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# Recent Developments: Price v. State: Inconsistent Verdicts in Criminal Jury Trials Are No Longer Permissible

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## RECENT DEVELOPMENT

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### ***PRICE V. STATE: INCONSISTENT VERDICTS IN CRIMINAL JURY TRIALS ARE NO LONGER PERMISSIBLE.***

**By: Alison Karch**

The Court of Appeals of Maryland changed long-standing common law by holding that inconsistent jury verdicts in criminal cases are no longer allowed. *Price v. State*, 405 Md. 10, 949 A.2d 619 (2008). The court concluded that a jury verdict of guilty, which is flatly inconsistent with the jury's verdict of not guilty on another count, is illogical and contrary to law. *Id.* at 29, 949 A.2d at 630.

On November 20, 2002, two Baltimore City police officers observed about fifteen people congregating in a breezeway of an apartment complex known for the sale of drugs. The police officers observed Lawrence Price, Jr. ("Price") surrounded by others who exchanged money for small objects. Price and others ran when the officers approached the breezeway. When the officers caught and apprehended Price, he threw a bag that contained a handgun and U.S. currency.

Price was charged in the Circuit Court for Baltimore City with various drug offenses, including drug trafficking crimes. In addition, Price was charged with the possession of a firearm during and in relation to a drug trafficking crime. At trial, the judge instructed the jury that to find Price guilty of possessing a firearm during and in relation to a drug trafficking crime, they also had to find him guilty of at least one of the drug trafficking crimes. The jury acquitted Price of all the drug trafficking charges. However, despite the trial judge's instructions, the jury found Price guilty of possession of a firearm during and in relation to a drug trafficking crime.

Price moved to strike the guilty verdict on the firearms charge on the grounds that it was inconsistent with the not guilty verdicts to the drug trafficking crimes. The trial court denied the motion. Price appealed to the Court of Special Appeals of Maryland, which upheld the guilty verdict holding that inconsistent verdicts are generally permitted in jury trials. Price petitioned for writ of certiorari, which the Court of Appeals of Maryland granted.

The Court of Appeals of Maryland recognized that there are no Maryland statutes or procedural rules that relate to inconsistent verdicts generally or to specific types of inconsistent verdicts. *Price*, 405 Md. at 18, 949 A.2d at 624. The court previously held that inconsistent verdicts in jury trials were permissible in criminal cases. *Id.* (citing *State v. Williams*, 397 Md. 172, 189, 916 A.2d 294, 305 (2007)). Inconsistent jury verdicts were tolerated because the “inconsistencies may be the product of lenity, mistake, or a compromise to reach unanimity.” *Price*, 405 Md. at 19, 949 A.2d at 624 (quoting *Galloway v. State*, 371 Md. 379, 408, 809 A.2d 653, 671 (2002)).

Prior to this decision, inconsistent jury verdicts were the only inconsistent verdicts still permitted under Maryland law. *Price*, 405 Md. at 19-20, 949 A.2d at 624-25. