Circuit Court for Baltimore City
Case No. 120324037

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1358 & 0071

September Term, 2022 & 2023

DAVID RAY
v.
STATE OF MARYLAND

Arthur,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: June 5, 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, David Ray, was convicted by a jury in the Circuit Court for Baltimore City of reckless endangerment and conspiracy to commit second-degree assault. Appellant was sentenced to ten years' imprisonment, all but two years suspended, and five years of supervised probation for conspiracy; and five years' imprisonment, all but two years suspended, to run consecutively, and five years of supervised probation for reckless endangerment. Appellant filed a Motion for a New Trial, which was denied by the court. Appellant timely noted this appeal and presents three questions for our review:

1. Did the trial court abuse its discretion in refusing to grant [Appellant]'s Motion for a New Trial where it was revealed post-verdict that one of the jurors conducted improper outside research about the nature and severity of the charges during an overnight recess in deliberations?

2. Did the trial court err in denying [Appellant]'s Motion for Judgment of Acquittal where the State presented insufficient evidence of conspiracy to commit second[-]degree assault?

3. Did fundamental fairness require the trial court to merge [Appellant]'s sentences for conspiracy to commit second[-]degree assault and reckless endangerment where the underlying conduct for both charges was the same?

For the following reasons, we affirm the judgment of the circuit court.

BACKGROUND

Appellant was charged by indictment with five counts for an alleged assault on Darryl Howe: first-degree assault and conspiracy to commit first-degree assault; second-degree assault and conspiracy to commit second-degree assault; and reckless endangerment. Trial began on September 28, 2022, and the State called Mr. Howe as its first witness. He testified that on July 20, 2020, as he was driving eastbound on West Baltimore Street, he went through a light, and "the next thing [he] remember[s], [he] had

come to a stop and hit a car." Mr. Howe testified that he hadn't taken his blood pressure medicine, and this in combination with the heat, he opined, caused him to lose consciousness behind the wheel. Prior to the incident, Mr. Howe took an eighty-milligram dose of methadone. Appellant owned the vehicle that Mr. Howe hit. After Mr. Howe hit Appellant's parked car, he "heard a bunch of yelling and screaming from the porches. . . . 'This MF hit my car. I'm tired of these jumpy [sic] people coming down here and hit my car. Hit my car. That's the second time this happened.'"

A group of people approached his vehicle, removed Mr. Howe and his girlfriend from the vehicle, and hit him. When asked how many times he was hit, Mr. Howe responded "I don't know. The first hit felt like I was hit with something . . . I just got banged up, and I was told to go sit down there on the ground until the police come." The police were called, and Appellant remained on the scene and exchanged insurance information with Mr. Howe. When asked by a firefighter at the scene, who "beat him up," Mr. Howe responded that he didn't know. Mr. Howe testified that he went to University of Maryland Hospital, where he underwent surgery to treat injuries he sustained on the left side of his face. On direct examination, Mr. Howe identified Appellant as the person who attacked him.

The State then called its second witness, Shawnttae Thomas, Mr. Howe's girlfriend and a passenger in his vehicle at the time of the accident. Ms. Thomas testified that after the car came to a stop, Mr. Howe was "dragged out of the car" and "a girl came around the other side" and punched Ms. Thomas through the rolled-down passenger window. Ms. Thomas's belongings were then kicked down the street. Ms. Thomas testified that she

heard someone yell, "[g]et him. Eff him up." Before either of them could explain, "[t]hey just pulled [Mr. Howe] out and just started wailing, and it was so many of them." When the police arrived, Ms. Thomas did not report either assault. On direct examination, Ms. Thomas identified Appellant as one of the perpetrators of Mr. Howe's assault.

At the close of the State's case-in-chief, defense counsel moved for judgment of acquittal and the motion was denied. The defense then called their first witness, Rolandus Mayfield, Appellant's maternal uncle and a resident of the 1800 block of West Baltimore Street, where the accident occurred. Mr. Mayfield testified that when he exited his home, he heard a collision outside, and he helped remove his infant niece from the backseat of Appellant's vehicle. He observed Appellant taking photos of his vehicle and the accident scene and saw Appellant staying away from the other drivers because he was upset. Mr. Mayfield testified that Timothy Taylor, the father of his infant niece, "came running out of the house and said, 'That's my baby in the car'" and proceeded to hit the other driver, later identified as Mr. Howe, in the face.

Malique Mayfield, another uncle of Appellant's, was called to the stand. Malique[1] testified that he was sitting in his parked car when the accident occurred. He did not witness the assault on Mr. Howe, nor the accident itself, but later he did see an older Black man sitting on the sidewalk and he looked like he'd been beaten up.

Appellant was the final witness called by the Defense and he testified that he had just parked his car in front of his grandmother's house in the 1800 block of West Baltimore

[1] We will refer to Malique Mayfield by his first name to avoid confusion with Rolandus Mayfield.

Street when his car was hit. He called his mother for guidance, as he had not dealt with the insurance company before. He then called the police and started to take pictures of the accident scene. Appellant testified that he did not see how Mr. Howe sustained his injuries because he had walked away to make the phone calls. He later witnessed his uncle, Malique Mayfield, chastising Timothy Taylor for hitting Mr. Howe. After his testimony, the defense rested and renewed its motion for judgment of acquittal, which the court denied.

Following deliberations, the jury found Appellant not guilty of first-degree assault, conspiracy to commit first-degree assault, and second-degree assault. He was convicted of conspiracy to commit second-degree assault and reckless endangerment. On October 4, 2022, Appellant was sentenced to ten years of imprisonment, all but five years suspended and five years of probation for the conspiracy to commit second-degree assault; and five years of imprisonment, all but three years suspended, to be served consecutively, and five years of probation for the reckless endangerment. Appellant filed a Motion to Modify his Sentence. The judge granted his motion and resentenced him to a composite sentence of ten years of imprisonment, all but four years suspended, and five years of probation.

On October 7, 2022, Appellant filed a motion for a new trial pursuant to Md. Rule 4-331(a), including, as one ground, that improper outside research was conducted by a juror during the trial. The court held a hearing on March 9, 2023, and denied Appellant's Motion for a New Trial. Appellant timely filed this appeal.

DISCUSSION

I. The court did not abuse its discretion in denying the Motion for a New Trial.

"Generally, an appellate court reviews for abuse of discretion a trial court's denial of a motion for a new trial." *Williams v. State*, 478 Md. 99, 130 (2022). "In cases involving juror error, misconduct, or mistake, consideration of a motion for a new trial based upon that conduct requires a proper balancing[,]" which should be reversed "only where a plain abuse of discretion has resulted in palpable injustice." *Smith v. Pearre*, 96 Md. App. 376, 389 (1993); *see also Jenkins v. State*, 375 Md. 284, 299 (2003). A ruling reviewed under an abuse of discretion standard "will not be reversed simply because the appellate court would not have made the same ruling." *North v. North*, 102 Md. App. 1, 14 (1994). Rather, "[a] court's decision is an abuse of discretion when it is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Gray v. State*, 388 Md. 366, 383 (2005) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005)) (some internal quotation marks omitted); *Nash v. State*, 439 Md. 53, 67 (2014).

Appellant argues the court abused its discretion in denying his Motion for a New Trial. Attached to his motion, was a letter from a juror that indicated the juror did not obey the court's "explicit instructions." It stated that the juror performed outside research as to the definition of conspiracy and the juror discovered that conspiracy is a misdemeanor. Appellant contends that he was prejudiced by the juror's conduct and communications with other jurors and that his right to a fair and impartial trial was violated.

Also, given the brevity of the court's ruling, Appellant argues it is impossible to discern whether the court conducted "an analysis of the relevant facts and circumstances that resulted in the exercise of discretion."

The State responds that the juror's letter consisted almost entirely of inadmissible details of the deliberative process and that Md. Rule 5-606(b) prohibited the court from considering the majority of the information within the letter. The State contends that there was no presumption of prejudice and argues the court did not abuse its discretion in denying the motion. The State, further, argues that the court was not required to articulate the basis for its ruling.

Under Maryland law, jurors are prohibited from impeaching their verdicts. In 1864, the Supreme Court of Maryland, in *Browne v. Browne*, held "[t]o allow a verdict of a jury solemnly rendered, to be afterwards impeached upon such testimony, would, we think, be setting a dangerous precedent, tending in most cases to the defeat of justice." 22 Md. 103, 113 (1864). As codified in 1994, Md. Rule 5-606 "prevents a juror from impeaching the verdict and prohibits the inquiry into the juror's mental processes during deliberations." *Williams*, 478 Md. at 132.

