

Circuit Court for Montgomery County
Case No. 135713C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2351

September Term, 2019

JOEY NEGRON

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 2021

*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.

Convicted by a jury in the Circuit Court for Montgomery County of second degree assault and reckless endangerment, Joey Negron, appellant, presents for our review two questions: whether the court erred in imposing separate sentences for the convictions, and whether the court erred “in granting the State’s objection to the defense request for particulars.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Kelly Eam, who testified that on April 20, 2019, he boarded a Metro bus on which Mr. Negron was riding and accompanied by a dog. When Mr. Eam prepared to exit the bus, Mr. Negron “tried to rush [Mr. Eam] out.” Mr. Negron “pushed [Mr. Eam] off the bus and tried to rush his dog out to the sidewalk and sit his dog there.” Mr. Negron “[t]hen told the dog get him, get him, get him, get him.” Mr. Negron “charged the dog into” Mr. Eam, who “ran down the hill,” but “slip[ped] on the grass and fell down.” The dog then “grabbed” and “bit [Mr. Eam] on [his] forearms and wouldn’t let go.” Mr. Eam “had to punch [the dog] three times to get loose,” then “jump[ed] up the cars and . . . call[ed] 911.”

The State also introduced into evidence a video recording from the bus’s surveillance cameras. The recording shows Mr. Negron push Mr. Eam out of the bus’s rear door as other passengers exit the bus’s front door. The recording then shows Mr. Eam and Mr. Negron engage in an altercation, during which the other passengers flee. The recording then shows the dog attack and chase Mr. Eam. Following the verdicts, the court sentenced Mr. Negron to a term of ten years’ imprisonment, all but five years suspended, for the second degree assault, and a consecutive term of five years’ imprisonment, all suspended, for the reckless endangerment.

Mr. Negron first contends that the court erred in imposing separate sentences for second degree assault and reckless endangerment. Although these offenses do not merge under the required evidence test, we have held that merger is required under the rule of lenity when both offenses are based on the same conduct. *See Marlin v. State*, 192 Md. App. 134, 171 (2010). Mr. Negron claims that “both convictions . . . could have arisen from the same conduct, generating an ambiguity that must be resolved in Mr. Negron’s favor.” *See Nicolas v. State*, 426 Md. 385, 408 n.6 (2012) (noting that “where it is impossible to know for certain the rationale of the trier of fact for finding the convictions entered against the defendant,” that factual ambiguity must be resolved in the defendant’s favor). The State counters that there was no factual ambiguity because “the record demonstrates that the jury’s verdicts were based both on different acts . . . and on different victims.” Specifically, the State notes that:

- Mr. Negron “was charged with assaulting [Mr.] Eam, but recklessly endangering ‘another.’”
- During voir dire, the court told the prospective jurors that “the State alleges that on or about April 20th, 2019, the defendant, Joey Negron, instructed a dog in his possession to bite Kelly Eam upon exiting a bus, seriously injuring Mr. Eam and endangering the lives of other patrons[.]”
- The “prosecutor’s opening statement and closing arguments highlighted the differences between the offenses.” During opening statement, the prosecutor stated, in pertinent part:

Additionally, reckless endangerment. Everyone on that bus was in danger the moment that Joey Negron released that dog. Everyone. You see people flying, trying to get away because they’re concerned that that dog is going to bite them as well.

During closing argument, the prosecutor stated, in pertinent part:

Now, in also considering that I want you to consider reckless endangerment. Now, certainly that conduct was directed toward Mr. Eam. But I wanted you to look at, and I hope you took this into consideration here looking at the video, is all of the other people near the bus, coming off the bus, people still on the bus who were freaked out. Who were scared. Who know, just like everyone else knows, that dogs are dangerous, inherently. And so when a dog is attacking someone they know they could be next. You see people shooting, just flying away from that bus, going in the front of the bus. Some people running in the street, including Mr. Eam himself. Some people running along near the side of the bus along the right side because they are scared for their lives.

- The “court’s instructions specified that second-degree assault required the State to prove that [Mr.] Negron ‘caused offensive physical contact with or physical harm to [Mr.] Eam,’ whereas the reckless endangerment instruction required the State to prove that [Mr.] Negron ‘engaged in conduct that created a substantial risk of death or serious physical injury to another.’”
- The “verdict sheet specified that the assault charges related to [Mr.] Eam, but the reckless endangerment charges related to ‘another.’ . . . Notably, the trial court did not instruct, nor the verdict sheet state, that the jury’s verdicts on the assault and reckless endangerment charges . . . were connected. Instead, the jury was instructed to consider the reckless endangerment charge separately from the assault charges.”

We agree with the State that, for these reasons, the jury’s finding of guilt on the second degree assault charge was clearly based on a separate act and victim than their finding of guilt on the reckless endangerment charge. Because we do not see any ambiguity in the verdicts, the court did not err in imposing separate sentences for the offenses.

Mr. Negron next contends that the court “erred in granting the State’s objection to the defense request for particulars.” Prior to trial, Mr. Negron filed a “Demand for Particulars.” The State subsequently filed an opposition to the request, in which it noted that Mr. Negron had not filed the request in a timely manner pursuant to Rule 4-241(a) (“[w]ithin 15 days after the earlier of the appearance of counsel or the first appearance of

the defendant before the circuit court pursuant to Rule 4-213(c), the defendant may file a demand in circuit court for a bill of particulars”). At a hearing on the request, defense counsel conceded that the request was untimely, but stated that he “waited in this case[] to review the discovery or start reviewing the discovery to see whether [he] needed particulars,” and argued that “the fact that they were outside the timeline set in the rule in no way affected the timeline of the case” or “the State’s ability to answer.” The court subsequently denied the request.

Mr. Negron now contends that the court erred in so ruling, because he “had an absolute right to particulars,” and “the Draconian sanction of precluding particulars was entirely unjustified.” But, Md. Code (2002, 2012 Repl. Vol., 2018 Supp.), § 3-206(b) of the Criminal Law Article states that a “defendant . . . is entitled to a bill of particulars” only “on timely demand.” Mr. Negron does not dispute that his request for particulars was not timely, and hence, the court did not err in denying the request.

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