Circuit Court for Baltimore City
Case No.: 121277013

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1090

September Term, 2023

KELLY JEROME FRANKLIN

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: November 18, 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).

Following a five-day trial, a jury sitting in the Circuit Court for Baltimore City convicted Kelly Franklin, appellant, of eight counts—robbery and second-degree assault of Tanisha Johnson; robbery and second-degree assault of Russell Henniger; attempted robbery, second-degree assault, and attempted theft ($1,500 – $25,000) of Oluwadamilolo Sabuto; and theft ($1,500 – $25,000) from a CVS Pharmacy. The court imposed a sentence of fifteen years' imprisonment for the robbery of Henniger, five consecutive years' imprisonment for theft from the CVS, and two terms of ten years' imprisonment, all suspended with five years of probation, for the robbery of Johnson and attempted robbery of Sabuto, with sentences for the remaining counts being merged.

On appeal, Franklin presents four questions for our review,[1] which we have consolidated as follows:

1. Did the trial court err in completely delegating its responsibility to manage courtroom security to security personnel?

2. Is the evidence sufficient to sustain Franklin's convictions for attempted theft from Sabuto and theft from the CVS, where the State failed to show that the pharmaceuticals were valued at $1,500 – $25,000?

3. Under either the rule of lenity or fundamental fairness, must Franklin's sentence for theft from the CVS merge into his sentence for robbery of Henniger?

[1] Franklin presented the following questions on appeal:
1. Did the trial court err in completely delegating its responsibility to manage courtroom security to security personnel?
2. Is the evidence sufficient to sustain Mr. Franklin's convictions for attempted theft from Ms. Sabuto and theft from the CVS, where the State failed to show that the pharmaceuticals were valued at $1,500 – $25,000?
3. Under the rule of lenity, must Mr. Franklin's sentence for theft from the CVS merge into his sentence for robbery of Mr. Henniger?
4. In the alternative, does fundamental fairness require that Mr. Franklin's sentence for theft from the CVS merge into his sentence for robbery of Mr. Henniger?

For the reasons set forth below, we shall remand for resentencing but otherwise affirm the judgment of the circuit court.

BACKGROUND

On September 16, 2021, Baltimore City police officer Donnell Jackson responded to a call for service at a Baltimore City CVS. Upon arrival, CVS employees were pointing frantically to a person who was running across the CVS parking lot, holding a trash bag. Officer Jackson pursued the person, later identified as Franklin, until he apprehended him in the front yard of a residence, about 50 yards from the CVS. Officer Jackson discovered a cellphone on Franklin's person that belonged to Johnson, a CVS employee. In the area where Franklin was apprehended, Officer Jackson also found a bookbag containing money, a pocketbook that belonged to McLaren, the CVS manager, and the trash bag that Franklin was seen with, which contained prescription drugs from CVS.

CVS surveillance footage from the incident showed that the individual who robbed the store was wearing red shoes, sunglasses, a white mask, a wig, and possibly fake breasts. However, Franklin was not wearing sunglasses, a white mask, fake breasts, or a wig when Officer Jackson apprehended him. Officer Jackson did find a mask in the area, but it was blue. Officer Jackson did not see Franklin remove a disguise at any point during his pursuit, and did not find a wig, sunglasses, or fake breasts in the area where Franklin was apprehended.

Franklin was indicted on twelve counts, including various robbery, theft, and assault charges.[2] His jury trial took place between February 24 and March 2, 2023, where he proceeded *pro se*. On February 24, 2023, the first day of trial, the circuit court explained to Franklin how courtroom security would proceed, given his decision to proceed *pro se*. The court warned that "[i]f Mr. Franklin chooses to move, he needs to understand that the Correctional Officers are going to move with him because he is in their custody." The court went on to explain, "he needs to understand there is no option, they will move with him because he is in their custody and he will not have either leg shackles and [sic] handcuffs." The court assured Franklin that the correctional officers were "not going to be intrusive," but again warned that "they're not in my direct control."

