Robison identified Wilkins as the driver of the Mercedes.

[1] Although Eccles did not identify his assailant, he referred to the assailant using male pronouns.

The police took off in the patrol car in pursuit of the Mercedes, and verified that the license plate matched the tag information for the stolen vehicle. During the pursuit, Wilkins drove the Mercedes in excess of 75 miles per hour, through red lights and into oncoming traffic.

After losing sight of the Mercedes for less than a minute, the police came to the intersection of Ridge Road and Texas Avenue in the District of Columbia, and observed that the Mercedes had been in an accident and appeared to have hit a school bus head on. There was a Cadillac at the scene that looked like it had been struck as well. Both doors to the Mercedes were open, and there was no one in the vehicle.

Citizens at the scene made pointing gestures, and Officer Brown drove the patrol car in the direction they were pointing. They came upon another person who was pointing toward a house. The police drove around to the other side of the house where they spotted Wilkins ducking down behind a van. When the police jumped out of the patrol car, Wilkins went back around the house. The police pursued Wilkins on foot and apprehended him, which occurred less than a minute after coming upon the scene of the accident.

According to the police, Wilkins had blood on his face, his lip was "busted," he was limping, and he said his leg was hurting. He claimed that someone was chasing him. He had no identification, and refused to give the police his name, address or date of birth.

Lydell Mann testified that on the morning in question, he was stopped at the intersection of Texas Avenue and Ridge Road when he saw a Mercedes "slide across the

light" and run into the front of a school bus. Three individuals hopped out of the vehicle. Two immediately ran down Texas Avenue. The third person, whom Mr. Mann identified as one Christopher Barnes, exited from the passenger side of the Mercedes, tossed a black handgun behind the Cadillac that had also been involved in the accident, and proceeded to walk down the sidewalk in the same direction as the other two individuals. The police recovered a handgun from the bushes near the scene of the accident, and a black ski mask was found on the ground between the Mercedes and the curb.

Additional facts will be discussed below.

DISCUSSION

I.

Wilkins was 17 years- and 7 months-old when the offenses with which he was charged were alleged to have occurred. Due to the nature of the offenses, he was charged as an adult. *See* Maryland Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 3-8A-03(d)(4)(xii-xiii) (The juvenile court does not have jurisdiction over a child age 16 or older who has been charged with certain crimes, including armed carjacking and first-degree assault, and other offenses arising out of the same incident).

Prior to trial, Wilkins filed a motion pursuant to Maryland Code (2001, 2008 Repl. Vol), Criminal Procedure Article ("CP"), § 4-202 to transfer his case to the juvenile court. CP § 4-202 provides that:

> the court may transfer a criminal case to juvenile court if: (1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;

> (2) the alleged crime is excluded from the jurisdiction of the juvenile court under [CJP § 3-8A-03(d)(4)] . . .; and (3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

The court requested a waiver report from the Maryland Department of Juvenile Services ("DJS") to assist it in ruling on Wilkins' motion. The court held a hearing on January 6, 2014 and denied the motion.

Wilkins contends that the circuit court abused its discretion in denying his motion to transfer jurisdiction to the juvenile court. Specifically, he contends that the circuit court did not give appropriate consideration to each of the statutory factors, such as his mental condition. Appellant suggests that proper consideration of his mental condition would have led to a finding that he was amenable to treatment, and consequently to a transfer of jurisdiction to the juvenile court.

The State responds that the court noted the assertion of issues regarding Wilkins' mental condition, but properly denied the motion to transfer jurisdiction to the juvenile court, based on Wilkins' prior juvenile record and continued criminal activity while under the supervision of the court, as well as the degree of violence aimed at his victim. We agree with the State.

The focus of the juvenile court differs from that of the criminal court:

> The focus of adjudication in juvenile court is "to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest." [CJP] § 3-8A-02(a)(4). Although one of the purposes of sentencing in the criminal justice system is

> rehabilitation, it also has, as purposes, punishment and deterrence, neither of which is a stated purpose of the juvenile act.