Maryland Rule 5–606(b) provides:

> (b) Inquiry into validity of verdict.
>
> > (1) In any inquiry into the validity of a verdict, a sworn juror may not testify as to
> >
> > > (A) any matter or statement occurring during the course of the jury's deliberations,

> (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or
>
> (C) the sworn juror's mental processes in connection with the verdict.
>
> (2) A sworn juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.
>
> (3) Notes made under Rule 2–521(a) or Rule 4–326(a) may not be used to impeach a verdict.

Md. Rule 5-606.

In *Jenkins v. State*, 375 Md. 284, 319 (2003), the Maryland Supreme Court examined jury misconduct and stated that "in determining whether jury contact is prejudicial, a trial court must balance the 'probability of prejudice from the face of the extraneous matter in relation to the circumstances of the particular case.'" *Id.* at 207 (citing *Wernsing v. General Motors Corp*., 298 Md. 406, 411 (1984)). There, over a weekend recess in a criminal trial, a juror and a State's witness who was a detective, ignored the court's orders and interacted with each other during a religious retreat. *Id.* at 289. After the retreat, the juror and detective had lunch together, while the trial was pending, and the detective drove the juror to his car in her personal vehicle. *Id.* at 295. The first step of the *Jenkins*' court's analysis was whether the juror's contact with the witness and misconduct "reach[ed] the level of being presumptively prejudicial to [the] defendant, thus placing the burden of showing harmlessness on the State." *Id.* at 301.

The Court relied upon *Remmer v. United States*, 347 U.S. 227, 229 (1954), which held, "[i]n a criminal case, any private communication, contact, or tampering directly or

indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial[.]" *Jenkins*, 375 Md. at 301–02 (quoting *Remmer* at 229). The *Jenkins* court went on to discuss two later U.S. Supreme Court cases, *Smith v. Phillips*, 455 U.S. 209 (1982) and *United States v. Olano*, 507 U.S. 725 (1993), and found them to have "somewhat limit[ed] the scope of presumptive prejudice" but they "do not preclude such a presumption in all situations, i.e., where excessive or egregious jury misconduct or improper contact by a third party occurs." *Jenkins*, 375 Md. at 315; *see Smith v. Phillips*, 455 U.S. 209 (1982) (holding that it was improper to presume prejudice, as pre-trial voir dire and post-trial hearing were sufficient to protect defendant's rights); *United States v. Olano*, 507 U.S. 725 (1993) (overturning a Ninth Circuit Court of Appeals decision finding presumed prejudice in a criminal trial resulting in the grant of a new trial when an alternate juror was allowed to remain in the jury room while the jury reached a verdict).

Citing the extended and intentional contact between the juror and the State's witness as "egregious circumstances," the Supreme Court of Maryland held that "[r]egardless of whether details of the ongoing trial were discussed, personal and prolonged contact as occurred in this case not only interjects an inherent prejudice to petitioner in the form of possible bias in favor of the State's case, but also creates an appearance of serious impropriety and causes subsequent serious harm to the perception of the integrity of the jury process itself." *Jenkins*, 375 Md. at 340.

Jenkins was the first time the Supreme Court of Maryland had occasion to interpret the *Remmer* presumption of prejudice, but this Court had, earlier, applied it in the case of

Eades v. State, 75 Md. App. 411 (1988). In *Eades*, during a weekend recess, a juror violated the court's instruction not to discuss the case with third persons when she asked her husband (not a witness), who was an Assistant United States Attorney for the District of Columbia, an evidentiary question. After the verdict had been initially rendered but before it had been accepted, the defendant requested that the judge poll the jury and ask each juror, individually and out the presence of the other jurors, whether, over the weekend recess, the juror had discussed the facts or substance of the case with anyone. The judge questioned the juror whose conduct was in question, finding that the juror had asked her husband one "innocuous" question. In holding that the presumption of prejudice had been rebutted, this court cited the relatively brief discussion the juror had with her husband, her responses to the trial court's questioning, that the conversation was not "inherently suspect" and the fact that the improper contact merely dealt with an evidentiary problem unrelated to the question of guilt. We concluded that the court did not abuse its discretion in denying the motion for a new trial, "[b]ecause the presumption that the improper juror communication was prejudicial was effectively overcome, appellant was not deprived of a fair trial." *Id.* at 425.

In *Dorsey v. State*, this Court affirmed the denial of a motion for new trial when a juror reported that the jury had discussed a defendant's decision not to testify, despite specific instructions by the court against such considerations. 185 Md. App. 82, 95 (2009). We observed that prejudice, in such cases, is only presumed in circumstances concerning outside influences on the jury. *Id.* at 104. We held that "asking the jurors directly about their deliberations or asking a third party to provide hearsay testimony about the jury

deliberations, would have constituted an inquiry into the validity of the verdict" in violation of Rule 5-606(b). *Dorsey*, 185 Md. App. at 110–11.

In *Colkley v. State*, we examined a trial court's determination to deny a mistrial after a juror's note was received that stated, "we have already looked it up[,]" which followed a prior note from the jurors asking if they could have a dictionary. 204 Md. App. 593, 622–25, (2012), *rev'd on other grounds sub nom*.; *Fields v. State*, 432 Md. 650 (2013). We held that was not the type of "excessive or egregious misconduct" or "serious juror misconduct" that would give rise to a presumption of prejudice. *Id.* This Court opined, that, "if a mistake this relatively minor could precipitate a mistrial, the criminal justice system would collapse." *Colkley*, 204 Md. App. at 625.

We, further, in *Cooch v. S & D River Island, LLC*, 216 Md. App. 275, 288 (2014), explained the difference between jury deliberations and outside factors that impact such deliberations:

> If the juror's testimony is about an extraneous infraction, even one by the juror himself, that took place outside the jury room, the court is willing to receive such evidence from the juror. It is deemed to be "extraneous matter." What is absolutely prohibited is testimony from a juror that bears directly on the deliberative process itself. The juror is, therefore, barred from testifying as to what effect any information learned in the course of the infraction may have had on the juror's own decision as well as on the decisions of other jurors.

Cooch v. S & D River Island, LLC, 216 Md. App. at 288.

Ten years after *Jenkins*, in *Nash v. State*, the Supreme Court of Maryland again examined the doctrine of presumptive prejudice, explaining that this presumption is limited to cases like *Jenkins*, where "egregious juror and witness misconduct occurs." 439 Md.

53, 72 (2014). In *Nash*, a juror allegedly remarked during deliberations that she was willing to change her original position of "not guilty" if it meant she could go home and not return to the courthouse. *Id.* at 58. The court held the juror's statement did not raise a rebuttable presumption of prejudice imposing a *sua sponte* duty on the trial court, before denying mistrial, to *voir dire* jurors to determine their ability to reach impartial verdict. *Nash*, 439 Md. at 77. The court found that, "to the extent that the Subject Juror's statement could be considered actual misconduct, it does not fit within the type of 'limited' circumstance in which the presumption applies. . . . A statement made by a single juror, which did not concern the evidence or any of the witnesses, does not have the same likelihood of poisoning the well of deliberations as the type of juror contact with witnesses, parties to the case, or third parties that took place in *Remmer* [or] *Jenkins*[.]" *Id.* at 78–79.

In *Williams*, a juror contacted a member of the defense team after the trial had concluded and provided an affidavit that indicated the jury misinterpreted the jury instructions on second-degree murder and other matters, which defense counsel then attached to his motion for a new trial. 478 Md. at 114–15. The State filed an opposition to the motion for a new trial and moved to strike any reference to statements allegedly made by jurors, arguing that under case law and Md. Rule 5-606, it is impermissible to use information obtained from a juror about the jury's deliberations to impeach a verdict. *Id.* The trial court granted the State's motion to strike and denied Williams' motion for a new trial, after which the case was appealed to the Appellate Court of Maryland. The Appellate Court issued a limited remand on the issue of expert testimony. *Williams v. State*, 251 Md. App. 523 (2021), *aff'd*, 478 Md. 99 (2022). From this appeal, a petition for certiorari was

filed, which the Supreme Court of Maryland granted. The Supreme Court affirmed the circuit court, stating:

> The information obtained from jurors after the verdict that Williams's counsel proffered on the last day of the trial and the averments in the affidavit accompanying the motion for a new trial purported to be statements by jurors about discussions that occurred *during the jury's deliberations and the jurors' thought processes during deliberations*. None of the information attributed to the jurors involved allegations of racial bias or discrimination or the existence of external influences on the jury. The information proffered by Williams's counsel on the last day of trial as well as the information in the affidavit accompanying the motion for new trial indicated that the jurors who William's [sic] counsel spoke with after the verdict revealed, at that time, that they were not convinced that Williams shot Townsend. This type of *post hoc* information from jurors was clearly barred from being received by the circuit court under both the no-impeachment rule and the plain language of Maryland Rule 5–606(b)(1) and (2), which establish that it is improper in an inquiry into the validity of a jury's verdict to consider statements or testimony by a juror about the jury's deliberations obtained after a jury has reached a verdict. *See Stokes v. State*, 379 Md. 618, 637 (2004).

Williams, 478 Md. at 137 (emphasis added).

Turning to Appellant's case and in accordance with Md. Rule 5-606 and *Williams*, we hold that the information in Appellant's Motion for a New Trial, as it pertained to the jurors' thought processes during deliberations and communication with other jurors, was inadmissible. As such, the only information from the affidavit that was admissible was that the juror had done outside research on the definition of conspiracy and discovered that conspiracy is a misdemeanor.

Appellant argues that the improper research raised a presumption of prejudice. In our view, while the juror's outside research did constitute misconduct, it is markedly different from the cases in which the presumption was applied. Here, the juror did not have

contact with any witnesses, the parties to the case, or other potential outside influences. We hold that the juror's improper research on the definition of conspiracy and discovery that it was a misdemeanor, do not fit within the "limited" circumstances in which the presumption has been applied. *Jenkins*, 375 Md. at 319.

In *Wernsing v. General Motors Corp.*, a jury's notes to the court communicated that the jurors had used a dictionary to find a definition of "proximate cause" that differed from that provided by the court. 298 Md. 406, 408 (1984). The Supreme Court of Maryland declined to presume prejudice "solely from the delivery of a dictionary into the jury room" because "[t]he result of such a rule in Maryland would be to overturn verdicts automatically in nearly all cases where this irregularity occurs" as it would be nearly impossible to demonstrate the absence of harm from the presence in the jury room because "jurors may not be interrogated concerning their deliberations in order to impeach the verdict." *Id.* at 416. Instead, the Court stated:

> Where, as here, the precise extraneous matter is known but direct evidence as to its effect on the deliberations is not permitted, *a sound balance is struck by a rule which looks to the probability of prejudice from the face of the extraneous matter in relation to the circumstances of the particular case*. It is the function of the trial judge when ruling on a motion for a new trial to evaluate the degree of probable prejudice and whether it justifies a new trial. That judgment will not be disturbed but for an abuse of discretion.

Wernsing, 298 Md. at 419–20. The Court then found the misconduct to be probably prejudicial because if the jury applied the dictionary definition in the medical malpractice case, "it would mean that all of the evidence, including expert opinions, . . . would have been disregarded." *Id.* at 420. The Supreme Court held that the probability of prejudice was so great that the court abused its discretion in denying the motion for a new trial. *Id.*

Contrary to the facts in *Wernsing*, in the present case, the juror's research of the definition of conspiracy and discovery that conspiracy is a misdemeanor were not contradictory to evidence presented or expert testimony. The court provided a written copy of the definition of "conspiracy" to the jury, further negating any potential prejudice. Thus, while there was juror misconduct, it was not "so great" as to deny Appellant the right to a fair trial. *Wernsing*, 298 Md. at 420. It was not a situation where the evidence would have been disregarded or the court's instructions ignored. The information obtained by the juror related solely to the definition and classification of the crime. In sum, we conclude that there was no presumption nor probability of prejudice that required a new trial. The court did not abuse its discretion in denying the motion.

Appellant also argues that the court's failure to articulate its reasoning was an abuse of discretion. We do not agree as "judges are presumed to know the law and to apply it properly." *Malvo v. State*, 481 Md. 72, 164 (2022). Judges are not required to detail every step of their logic and the record is sufficient when it "reflect[s] that the judge exercised discretion and did not simply apply some predetermined position." *Maddox v. Stone*, 174 Md. App. 489, 502 (2007). This presumption stems from "the most fundamental principle of appellate review, which is that the action of a trial court is presumed to have been correct and the burden of rebutting that presumption is on the party claiming error[.]" *State v. Chaney*, 375 Md. 168, 181 (2003).

Here, the court specifically commented that it had researched "impeaching a juror's verdict based on statements by jurors about what went on in the jury room[.]" We, therefore, can presume that the court examined Rule 5-606(b) and the applicable case law

in making its determination and did not apply a "predetermined position." *Maddox*, 174 Md. App. at 502. We conclude the court did not abuse its discretion in denying the motion for a new trial in light of the "no-impeachment rule." Md. Rule 5-606(b).

II. The court did not err in denying the motion for judgment of acquittal.

"The critical inquiry on review of the sufficiency of the evidence to support a criminal conviction .... is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 318–19 (1979) (emphasis in original); *see also Allen v. State,* 402 Md. 59, 76–77 (2007) ("[W]e review a challenge to the sufficiency of the evidence in a jury trial by determining whether the evidence, viewed in a light most favorable to the prosecution, supported the conviction ..., such that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.").

Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. *Tarray v. State,* 410 Md. 594, 608 (2009); *State v. Smith,* 374 Md. 527, 533–34 (2003). It is not our role to retry the case. *Allen,* 402 Md. at 77. We defer to the jury's inferences and determine whether they are supported by the evidence. *State v. Smith*, 374 Md. at 557; *Smith v. State*, 415 Md. 174, 185 (2010).

Appellant argues the State presented insufficient evidence to support the conviction of conspiracy to commit assault. Specifically, Appellant asserts that the State did not

establish a "unity of purpose" or unlawful agreement between Appellant and any co-conspirators. The State responds that the evidence was legally sufficient.

Under Maryland law, "[a] criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose. . . [the essence of which] is an unlawful agreement." *Mitchell v. State,* 363 Md. 130, 145 (2001). This agreement requires a "meeting of the minds reflecting a unity of purpose and design." *Id.* In order to have a meeting of the minds, the parties of the conspiracy:

> Must (1) have given sufficient thought to the matter, to be able mentally to appreciate or articulate the object of the conspiracy[,] . . . and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective.

Id. Without this understanding, the required unity of purpose cannot be established. *Id.* at 146. Conspiracy is a "specific intent" crime, requiring the defendant's "specific intent to join with another person in the accomplishment of an unlawful purpose." *Id.*

Circumstantial evidence alone may be sufficient to sustain a conviction when the proof amounts to more "than strong suspicion or mere probability." *Corbin v. State*, 428 Md. 488, 514 (2012). The agreement at the heart of a conspiracy "need not be formal or spoken" and the crime is complete when the agreement is formed, no overt act in furtherance of the conspiracy is necessary. *Carroll v. State*, 428 Md. 679, 696–697 (2012). "From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence." *Darling v. State*, 232 Md. App. 430, 467 (2017) (quoting *Jones v. State*, 132 Md. App. 657, 660, *cert. denied*, 360 Md. 487 (2000)).

At trial, Mr. Howe testified that he was attacked on July 20, 2020, and that he was seriously injured. Photographs from the scene depicted injuries to the left side of his face. Several days after the accident, Mr. Howe went to "Western District police station" and identified Appellant as one of the assailants from July 20.[2] While on the stand, Mr. Howe detailed the attack, and stated that immediately after the accident, Appellant stated "I'm tired of these [MFs] hitting my car." Ms. Thomas testified that someone then yelled "get them" and the crowd, including Appellant, began to assault them. She specifically identified Appellant as Mr. Howe's assailant. Appellant's uncle, Rolandus Mayfield, testified that Appellant had yelled in frustration that "[t]his mother f[*****] hit my car" and "I'm tired of these junky mother f[******][.]" Mr. Mayfield also testified that he witnessed an attack on Mr. Howe perpetrated by Timothy Taylor. Viewing the evidence in the light most favorable to the State, we hold that the evidence was sufficient to support Appellant's conspiracy conviction. After hearing Appellant's statements regarding his car and a statement from an unidentified person yelling "get them," multiple individuals joined in an effort to assault the victim. Based on the concerted action, a conspiracy could be reasonably inferred.

