

Circuit Court for Howard County
Case No. C-13-CR-23-000529

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2449

September Term, 2024

DONALD GENE FAILINGER

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: May 14, 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.

Convicted by a jury in the Circuit Court for Howard County of two counts of use of a stolen credit card, four counts of theft of a credit card, four counts of unauthorized use of a payment device number, and related offenses, Donald Gene Failinger, appellant, presents for our review two issues: whether Mr. Failinger was “improperly charged and convicted of [unauthorized] use of a payment device number,” and whether the court erred in “ruling that . . . Howard County was the proper venue.” For the reasons that follow, we shall reverse the convictions of unauthorized use of a payment device number. We shall otherwise affirm the judgments of the circuit court.

At trial, the State produced evidence that at 2:30 p.m. on June 5, 2022, Roseann Zimmerman visited the grave of her daughter in Meadowridge Memorial Park in Elkridge. When Ms. Zimmerman returned to her Cadillac Escalade, she discovered that someone had entered the vehicle and taken her pocketbook, which contained American Express, Royal Caribbean, MGM, and Synchrony Bank credit cards, Bank of America and SECU debit cards, and U.S. currency. Police subsequently discovered that the American Express card had been used at a Royal Farms store in District Heights, Prince George’s County, to purchase Home Depot and Vanilla Visa gift cards. The Vanilla Visa card was subsequently used at a Walmart in Onley, Virginia. Also, multiple cards were used at a Target in Oxon Hill, Prince George’s County, to attempt to purchase a laptop computer, but the cards were declined and the transaction voided. Police obtained video recordings made by surveillance cameras at the Royal Farms, Walmart, and Target, and identified the suspect as Mr. Failinger. Following the close of the State’s case, Mr. Failinger testified that he did not take Ms. Zimmerman’s pocketbook, but received and used her cards.

At sentencing, the court sentenced Mr. Failinger to a term of imprisonment of one year for the use of the American Express card, a consecutive term of imprisonment of one year for the attempted use of the American Express card, and consecutive terms of imprisonment for the thefts of the American Express, Royal Caribbean, Bank of America, and SECU cards. For the remaining offenses, the court “imposed no sentence.”

Mr. Failinger first contends that he “was improperly charged and convicted of use of a payment devi[c]e number” in violation of Md. Code (2002, 2021 Repl. Vol.), § 8-214 of the Criminal Law Article (“CR”) (prohibiting the unauthorized use or disclosure of “any credit card number or other payment device number or holder’s signature”). The State concurs, as do we. In *Clark v. State*, 188 Md. App. 185 (2009), we stated:

[CR] § 8-214 was aimed at persons who came into possession of a credit card number(s) with a fraudulent intent or who came into possession of the number(s) lawfully, but thereafter formed a fraudulent intent. In either case, it was the fraudulent possession of a credit card number, as a number, that the General Assembly intended to reach. There was no intent to duplicate the existing crimes of stealing and then using a credit card.

Id. at 199-200. Accordingly, we reverse the convictions of unauthorized use of a payment device number.

Mr. Failinger next contends that the court erred in “ruling that . . . Howard County was the proper venue.” Mr. Failinger was initially charged by indictment with four counts of unlawful use of a payment device number, one count of use of a stolen credit card, four counts of attempted use of a stolen credit card, four counts of identity fraud, six counts of theft of a credit card, one count of rogue and vagabond, and one count of theft of U.S. currency. On April 5, 2024, Mr. Failinger filed a “Motion to Dismiss for Improper Venue,”

in which he moved to dismiss the counts of unlawful use of a payment device number, use of a stolen credit card, attempted use of a stolen credit card, identity fraud, and theft of U.S. currency on the ground that “there is sufficient direct evidence to demonstrate that the . . . counts . . . did not occur in Howard County.” The court denied the motion.

On April 15, 2024, the parties appeared for a motions hearing, at which defense counsel requested that the court reconsider the motion. The prosecutor cited CR § 8-301(p), which states, in pertinent part, that “[t]he prosecution of a violation of this section or for a violation of any crime based on the act establishing a violation of this section may be commenced in any county in which . . . an element of the crime occurred.” Following argument, the court again denied the motion, stating:

I think that this is an expanded statute for reasons because of the nature of this type of offense where things can be quickly taken from one location, used in a number of different locations, and so things can happen in a number of different ways.

And I think also, for the convenience of a victim who might be very much inconvenienced with things in all different types of locations, the [s]tatute allows things to be in one location and it gives a wider venue. So I do believe it is appropriate[.]

Following trial, the jury acquitted Mr. Failinger of, among other offenses, rogue and vagabond.

Mr. Failinger contends that “[w]ith the acquittal of the rogue and vagabond charge, no elements of any of the crimes occurred in Howard County,” and hence, “venue properly lay in Prince George’s County.” We disagree. The Supreme Court of Maryland has long “found the common law rule, that the proper venue of a crime is the county of commission, to be the general rule in Maryland.” *McBurney v. State*, 280 Md. 21, 32 (1977). Here, the

State alleged that Mr. Failinger committed the offense of rogue and vagabond in Howard County. Mr. Failinger did not challenge venue as to that offense, and does not cite any authority that required the court to revisit its ruling as to venue for the remaining offenses following the verdict. Hence, the court did not err in denying the motion to dismiss for improper venue.

**CONVICTIONS OF UNAUTHORIZED USE
OF A PAYMENT DEVICE NUMBER
REVERSED. JUDGMENTS OF THE
CIRCUIT COURT FOR HOWARD
COUNTY OTHERWISE AFFIRMED.
COSTS TO BE PAID ONE-HALF BY
HOWARD COUNTY AND ONE-HALF BY
APPELLANT.**