Gaines v. State, 201 Md. App. 1, 8-9, *cert. denied*, 424 Md. 55 (2011) (Citations omitted). "The purpose of the juvenile waiver hearing is not to determine guilt or innocence, but rather to determine whether or not the juvenile is a fit subject for juvenile rehabilitative measures." *In re Franklin P.*, 366 Md. 306, 329-30 (2001) (Citation omitted).

In determining whether a transfer of jurisdiction to the juvenile court is appropriate, the court considers five factors: (1) the age of the child; (2) the mental and physical condition of the child; (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children; (4) the nature of the alleged crime; and (5) the public safety. CP § 4-202 (d). The court must consider each factor, weighing them in relation to one another, but need not resolve each factor in favor of the party requesting transfer in order to grant the waiver. *See In re Appeal No. 646*, 35 Md. App. 94, 95-96 (1977); *In re Johnson*, 17 Md. App. 705, 709 (1973).

"When a juvenile stands accused of one of those offenses expressly excluded from juvenile court jurisdiction, he or she carries the burden of establishing, under the five factors of [CP § 4-202(d)], that the adult or criminal court should waive jurisdiction to the juvenile court. He or she must demonstrate to the hearing judge that the 'reverse waiver' is 'in the interests of the child or society.'" *In re Ricky B.*, 43 Md. App. 645, 649 (1979). The disposition of a motion to transfer jurisdiction to the juvenile court is committed to the sound discretion of the trial court and will not be disturbed on appeal unless that discretion has been

abused. *King v. State*, 36 Md. App. 124, 128 (1977). Under the abuse of discretion standard of review, we will disturb a court's ruling only if it is "'well removed from any center mark imagined by [us],'" or "'beyond the fringe of what [we] deem[ ] minimally acceptable.'" *Gaines,* 201 Md. App. at 21 (quoting *North v. North*, 102 Md. App. 1, 14 (1994)) (Alterations in original).

At the reverse waiver hearing, the court reviewed the DJS waiver report and heard argument from defense counsel and the prosecutor. The court also heard testimony from Crystal Wilkins, Wilkins' aunt and legal guardian.

DJS addressed the five factors in its waiver report and concluded that each factor weighed in favor of treating of Wilkins as an adult offender. The report detailed Wilkins' "appalling" history of juvenile delinquency, which included a plea of "involved" in second-degree murder in the District of Columbia. The report noted Wilkins' poor compliance with, and abscondence from various rehabilitation programs, as well as his ongoing delinquent/criminal activity while under court supervision. DJS observed that "[Wilkins'] crimes appear to escalate in violence and severity." The report concluded that "[i]t appears as though [Wilkins] is not amenable to treatment as a juvenile," and is "an extreme risk to public safety." DJS recommended that the court deny the motion to waive jurisdiction to the juvenile court.

Defense counsel's argument at the waiver hearing focused on Wilkins' mental condition. She highlighted the fact that he had two untreated head injuries, and had been

diagnosed with a learning disability. She also pointed out that Wilkins' mother, with whom he had a close relationship, had died the month after he was arrested in connection with the carjacking. Defense counsel represented that a psychological assessment report (which was not included in the record on appeal) recommended that an MRI test be completed. Defense counsel argued that because Wilkins required further assessment, the rehabilitative treatment that he had previously participated in had not "been able to address real issues," and the "programs haven't matched where he is neurologically." Wilkins' aunt testified that "something is going on in his head because he don't comprehend," and told the court that "he really needs [psychological] help."

In denying the motion, the court articulated its consideration of the five statutory factors as follows:

> I will first go to the defendant's age. It says he's currently 18 years old and two months of age. At the time he committed these offenses he was 17 years old and short by months of being 18.
>
> His mental and physical ability. While it appears that he does have some clear issues regarding his mental status, they do not amount to a finding or an acknowledgment by this Court that he is not competent, or that he is not responsible. And he is physically, he looks like he's of the height and physical weight, that he's an adult.
>
> As to the third one, his amenability to treatment. This Court believes that he is clearly not amenable to treatment in the juvenile court. He was under the supervision of the Court, and he continued to commit criminal acts.

> As to the nature of the charges, these are obviously very, very serious cases involving handguns and the public safety is threatened by him being seen as a juvenile in our system. There is absolutely no factors under which this court would decide that this matter need to be remanded to the juvenile court. So, your motion is denied.

We reject Wilkins' argument that the court's remarks about his competency to stand trial and criminal responsibility reflect that the court failed to consider and weigh his mental condition in deciding whether to waive jurisdiction to the juvenile court. Trial judges are presumed to perform their duties correctly. *See State v. Woodland*, 337 Md. 519, 526 (1995); *Beales v. State*, 329 Md. 263, 273 (1993)**.** Moreover, as the State points out, the court expressly noted the "issues regarding his mental status." The court heard the evidence regarding the MRI test that had been recommended, and obviously either rejected defense counsel's argument that Wilkins required additional neurological assessment in order to be amenable to treatment, or determined, as argued by the State, that given Wilkins' age, his prior record, and the nature of the charges against him, his options for rehabilitative treatment would be limited.

Wilkins' reliance on *In re: Johnson*, *supra*, is misplaced. There, we determined that the trial court was unduly influenced by the nature of the offense and either failed to consider the element of amenability to rehabilitation, or did not give it proper weight. 17 Md. App. at 712. That is not the situation here. It is clear from our review of the record that the circuit court properly considered all the statutory factors, including Wilkins' assertion of issues regarding his mental condition, and that, based upon consideration of those factors,

including all that weighed against transferring jurisdiction to the juvenile court, properly exercised its discretion in denying Wilkins' motion.

II.

Wilkins next argues that the circuit court erred by admitting prejudicial hearsay testimony of the police officers who testified that when they came upon the crash involving the victim's car, citizen bystanders pointed out for the police where the suspects had run. Wilkins claims that this testimony was prejudicial in that it bolstered the police officers' identification of him as the driver of the stolen vehicle.

The State responds preliminarily that Wilkins' argument is not preserved for appellate review because he failed to object to some of officer's testimony regarding the bystanders' actions. Alternatively, the State counters that the testimony was not hearsay because it was not offered to prove the truth of the matter asserted, but to explain how the officers came to arrest Wilkins.

We disagree with the State in its first contention. In our opinion, defense counsel objected to each of the officers' attempts to testify to the hearsay gestures and statements of witnesses, and thus, preserved Wilkins' argument for review. We do, however, agree with the State's second argument.

Our review of the record indicates that, with one exception, the court sustained all of Wilkins' objections to the officers' testimony about what the citizens were pointing to, but did not strike references to the fact that witnesses were making gestures. The court sustained

defense counsel's first objection to Officer Brown's testimony about what happened when they came upon the accident scene:

> [PROSECUTOR]: After making that observation, that is seeing the Mercedes Benz collision with the bus, what, if any, observation did you make in your immediate area? What did you see?
>
> Officer Brown: There were a lot of pedestrians out there. There was the driver of the vehicle, people that were on the school bus and then there were just citizens that were just out in the area. From that point, as we arrived into the area, we jumped out of the cruiser, did a really quick scan of the vehicle. We were then approached by several citizens, they were **pointing to the direction.**
>
> [DEFENSE COUNSEL]: **Objection**.
>
> THE COURT: Okay. Sustained.

(Emphasis added). The prosecutor then asked a series of questions that referenced the fact that citizens were pointing their fingers, and asked what actions the officers took in response. Defense counsel did not object:

> [PROSECUTOR]: After you made that observation, with respect to the gesture of pointed fingers of the pedestrians, did you head towards that direction at some point?
>
> Officer Brown: Yes.
>
> * * *
>
> [PROSECUTOR]: After you got back into the cruiser, did you head toward the direction where the gestures were being made?
>
> Officer Brown: Yes.

The prosecutor then asked another series of questions about where the citizens were pointing, and whether the police officers followed the direction of the pointing gestures. Defense counsel made no objection, except when Officer Brown began to testify about what a citizen had stated—an objection which was sustained.

