

Circuit Court for Baltimore City
Case No. 122263010

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1955

September Term, 2023

DARIUS PEAY

v.

STATE OF MARYLAND

Beachley,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 8, 2024

* This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Baltimore City, Darius Peay, appellant, was convicted of attempted first-degree murder, use of a handgun in the commission of a crime of violence, conspiracy to commit murder, conspiracy to use a handgun in the commission of a crime of violence, and other related offenses. On appeal, he contends that his conviction and sentence for conspiracy to use a handgun in the commission of a crime of violence must be vacated because the State only presented evidence of a single agreement. The State agrees. For the reasons that follow, we shall vacate appellant’s conviction for conspiracy to use a handgun in the commission of a crime of violence.

At trial, the State presented evidence that after arguing with the victim, appellant left in his vehicle and returned shortly thereafter with two other men. Appellant then pointed at the victim, at which time, both of the men opened fire. The victim then returned fire, and appellant and his associates drove away. There was no testimony regarding any specific discussions between appellant and the two men. Moreover, during closing the prosecutor did not contend that appellant and the men had entered into more than one agreement. The court imposed a sentence of life, suspend all but 40 years’ imprisonment, for attempted first degree murder. The remaining sentences, including the sentences for both conspiracy convictions, were ordered to run concurrently.

Appellant’s sole claim on appeal is that his conviction for conspiracy to use a handgun in a crime of violence must be vacated because the State only proved the existence of a single agreement. We agree. It is well established that “only one sentence can be imposed for a single criminal common law conspiracy no matter how many criminal acts the conspirators have agreed to commit.” *McClurkin v. State*, 222 Md. App. 461, 490 (2015) (quotation marks

and citation omitted). The unit of prosecution for a conspiracy is “the agreement or combination rather than each of its criminal objectives.” *Id.* (quotation marks and citation omitted). A conspiracy “remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy.” *Martin v. State*, 165 Md. App. 189, 210 (2005) (quotation marks and citation omitted). The conviction of a defendant for more than one conspiracy turns, therefore, “on whether there exists more than one unlawful agreement.” *Savage v. State*, 212 Md. App. 1, 13 (2013) (quotation marks and citation omitted). Where the State fails to establish a second conspiracy, “there is merely one continuous conspiratorial relationship . . . that is evidenced by the multiple acts or agreements done in furtherance of it.” *Id.* at 17 (quotation marks and citation omitted). “If a defendant is convicted of and sentenced for multiple conspiracies when, in fact, only one conspiracy was proven, the Double Jeopardy Clause has been violated.” *Id.* at 26.

In the instant case, the evidence did not establish, and the prosecutor did not contend, that appellant had entered into multiple unlawful agreements with his associates. Consequently, to avoid a double jeopardy violation, his conviction for conspiracy to use a handgun in a crime of violence must be vacated. *See id.* at 31.

**APPELLANT’S CONVICTION FOR
CONSPIRACY TO USE A HANDGUN IN A
CRIME OF VIOLENCE VACATED.
JUDGMENTS OTHERWISE AFFIRMED.
COSTS TO BE PAID BY THE MAYOR AND
CITY COUNCIL OF BALTIMORE.**