

Circuit Court for Baltimore County
Case No: K-06-0303

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2389

September Term, 2018

KEVIN STEWART

v.

STATE OF MARYLAND

Nazarian,
Wells,
Moylan, Charles E. Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 6, 2019

*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.

Kevin Stewart filed a Rule 4-345(a) motion to correct an illegal sentence in which he claimed that he was sentenced for counts which the State had not proessed. The Circuit Court for Baltimore County denied relief, and Mr. Stewart appeals that ruling. We shall affirm the judgment because Mr. Stewart is incorrect.

BACKGROUND

In 2006, Mr. Stewart was charged in a 15-count indictment with multiple counts of robbery with a dangerous and deadly weapon, robbery, theft, and use of a handgun in the commission of a felony or crime of violence. Counts 1 through 5 were based on a robbery at a Kentucky Fried Chicken restaurant on October 3, 2005; counts 7 through 10 were based on a robbery at the Another Gamba's restaurant on November 22, 2005; and counts 11 through 15 were based on a robbery of a McDonald's restaurant on November 29, 2005.

On July 12, 2006, the court granted a motion to sever counts 1 through 10 and denied the defense's motion to suppress. The next day, a two-day jury trial began on the McDonald's robbery. The jury convicted Mr. Stewart of robbery with a dangerous weapon, felony theft, use of a handgun in the commission of a felony, and use of a handgun in the commission of a crime of violence.

The transcript from the trial is not in the record before us, but our opinion affirming the judgments on direct appeal included the following factual summary of the evidence:

On November 29, 2005, the McDonald's restaurant on Security Boulevard was robbed by two men. The two robbers, one who was armed, gathered the employees of McDonald's and one customer and ordered them into the restaurant's freezer. Approximately \$1200 was taken from the safe and the cash registers and placed by the two men in a Dunkin' Donuts box. Witnesses described the two alleged robbers as African-

over \$500), and counts 14 and 15 (use of handgun in the commission of a felony or crime of violence).

At a sentencing hearing held three months after the trial concluded, the prosecutor reminded the court that Mr. Stewart “along with a co-defendant went into a McDonald’s on Security Boulevard during the lunch hour . . . and then at gunpoint put not only the employees but customers into a freezer and robbed the store, robbed them, tried to rob them of their personal belongings.” The court sentenced Mr. Stewart to 20 years’ imprisonment for robbery with a dangerous weapon (“count 11”), to a consecutively run term of 20 years’ for the handgun offense (“count 14”) and merged counts “13” (theft) and “15” (the other handgun offense). The State then nol prossed counts 1 through 10 of the indictment. As noted, this Court affirmed the judgments.

In 2018, Mr. Stewart filed a motion to correct an illegal sentence in which he claimed that the court “erroneously” sentenced him on counts 11, 13, 14 and 15 of the indictment because the jury had convicted him of counts 1, 3, 4, and 5. In other words, it appears that, because the offenses on the verdict sheet were numbered 1 through 5, Mr. Stewart maintained that he was tried on counts 1 through 5 of the indictment (the KFC store robbery) and not on counts 11 through 15 (those specifically related to the McDonald’s robbery). The circuit court summarily denied the motion.

DISCUSSION

On appeal, Mr. Stewart reiterates the contention he raised in his motion in the circuit court. The factual basis for his argument, however, is meritless. As noted, prior to trial, counts 1 through 5 of the indictment (the robbery of the KFC on October 23, 2005) and

counts 6 through 10 of the indictment (the robbery of the Another Gamba's on November 22, 2005) were severed from counts 11 through 15 (the McDonald's robbery on November 29, 2005). The fact that the McDonald's charges were referred to throughout the trial as counts 1, 2, 3, 4, and 5 is immaterial as it is clear from the record that the charges before the jury were those related to the McDonald's incident only. And the court correctly imposed sentence on counts 11, 13, 14, and 15 of the indictment as those were the precise charges upon which Mr. Stewart was found guilty, regardless of how they were numbered at trial.

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