There was no objection to additional testimony that the citizen was pointing to a house, or that the police went in that direction:

> [PROSECUTOR]: Did you proceed toward that direction that those gestures that were being made, the direction that the gestures were being made toward?
>
> Officer Brown: Yes.
>
> [PROSECUTOR]: After you followed yet another set of gestures, what happened?
>
> * * *
>
> [PROSECUTOR]: Okay. After observing that male citizen making a gesture you indicated a pointing gesture towards a house, what did you do?
>
> Officer Brown: I then went to the next block over, which basically where we were, it comes out at the other end of the street where, in an event someone was to jump the fence, would come out in front of the house, would be the next block over.
>
> [PROSECUTOR]: So is it fair to say you then made your way to the opposite side of the house where the gesture was being made?
>
> Officer Brown: Yes.

When Officer Robison took the stand, defense counsel lodged an objection to similar, questions that had already been asked of and answered by Officer Brown, to which defense counsel had not objected:

> [PROSECUTOR]: What if anything, were [the citizens] doing when you observed them?
>
> Officer Robison: There **was a few citizens making gestures**.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Okay. That's the end of that. They were making gestures. Next question.
>
> [PROSECUTOR]: What type of gestures were they making?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: All right. I'll sustain it.
>
> [PROSECUTOR]: After observing those gestures, what did you do?
>
> Officer Robison: **Went in the direction that the gestures were**.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: That's what he did, so that's overruled.

(Emphasis supplied).

The court properly sustained defense counsel's objections to testimony about what the citizens had stated or advised. It is clear from the record that the only objection that was not sustained regarding the pointing gestures made by citizens, was the objection made to

Officer Robison's testimony that "there were a few citizens making gestures," and that, after observing the gestures, the police went in that direction.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "A statement that 'is not offered for the truth of the matter asserted . . . is not hearsay and it will not be excluded under Rule 5-802." *Frobrouck v. State*, 212 Md. App 262, 282, *cert denied*, 424 Md. 313 (2013) (quoting *Stoddard v. State*, 389 Md. 681, 689 (2005)). "Ordinarily, we review a trial judge's determination on the admission of evidence for abuse of discretion, but whether evidence is hearsay is an issue of law reviewed *de novo." Id.* (Citations omitted).

Professor Lynn McLain explains that "[a]n out-of-court statement offered in evidence will be *nonhearsay if its probative value does not depend on either the declarant's sincere meaning or her having been factually correct.*"[2] 6A Lynn McLain, *Maryland Evidence, State & Federal* § 801:1, at 173 (3d ed.) (emphasis in original). Professor McLain continues: "Many statements falling under this category of nonhearsay are offered to show . . . why [a] person took actions in view of her learning of the statement[] or the reasonableness . . . of those actions." 6A *Maryland Evidence* § 801:10, at 244-45 (Footnotes omitted).

[2] Stated differently and for further clarity: "*An out-of-court statement will be considered to be offered to prove that 'truth,' only if it would have* ***no*** *probative value (as to the relevant fact it is offered to prove) unless the declarant was* ***both*** *sincere and factually correct when she made the statement.*" 6A Maryland Evidence § 801:1, at 171 (emphasis in original).

"Statements made to an investigating officer are not hearsay unless and until they are offered into evidence for their truth." *Hudson v. State*, 152 Md. App. 488, 508 (2003) (citing *Daniel v. State,* 132 Md. App. 576, 589 *cert. denied,* 361 Md. 232 (2000)), *abrogated in part on other grounds by Price v. State*, 405 Md. 10 (2008). "Indeed, such reports [to investigating officers] are routinely used for a variety of reasons other than as substantive evidence." *Id.* at 508 n.10 (citing *Ashford v. State*, 147 Md. App. 1, 75-76 (2002)). In *McCray v. State*, we held that testimony by an investigating officer describing information that the officer received from a source was not hearsay when offered to explain the course of the investigation. 84 Md. App. 513, 518 (1990) (citing E. W. Cleary, *McCormick on Evidence* § 249 (3d ed. 1984)). This premise is so well accepted in hearsay law that we have even referred to it as "elementary:"

> It is elementary that, as long as the officer is able to provide the basis for his testimony, and the testimony is not inadmissible for other evidentiary reasons, an investigating police officer may properly testify about the conclusions he draws in the context of an investigation. This is particularly evident when one considers that even the statements that led him to arrest the individual would be admissible to show that the officer relied on and acted upon those statements. *See, e.g., Graves v. State*, 334 Md. 30, 38, 637 A.2d 1197 (1994) ("It is well established that a relevant extrajudicial statement is admissible as nonhearsay when it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true.") (and cases cited therein).

Daniel, 132 Md. App. at 590.

Here, the testimony from Officer Brown and Officer Robison that citizens were pointing and making gestures, and that they went in the direction that the citizens were

pointing was not hearsay because it was not offered for the truth of the matter asserted. Rather, it was offered to explain the police officers' actions. Accordingly, we hold that the court did not abuse its discretion in admitting the evidence because it was offered for a non-hearsay purpose.

III.

Wilkins final argument is that the rule of lenity requires the merger of his sentence for transporting a handgun in a vehicle into the sentence for use of a handgun in a crime of violence because the acts were part of a single transaction. We agree.

As the Court of Appeals has explained:

> The doctrine of merging of offenses . . . stems in part from the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution, applicable to state court proceedings via the Fourteenth Amendment. The Double Jeopardy Clause states that no person "shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." The Fifth Amendment guarantee against double jeopardy prohibits both successive prosecutions for the same offense as well as multiple punishment for the offense.

Dixon v. State, 364 Md. 209, 236 (2001) (Citations omitted). As we observed in *Britton v. State*, 201 Md. App. 589 (2011):

> [W]hen the trial court is required to merge convictions for sentencing purposes but, instead, imposes a separate sentence for each unmerged conviction, it commits reversible error. . . . [S]uch an error implicates the illegality of imposing multiple sentences ... for the same offense. . . . [T]he result is the imposition of a sentence "not permitted by law.

Id. at 598-99 (Citations and internal quotation marks omitted). Our review of a court's failure to merge offenses for sentencing purposes is *de novo. Pair v. State*, 202 Md. App. 617, 625 (2011) (Review of court's decision regarding merger pursuant to the "required evidence" test or "the rule of lenity" is decided "as a matter of law"), *cert. denied*, 425 Md. 397 (2012).

In 1988, the text of then Article 27, § 36B prohibited, among other things, the carrying of a handgun, the transporting of a handgun, and the use of a handgun in the commission of a crime. In the section's declaration of policy, the General Assembly observed that:

> (i) There has, in recent years, been an alarming increase in the number of violent crimes perpetrated in Maryland, and a high percentage of those crimes involve the use of handguns;
>
> (ii) The result has been a substantial increase in the number of persons killed or injured which is traceable, in large part, to the carrying of handguns on the streets and public ways by persons included to use them in criminal activity[.]

§ 36B(a).

Section 36B(b) provided, in pertinent part:

> Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or knowingly transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, highways, waterways, or airways or upon roads or parking lots generally used by the public in this State shall be guilty of a misdemeanor[.]

Subsection (d) of § 36B penalized the unlawful use of a handgun in the commission of a crime. The Court of Appeals, in *Hunt v. State*, applied the rule of lenity to sentences based

on convictions for both carrying a handgun and using a handgun in the commission of a crime:

> In enacting § 36B, the legislature made clear its purpose to restrict the carrying of handguns as a measure to control the use of such weapons in the commission of crimes of violence. Section 36B(d) expressly provides for consecutive sentences for both the use of a handgun in the commission of a crime of violence and for the underlying crime itself. Section 36B(b) contains no express language authorizing multiple punishments. We think it plain that the legislature did not intend, under circumstances like those now before us, that a separate punishment would be imposed for carrying, wearing, and transporting a handgun consecutive to that imposed for using a handgun during commission of a crime of violence. We thus find in this case that the § 36B(b) offense merged into the greater § 36B(d) offense of using a handgun in the commission of a crime of violence.

312 Md. 494, 510 (1988)). In 2002, the General Assembly recodified Article 27 § 36B(b) to Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL") § 4-203, enumerating the prohibitions carrying a handgun on one's person and transporting a handgun in a vehicle as separate subsections, but leaving them substantively unchanged. *See* CL § 4-203(a)(1)(i), (ii); Chapter 26, Laws of 2002. The legislature moved § 36B(d) to its own section, CL § 4-204, and left it substantively unchanged.

Recently, we have reaffirmed the Court's ruling in *Hunt* with respect to carrying a handgun, noting that "[i]t is well settled that when convictions for use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun are based upon the same acts, separate sentences for those convictions will not stand." *Holmes v. State*, 209 Md. App. 427, 456 (2013) (citing *Wilkins v. State*, 343 Md. 444, 446-47 (1996); *Hunt v. State*, 312 Md. at 510). However, no case has decided the applicability of the rule

of lenity to separate sentences resulting from convictions for use of a handgun in the commission of a crime of violence and transporting a handgun in a vehicle on a public road when the crimes are based upon the same acts.

Neither the policy statement in Article 27, § 36B(a) nor the language of § 36B(b) distinguished between carrying a handgun on one's person and transporting a handgun in a vehicle—both were misdemeanors. Further, although the Court in *Hunt* had occasion only to consider merger in the context of carrying a handgun, we note that the Court's opinion referenced § 36B(b) generally—a subsection that at the time included the prohibition on transporting a handgun in a vehicle. In view of the language employed by the General Assembly in creating misdemeanor violations for both carrying a handgun and transporting one in a vehicle, we hold that the rationale articulated in *Hunt* requires that the rule of lenity apply to a sentence for transporting a handgun in a vehicle as well. Accordingly, we conclude that the convictions should have merged for sentencing purposes.

We disagree with the State's argument that the convictions should not merge because they were based on distinct criminal acts. The facts of the case before us are similar to those in *Hunt*, *supra.* There, the evidence—that the defendant drove around with a gun in his jacket for two hours before shooting a police officer—was enough to allow the Court to conclude that Hunt's actions constituted a single criminal act. 312 Md. at 510. Here, testimony demonstrated 1) that Wilkins and his accomplices were in a van before the carjacking occurred and 2) that after the stolen Mercedes crashed, an accomplice,

Christopher Barnes, exited from the vehicle and tossed a black handgun behind the other car that had also been involved in the accident. We agree with Wilkins that the evidence presented at trial could support a reasonable finding that a gun was transported in a van to the scene of the carjacking, that Wilkins or an accomplice used the gun to commit the carjacking, and that they then fled with the gun in the stolen car. Thus, transporting the handgun in a vehicle, whether it was the van or the stolen Mercedes, was part and parcel with the carjacking crime.

Further, even if we were to credit the State's argument that the carjacking and transporting of the handgun were distinct acts, we would conclude that the crimes were, at the very least, overlapping. During the carjacking, the victim feared for his life because a gun was pointed at him. He complied with the assailant's orders to lay on the ground, and did so while Wilkins and his accomplices fled with the gun in the Mercedes. Due to the inter-related nature of the two crimes and applying the rationale in *Hunt*, separate sentences should not have been imposed for the two weapons offenses.

We also disagree with the State's argument that CL § 4-204(c)(1)(i) is an expression of legislative intent against merger of Wilkins' two weapons convictions.[3] That language allows a convicted person to be sentenced for the offense of using of a handgun in the

[3] CL 4-204(c)(1)(i) provides: "[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."

commission of a crime of violence in addition to the penalty imposed for the underlying crime of violence (in this case, the armed carjacking). The provision cited by the State has no bearing on whether a conviction for use of a handgun in the commission of a crime merges with a conviction for wearing, carrying or transporting a handgun.

Accordingly, we shall vacate appellant's sentence for transporting a handgun. We, however, do not remand to the circuit court because the trial court sentenced Wilkins concurrently on these two offenses. *See Holmes*, 209 Md. App. at 456.

SENTENCE FOR TRANSPORTING A HANDGUN IN A VEHICLE ON A PUBLIC ROAD VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY OTHERWISE AFFIRMED.

COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY PRINCE GEORGE'S COUNTY.