

Circuit Court for Baltimore City
Case No. 223005026

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0938

September Term, 2023

JEBREEL FIELDS

V.

STATE OF MARYLAND

Reed,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: June 26, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Jebreel Fields, was convicted in the Circuit Court for Baltimore City of two counts of second-degree assault and one count of reckless endangerment. Appellant presents the following question for our review:

“Must the one-year sentence for reckless endangerment of M.F. merge into the two-year sentence for second-degree assault of M.F.?”

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Baltimore City of two counts of second-degree assault, one count of reckless endangerment, and one count of wearing and carrying a weapon openly with intent to injure. A jury convicted appellant of both counts of second-degree assault and of reckless endangerment but acquitted appellant of wearing and carrying a weapon openly with intent to injure. The trial court sentenced appellant to a term of incarceration of two years for each conviction for second-degree assault and an additional one-year term of incarceration for reckless endangerment, all to be served consecutively.

These charges stem from an altercation between appellant and M.H., the mother of appellant’s toddler M.F. M.H. and appellant got into a fight over the phone. Appellant then proceeded to M.H.’s apartment where he found M.H. putting M.F. into her car seat. Appellant approached M.H. and began to kick and punch her, before taking M.F. inside. When M.H. followed appellant inside, the physical altercation continued.

At several points relevant to this appeal the altercation involved M.F. While appellant was hitting M.H., M.F. came out of the room where appellant had left her. Appellant pushed M.H. and M.H. fell over on top of M.F. which made M.F. cry. Appellant then grabbed M.F. and said that he would kill her. M.H. testified at trial that appellant held M.F. in front of him and began to strangle her with both of his hands. M.H. testified that shortly thereafter appellant took M.F. and held her out over the stairwell of the apartment building as though he was going to drop her. They were, at the time, on the fifteenth floor.

Appellant’s indictment charged one count of second-degree assault against M.H., one count of second-degree assault against M.F., and one count of reckless endangerment against M.F. This appeal concerns the two charges for which M.F. was the victim. The indictment did not specify which portion of appellant’s conduct towards M.F. constituted second-degree assault and which portion constituted reckless endangerment. The jury instructions at trial defined each charge but did not specify the particular conduct that was alleged to meet the elements of each charge. The verdict sheet, likewise, did not specify which conduct was alleged to meet each charge. Nor did either the jury instructions or the verdict form ask the jury to specify whether the conviction for second-degree assault was based on separate conduct from the conviction for reckless endangerment. The evidence, however, did refer to different acts, and the prosecutor discussed those different acts as they related to the charges in closing argument.

In closing, the prosecutor argued that the assault consisted of strangling M.F.:

“But the defendant didn’t just assault [M.H.]. No, he assaulted his own 18-month-old daughter. You heard testimony that later that—after those incidents were happening, he goes. He grabs

[M.F.] while they're tussling over her. He picks her up by the neck, his own daughter. Picks her up by the neck and starts strangling her."

The prosecutor argued that the reckless endangerment charge was supported by appellant holding M.F. over the fifteen flights of stairs:

"And then the defendant moved his hand over to the side and held her over flights of stairs. [M.H.] testified that she lives on the 15th floor. And he held his 18-month-old over those 15 flights of stairs threatening to drop her. Saying tell me I won't do it.

That meets the elements of reckless endangerment. Because the defendant engaged in conduct that created a substantial risk or death or serious injury to [M.F.]. You would all agree holding your 18-month-old child over 15 flights of stairs could result in serious injury or death. And a reasonable person would not have engaged in that conduct.

And the defendant acted recklessly. He was aware that this conduct created a risk of death or serious injury. He was saying tell me I won't do it. He knew what would happen if he dropped [M.F.] down those 15 flights of stairs."

The jury found appellant guilty of both counts of second-degree assault and reckless endangerment. He was sentenced as described above. This timely appeal followed.

II.

Appellant argues that his conviction for reckless endangerment should have merged with his conviction for second-degree assault. He argues that it was not clear whether the jury convicted him of reckless endangerment for strangling his daughter or for holding her over the stairs. A reasonable jury could believe that either conduct satisfied the elements of reckless endangerment outlined in the jury instructions. Because the indictment, the

jury instructions, and the jury form fail to specify that different conduct was alleged to have satisfied the second-degree assault charge and the reckless endangerment charge, he argues that the jury verdict is ambiguous as to whether the basis for the verdict on each count was the same conduct. He argues that the rule of lenity demands that we read the ambiguity in his favor and that, therefore, the convictions must merge.

The State does not contest that reckless endangerment can merge with second-degree assault when the underlying conduct is the same. The State argues that the jury convicted appellant of second-degree assault for the strangulation and of reckless endangerment for holding his daughter over the stairs. The State argues that, despite the lack of specificity in the jury instructions and the verdict form, the jury received a clear explanation of the separate bases for the crimes in the State’s closing argument. The State argues that the basis for the jury’s convictions is readily apparent and that the convictions do not merge.

III.