Franklin objected to the proposed security procedures, perceiving that the security arrangements might give the jury the impression that he was guilty. He stated that "[i]t makes it look more that I'm in custody and makes me look dangerous, like as if I'm a dangerous person." In response, the circuit court acknowledged, "It does." However, the court doubled down on its earlier warnings, stating:

> You're not in my custody. It's not a choice I get to make. I'm merely alerting you in advance. You're in their custody. I cannot direct them not to do it. I cannot. But I'm letting you know in advance so you are not surprised on Monday.

[2] The charges included: (1) robbery, (2) theft, and (3) second-degree assault of Tanisha Johnson; (4) robbery, (5) theft, and (6) second-degree assault of Kavesh McLaren; (7) attempted robbery, (8) second-degree assault, and (9) attempted theft ($1,500 – $25,000) from Oluwadamilolo Sabuto; (10) theft from CVS Pharmacy ($1,500 – $25,000); (11) second-degree assault of Deanna Pitts; and (12) carrying a dangerous weapon.

Franklin renewed his objection to the security procedures, stating, "[Y]ou're giving the State the advantage of me being a criminal and me looking bad and me looking aggressive as if I'm wrong and dangerous." However, the circuit court again maintained, "It's not my choice," and "I cannot stop them from moving with him and I'm not going to." The trial proceeded with these security measures in place.

Franklin was ultimately convicted of eight counts—robbery and second-degree assault of Johnson; robbery and second-degree assault of Henniger; attempted robbery, second-degree assault, and attempted theft ($1,500 – $25,000) of Sabuto; and theft ($1,500 – $25,000) from the CVS. On June 13, 2023, the circuit court sentenced Franklin to fifteen years' imprisonment for the robbery of Henniger, five consecutive years' imprisonment for theft from the CVS, and two terms of ten years' imprisonment, all suspended with five years of probation, for the robbery of Johnson and attempted robbery of Sabuto, with sentences for the remaining counts being merged.

Franklin noted this timely appeal on June 30, 2023.

DISCUSSION

I. Franklin Fails to Show that he was Prejudiced by the Courtroom Security Procedures

Franklin asserts that the circuit court abused its discretion by delegating the responsibility to manage courtroom security to security personnel. He further contends that he was prejudiced by this security arrangement because it allowed correctional officers to follow him around the courtroom while he presented his case to the jury, thereby denying him the right to a fair trial.

The right to a fair trial, which includes the presumption of innocence, is a fundamental liberty right guaranteed by the Fourteenth Amendment. *Knott v. State*, 349 Md. 277, 286 (1998) (citing *Estelle v. Williams*, 425 U.S. 501, 503 (1976)). The general rule in this State "'is that the conduct of a criminal trial is committed to the sound discretion of the trial judge.'" *Campbell v. State*, 243 Md. App. 507, 518 (2019) (quoting *Wiggins v. State*, 315 Md. 232, 239 (1989)) (cleaned up). However, that control "'must safeguard the defendant's constitutional rights,'" including the right to a fair trial. *Id.* (quoting *Kelly v. State*, 392 Md. 511, 543 (2006)). "'If the exercise of discretion results in the denial of a fair trial to a defendant, the discretion is certainly abused.'" *Id.* (quoting *Wiggins*, 315 Md. at 240).

Franklin carries a heavy burden in convincing this Court that the circuit court's decisions regarding courtroom security necessitate reversal of his convictions. Franklin must prove three things to secure a reversal of his convictions: (1) that he did not waive his objection to the courtroom security procedures by failing to raise it below;[3] (2) that the circuit court abused its discretion by completely delegating its responsibility to manage courtroom security to security personnel;[4] and (3) that Franklin was prejudiced by the

[3] *See Robinson v. State*, 404 Md. 208, 216 (2008) (quoting Md. Rule 8–131(a)) ("It is well-settled that an appellate court ordinarily will not consider any point or question 'unless it plainly appears by the record to have been raised in or decided by the trial court'").

[4] *See Wagner v. State*, 213 Md. App. 419, 476 (2013) (holding that reviewing courts should apply an abuse of discretion standard to courtroom security decisions).

courtroom security procedures.[5] Although Franklin is correct that he preserved his objection for appeal, the third requirement is fatal to Franklin's argument. Since he failed to show that he was prejudiced by the courtroom security procedures, the circuit court's abuse of discretion does not necessitate reversal of Franklin's convictions.