III. The court properly imposed separate sentences.

Appellant concedes that his sentences do not merge under the required evidence test or the rule of lenity. He argues, nevertheless, that his convictions must be merged under

[2] *Eades v. State*, 75 Md. App. 411, 427 (1988) ("A victim's identification of the accused as the perpetrator of the crime is ample evidence to sustain his conviction.").

the doctrine of fundamental fairness because the convictions stem from the same conduct. The State responds that Appellant's convictions arose from separate acts. Alternatively, the State argues the court soundly exercised its discretion in imposing separate sentences.

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." *Monoker v. State*, 321 Md. 214, 222–23 (1990); *see State v. Prue*, 414 Md. 531, 550, n. 11 (2010) (noting, as grounds for merger, "considerations of fairness in a particular case"). Pertinent to the case at bar is the notion of fundamental fairness, which is "[o]ne of the most basic considerations in all our decisions . . . in meting out punishment for a crime." *Monoker*, 321 Md. at 223; *Khalifa v. State*, 382 Md. 400, 434 (2004) (observing that additional reasons for merger include "historical treatment, judicial decisions which generally hold that offenses merge, and fairness") (quoting *McGrath v. State*, 356 Md. 20, 25 (1999)). In deciding whether fundamental fairness requires merger, we have looked to whether the two crimes are "part and parcel" of one another, such that one crime is "an integral component" of the other. *Monoker*, 321 Md. at 223–24. This inquiry is "fact-driven" as it requires consideration of the circumstances surrounding a defendant's convictions, not solely the mere elements of the crimes. *Pair v. State*, 202 Md. App. 617, 645 (2011).

Fundamental fairness rarely requires a merger of separate convictions or sentences. *Carroll*, 428 Md. at 695. A merger of sentences is needed only when the very same act gave rise to the two crimes. *See Marlin v. State*, 192 Md. App. 134 (2010) (holding that merger of convictions was required under fundamental fairness when the "singular act" of

shooting the victim resulted in convictions for reckless endangerment and first-degree assault); *Marquadt v. State*, 164 Md. App. 95, 152 (2005) (finding merger was appropriate where the defendant's breaking of doors resulted in both fourth-degree burglary and malicious destruction convictions).

Here, while it is possible that the act of Appellant in yelling to "get" Mr. Howe could have been the basis for both the conspiracy conviction and the reckless endangerment conviction, the record also supports a finding that the reckless endangerment conviction could have been the result of Appellant's participation in the assault on Mr. Howe. In fact, the trial court found "there were, indeed, two separate acts, not just one act." Fundamental fairness, therefore, did not require merger.

Assuming, arguendo, that both convictions resulted from Appellant's singular act of yelling "get him. Eff him up[,]" the doctrine of fundamental fairness, nevertheless, would not require merger because the convictions were for wholly distinct crimes intended to punish separate harms. *See Carroll*, 428 Md. at 697 (holding that fundamental fairness did not require merger of convictions for attempt to commit armed robbery and conspiracy to commit armed robbery where the convictions punished separate wrongdoings). Conspiracy to commit a crime is generally distinct from the underlying crime itself. *Khalifa v. State*, 382 Md. 400, 436 (2004). One of the principal reasons for rejecting a claim that fundamental fairness requires merger in a given case is that the crimes punish separate wrongdoing. *See, e.g., Pryor v. State*, 195 Md. App. 311, 339 (2010) (declining to merge first-degree assault and first-degree arson under fundamental fairness because "each crime punishes a different harm"); *Fenwick v. State*, 135 Md. App. 167, 177 (2000)

(holding that fourth-degree burglary and second-degree rape do not merge under fundamental fairness or the rule of lenity because they are distinct crimes).

Here, Appellant's sentence for conspiracy punished his agreement with alleged co-conspirators to assault Mr. Howe. Appellant's sentence for reckless endangerment punished him for engaging in conduct that created a substantial risk, which was realized, of serious physical harm to Mr. Howe. In sum, the sentences punished separate wrongdoings and based on this record, the court did not abuse its discretion in declining to merge Appellant's sentences.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.