When a court fails to merge a sentence as required, the sentence is illegal as a matter of law. *White v. State*, 250 Md. App. 604, 643 (2021). Maryland recognizes three grounds for merging a defendant’s convictions: (1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness. *Carroll v. State*, 428 Md. 679, 693–94 (2012). Merger is required where both offenses are based on the same conduct. *Marlin v. State*, 192 Md. App. 171 (2010) (“When a single act is sufficient to result in convictions for both offenses, but the victim suffered only a single harm as a result of that act, then as

a matter of fundamental fairness there should be only one punishment because in a real-world sense there was only one crime.”). The required evidence test under *Blockburger v. United States*, 284 U.S. 299 (1932) is not at issue in this case. The only issue is whether the rule of lenity or the principle of fundamental fairness requires merger.

Neither party contests that reckless endangerment *can* merge with second-degree assault where both offenses are based on the same conduct. *Marlin*, 192 Md. App. 171 (holding that reckless endangerment merges with first-degree assault where the reckless conduct was the assaultive conduct); *Williams v. State*, 100 Md. App. 468, 511 (1994) (holding that reckless endangerment merges with aggravated assault where the reckless conduct was the assaultive conduct). The question here is whether the conduct was the same.

It is true that appellant could be charged separately for strangling his daughter, on the one hand, and for holding her over the stairs, on the other. *State v. Boozer*, 304 Md. 98, 105 (1985) (“Separate acts resulting in separate insults to the person of the victim may be separately charged and punished even though they occur in very close proximity to each other and even though they are part of a single criminal episode or transaction.”). But for appellant to be sentenced separately, it must be readily apparent that the jury convicted appellant for two separate instances of conduct. *Snowden v. State*, 321 Md. 612, 619 (1991). Where it is unclear whether the convictions were based on the same conduct, we resolve the ambiguity in favor of the defendant, which, in this case, means that the charges must merge. *Id.*

One source of valuable information regarding the jury’s verdict is the State’s closing argument. *Butler v. State*, 255 Md. App. 477, 501-02 (2022) (holding that, in determining whether the conduct underlying two convictions was the same, we look to the prosecutor’s closing argument, the indictment, the jury instructions, the verdict sheet, and the evidence introduced to determine whether there was any ambiguity regarding the jury’s verdict). We have, for instance, found that there was no ambiguity where the prosecutor clearly delineated the separate conduct for separate offenses in closing arguments, and, either the jury form explicitly asked if the jury’s verdict was based on separate conduct, or the judge’s instructions explained that convictions for separate charges should be for separate conduct. *Id.* at 504 (closing arguments and jury form); *Graham v. State*, 117 Md. App. 280, 289 (1997) (closing arguments and jury instructions).

Appellant urges us to hold that clarity in the State’s closing argument *alone* is not sufficient to render the jury’s verdict unambiguous because the jury is not required to accept the prosecutor’s analysis of the law as applied to the facts. Yet the Supreme Court of Maryland noted in *State v. Frazier*, 469 Md. 627, 652-53 (2020) that such clarity may be enough, on its own, in some cases. In *Frazier*, the Maryland Supreme Court considered whether a lesser charge of fourth-degree sexual offense merges with second-degree assault even though the lesser offense carried a greater sentence. *Id.* The Court noted that the issue could have been avoided if the court had ensured that there was a clear verdict charging the defendant with fourth-degree sexual offense for conduct separate from the second-degree assault. The court explained, however, that the prosecutor’s conduct had

contributed to the issue, and that more clarity on the part of the prosecutor could have solved the problem:

“At trial, prosecutors also have a responsibility to explain the required elements of the crime charged. In closing argument, the prosecutor convoluted the applicable elements and acts, blurring the distinction between which act or acts supported the conviction for second-degree assault and which supported a conviction for the fourth-degree sexual offense. In closing, the prosecutor described forced vaginal intercourse and stated that the assault ‘continued’ from the upstairs bedroom to the kitchen. *Had the prosecutor been clear regarding the acts sufficient to sustain a conviction for each, there may have been no ‘Lancaster problem.’*”

Id. (emphasis added). We take this to mean that, in some cases, a prosecutor’s clarity about which conduct was intended to satisfy which charges may be enough to make the verdict clear.

Here, the prosecutor was clear as to which conduct the jury should apply to which charge. The State argued explicitly that appellant’s attempt to strangle his daughter was the assault and that appellant’s decision to hold his daughter over the stairs was reckless endangerment. At no point did either party (or the trial judge) indicate to the jury that the attempt to strangle appellant’s daughter could also be reckless endangerment. At no point was it suggested to the jury that it could find appellant guilty of reckless endangerment even if it found that he did not engage in the conduct which the state claimed was reckless endangerment. Appellant did not present a separate defense to reckless endangerment that might cause the jury to believe M.H.’s account of strangulation but not her account of appellant holding their daughter over the stairs.

It is readily apparent that appellant was convicted of assault for his attempt to strangle his daughter and reckless endangerment for his decision to hold his daughter over fifteen flights of stairs. The prosecutor made that clear. And the record supports the prosecutor's argument. The convictions are based on separate conduct and need not merge.

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