A. Waiver

Franklin contends that his security procedures argument is "squarely preserved" because he not only raised it several times at the start of trial, but the circuit court also ruled on the matter several times. The State, however, contends that Franklin waived his objection because "[a]lthough Franklin voiced his concern about the security procedures generally, he never argued that the court was failing to exercise its discretion." Alternatively, the State argues that Franklin affirmatively waived his challenge to the courtroom security procedures by agreeing with them.

Under Maryland Rule 4–323(c), a general objection preserves an issue for appellate review, and a party need not state specific grounds for the objection unless the court directs the party to do so.[6] Franklin made his objection to the courtroom security procedures clear,

[5] *See id.* at 478 (holding that, upon a finding of abuse of discretion, the reviewing court must also determine whether the defendant was prejudiced by the challenged practice).

[6] Maryland Rule 4–323(c) states in its entirety:

> **(c) Objections to Other Rulings or Orders.** For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection at that time does not constitute a waiver of the objection.

on the record, several times.[7] Additionally, the circuit court never directed Franklin to give more specific grounds for his objection to the security procedures. "[T]he 'effect of a general objection in this State is far-reaching.... We have said that when the trial court does not request a statement of the grounds for an objection, a general objection is sufficient to preserve all grounds which may exist.'" *Wilder v. State*, 191 Md. App. 319, 355 (2010) (quoting *Boyd v. State*, 399 Md. 457, 476 (2007)). Thus, Franklin's general objections to the courtroom security procedures suffice to preserve his argument for appeal.

Additionally, the State concedes that although "Franklin initially waived an objection by stating that he was agreeing to all of it . . . [h]e later revived his objection." The State goes on to argue that after reviving his objection to the courtroom security procedures, Franklin "again waived it by indicating that his objection depended on how the security procedures were carried out." This argument relies on Franklin's saying, "That's understood," in response to the court explaining the anticipated security procedures. Contrary to the State's argument, however, responding "that's understood" to a statement does not reflect agreement with the content of that statement. Rather, it simply expresses that the listener understands the statement. Thus, Franklin did not affirmatively waive his objection to the courtroom security procedures.

[7] FRANKLIN: It makes it look more that I'm in custody—
THE COURT: It does.
FRANKLIN: — and makes me look dangerous, like as if I'm a dangerous person.
THE COURT: It does. That's why I'm telling you.
FRANKLIN: That puts a thing into the minds of the jury. That makes the jury see me in a certain way.

B. Abuse of Discretion

Franklin's primary contention is that the circuit court's complete delegation of courtroom security to security personnel amounts to an abuse of discretion. The State, however, argues that the circuit court properly exercised its discretion in managing courtroom security.

1. Standard of Review

"The decision as to the method and extent of courtroom security is left to the sound discretion of the trial judge." *Wagner v. State*, 213 Md. App. 419, 476 (2013) (quoting *Miles v. State*, 365 Md. 488, 570 (2001), *cert. denied*, 534 U.S. 1163 (2002)). Therefore, reviewing courts should apply an abuse of discretion standard to such decisions. *Id.* (citing *Hunt v. State*, 321 Md. 387, 408 (1990)). While trial courts enjoy broad discretion to maintain courtroom security, that discretion "must be [exercised] by the judge personally, and may not be delegated to courtroom security personnel." *Whittlesey v. State*, 340 Md. 30, 84 (1995). "A failure to exercise […] discretion, or a failure to consider the relevant circumstances and factors of a specific case, is, itself, an abuse of discretion." *Cagle v. State*, 462 Md. 67, 75 (2018) (cleaned up).

2. Analysis

Franklin highlights numerous statements made by the trial judge that demonstrate a complete failure to exercise her discretion in managing courtroom security. For example, in response to Franklin's concerns about being followed around the courtroom by correctional officers, the trial judge made the following statements:

> THE COURT: But he needs to understand there is no option, they will move with him because he is in their custody and he will not have either leg shackles and handcuffs.
>
> THE COURT: And they're not in my direct control. I'm not going to try to stop them because that's their job.
>
> THE COURT: You're not in my custody. It's not a choice I get to make. I'm merely alerting you in advance. You're in their custody.
>
> THE COURT: I cannot direct them not to do it. I cannot.
>
> THE COURT: And, finally, the issue of the Correctional Officers, I've told him as a courtesy. It's not my choice. It is their duty.
>
> THE COURT: I cannot stop them from moving with him and I'm not going to. They are responsible for him and that's what they will do in exercising their responsibility.

The State argues that when taken in context, these statements show that the trial judge was aware of her authority to manage courtroom security and properly exercised her discretion when she allowed the correctional officers flexibility. For example, the State points to the fact that the trial judge instructed the bailiffs to remove Franklin's handcuffs and leg shackles and explained that a procedure had been created so that Franklin could move through the courthouse without being seen by jurors. According to the State, these examples demonstrate that the circuit court did not completely delegate courtroom security decisions to security personnel. The State further contends that the trial judge's statements about having no control over the correctional officers indicate an *approval*, not a deferral of the security arrangements. However, this argument is unavailing.

Although a trial judge has broad discretion to manage courtroom security, the discretion must be exercised. A failure to do so is an abuse of discretion. *Cagle*, 462 Md.

at 75. The State urges us to find that despite the circuit court's clear, unequivocal statements that "It's not a choice I get to make" and "I cannot direct them not to do it," what the circuit court actually meant was that it did have a choice, and simply chose to approve of the correctional officers' security arrangements. Instead, the court merely deferred those decisions to the correctional officers. "Decisions as to the need for enhanced or additional security measures must be rooted in the trial court's assessments and such decisions may not be completely delegated to law enforcement officers." *Cooley v. State*, 385 Md. 165, 184–85 (2005). Since the decision to allow correctional officers to follow Franklin around the courtroom was not "rooted in the trial court's assessments," the circuit court abused its discretion in this case. *Id.*

C. Prejudice

Having established that the circuit court abused its discretion, Franklin also contends that the circuit court made an explicit finding that he was prejudiced by the officers following him around the courtroom when the court responded, "It does," to Franklin's complaint that it "makes it look more that I'm in custody," and "makes me look dangerous, like as if I'm a dangerous person." He asserts that "the prejudicial impact on Mr. Franklin was the very reason that the court repeatedly warned him that the officers would be following him around the courtroom." However, the State argues that the circuit court's statements do not amount to an explicit finding of prejudice, and that Franklin fails to otherwise show prejudice from the courtroom security procedures.

1. Standard of Review

Upon a finding that the circuit court abused its discretion in managing courtroom security, this Court "must determine whether 'the scene presented to jurors,' and what they saw, 'was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over.'" *Wagner v. State*, 213 Md. App. 419, 478 (2013) (quoting *Bruce v. State*, 318 Md. 706, 721 (1990)).

2. Analysis

This Court has previously held that the type of courtroom security procedures implemented at Franklin's trial are not inherently prejudicial. *See Campbell v. State*, 243 Md. App. 507, 521 (2019) ("[T]here is nothing inherently prejudicial about the presence of one or more security guards near a defendant during trial"). The security procedures employed in *Campbell* were similar to those used in this case. In *Campbell*, the circuit court had explained at trial that sheriffs would only follow Campbell if he chose to approach the witness stand. *Id.* at 522. The court went on to explain that if that occurred, the sheriffs would stay at a distance that allowed them to maintain courtroom security while also permitting Campbell "to do what [he] need[ed] to do approaching the witness stand." *Id.* Similarly, in this case, the trial judge explained, "If Mr. Franklin chooses to move, he needs to understand that the Correctional Officers are going to move with him because he is in their custody. . . . The more he moves, the more he will highlight the fact that they're moving with him. They're not going to be intrusive, but they're going to do their job."

Since the courtroom security procedures used in this case are similar to those approved in *Campbell*, they were not inherently prejudicial.

Franklin also fails to show that he suffered actual prejudice from the courtroom security procedures. "To prove actual prejudice, the defendant must show some actual prejudicial effect on the jurors based on what transpired in the courtroom." *Smith v. State*, 481 Md. 368, 393 (2022). Here, Franklin relies on statements that the circuit court made *before* the jury was seated for his trial. Thus, those statements were merely forward-looking, cautionary remarks the court made, warning him that the bailiffs' actions *might* highlight that he was in custody. There is nothing in the record to suggest that the circuit court made a finding *after the fact* that Franklin was actually prejudiced by the courtroom security procedures "based on what transpired in the courtroom." *Smith*, 481 Md. at 393. Therefore, because he fails to show that he was prejudiced by the courtroom security procedures, we affirm Franklin's convictions.

II. Franklin Waived his Challenge to the Sufficiency of the Evidence

Franklin's second contention is that his convictions for attempted theft from Sabuto and theft from the CVS should be vacated because the evidence was insufficient to sustain those convictions, since the State failed to show that the pharmaceuticals were valued at $1,500 – $25,000.

The State's only evidence regarding the value of the pharmaceuticals was Henniger's testimony. Henniger testified that he did not know what drugs were stolen, nor did he know how many were stolen. However, when asked if he knew the fair market value of the drugs, Henniger estimated that, based on his "experience in pharmacies," and the

size of the bag that Franklin was carrying, they were worth "at least $50,000." Franklin argues that this testimony is insufficient to prove the value of the pharmaceuticals because it is "pure speculation."

The State first contends that Franklin waived any challenge to the sufficiency of the evidence based on value because he failed to raise it during his motion for judgment of acquittal or his renewed motion for judgment of acquittal. Alternatively, the State argues that even if Franklin did not waive his challenge, it should be rejected because the evidence sufficed to sustain Franklin's convictions of theft and attempted theft.

1. Standard of Review

"'[A]ppellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal.'" *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *Lotharp v. State*, 231 Md. 239, 240 (1963)). A criminal defendant can move for judgment of acquittal "at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence." Md. Rule 4–324(a). If he so moves, "[t]he defendant shall state with particularity all reasons why the motion should be granted." *Id.* A criminal defendant who moves for judgment of acquittal "is not entitled to appellate review of reasons stated for the first time on appeal." *Starr*, 405 Md. at 302.

2. Analysis

In *Graham v. State*, the petitioner, who had been convicted of theft of property worth $300 or more, argued that this conviction should be reversed on the ground "that the State failed to establish that [the stolen] items were worth $300 or more." 325 Md. 398, 416

(1992). This Court, however, refused to consider that argument because the record showed that the petitioner's trial counsel moved for a judgment of acquittal solely on the ground that the State had failed to prove that the owner of the stolen items was "a corporation, licensed to practice in the State of Maryland." *Id.* at 417.

This case is very similar to *Graham*. Here, Franklin argues that the evidence produced at trial was insufficient to establish that the stolen pharmaceuticals were valued between $1,500 and $25,000. However, the record shows that Franklin moved for a judgment of acquittal solely on the ground that the State had failed to prove that he was the person who robbed the CVS.[8] In other words, Franklin's motion for judgment of acquittal rested entirely on mistaken identity. He did not mention the value of the stolen pharmaceuticals or the State's lack of proof therefor in his motion for judgment of acquittal. Thus, as in *Graham*, this Court refuses to consider Franklin's challenge to the sufficiency of the evidence based on the value of the stolen pharmaceuticals because that challenge was waived.

[8] Franklin's argument for a judgment of acquittal can be summarized as follows:

> I am not the person who left that CVS pharmacy without a black bag supposedly hauling it. I'm not the person who was dressed in this costume and throw it in the sky and God caught it so that I wouldn't get caught and it never landed back on the ground. I am not the person he says jumped the stone wall, and after that, jumped a fence and jumped back over the fence, or went through it, however he said, went through it or went over it. And jumped back over into his custody to give myself up. Right? I'm not that person.

III. On Remand, the Circuit Court Should Lower the Executed Portion of Franklin's Sentence by Five Years and Consider whether to Convert Any of Franklin's Previously Suspended Time into Executed Time

Franklin's final contention is that his sentence for theft from the CVS should have merged into the sentence for robbery of Henniger for two reasons. First, Franklin argues that the sentences should have merged under the rule of lenity. Alternatively, he argues that fundamental fairness requires that the sentences merge. The State agrees with Franklin that the sentences should have merged under the rule of lenity, and argues that the executed portion of Franklin's sentence should be lowered by five years on remand. However, Franklin argues that this Court should not remand for resentencing under *Twigg v. State*, 447 Md. 1 (2016), and should instead instruct the trial court that, if he is re-convicted on these counts, the sentences must merge.

Both parties agree that the sentences should have merged under the rule of lenity. The rule of lenity, which applies only to statutory offenses, "provides that where there is no indication that the General Assembly intended multiple punishments for the same act, a court will not impose multiple punishments but will, for sentencing purposes, merge one offense into the other." *State v. Johnson*, 442 Md. 211, 218 (2015) (cleaned up). Under the rule of lenity, a sentence for felony theft merges into a sentence for robbery when both sentences stem from the same underlying actions. *Spitzinger v. State*, 340 Md. 114, 124 (1995); *Bellamy v. State*, 119 Md. App. 296, 307 (1998). Failure to merge a sentence under the rule of lenity constitutes an illegal sentence that may be raised to this Court for the first time. *See* Md. Rule 4–345(a) ("The court may correct an illegal sentence at any time"); *Pair v. State*, 202 Md. App. 617, 624–25 (2011) (finding that where a sentence violates the

rule of lenity, that sentence is "an 'illegal sentence' within the contemplation of Rule 4–345(a)"). Here, the goods stolen from Henniger during the robbery were the same as those taken from the CVS, so the sentences for theft and robbery should have merged.

The parties disagree, however, regarding the proper remedy for the circuit court's failure to merge the sentences. In *Twigg*, the Supreme Court of Maryland determined that sentencing should be viewed as a package, and held that "[a]fter an appellate court unwraps the package and removes one or more charges from its confines, the sentencing judge, herself, is in the best position to assess the effect of the withdrawal and to redefine the package's size and shape (if, indeed, redefinition seems appropriate)." 447 Md. at 28 (citations omitted). However, in *Johnson v. State*, this Court clarified that under *Twigg*, "appellate courts have the *discretionary* authority to remand cases for resentencing in response to their decision that the trial court's sentencing package has been disrupted by mergers the trial court didn't anticipate or consider." 248 Md. App. 348, 357 (2020) (emphasis in original). Thus, this Court may remand to the circuit court for resentencing under *Twigg* in the exercise of its discretion, but it is not compelled to do so.

Whether a *Twigg* remand is appropriate in this case turns on whether the removal of one or more sentences could disturb the trial court's intended sentencing scheme. *See Johnson*, 248 Md. App. at 357 ("As a matter of principle, nothing in *Twigg* appears to preclude an appellate court from ordering a *Twigg* remand in a case where the sentencing package was disturbed by a decision to reverse a conviction"). The State argues that this Court should order a *Twigg* remand because the circuit court previously suspended Franklin's sentences for the robbery of Tanisha Johnson and the attempted robbery of

Sabuto, imposing two 10-year, concurrent suspended terms. The State further contends that, in light of these sentencing decisions, the circuit court should have the option on remand to convert some of that previously suspended time into executed time.

Franklin, on the other hand, argues that this Court should not exercise its discretion to remand the case for resentencing under *Twigg* because allowing for resentencing on the remaining convictions "could defeat [this Court's] [merger ruling]." *Johnson*, 248 Md. App. at 355. However, Franklin does not explain how a *Twigg* remand could defeat this Court's merger ruling, and it is not clear that it would. Furthermore, this Court in *Johnson* declined to order a *Twigg* remand where a "conviction had been reversed, not merged, and a resentencing with the potential to increase the sentence for other convictions could defeat our reversal on that charge." *Johnson*, 248 Md. App. at 355. Here, this Court is merging Franklin's sentences for theft from the CVS and robbery of Henniger, not reversing the underlying convictions, so the reasoning behind this Court's decision in *Johnson* does not apply here. Therefore, we remand the case for resentencing under *Twigg*.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS VACATED IN PART AND AFFIRMED IN PART. CASE IS REMANDED FOR RESENTENCING CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.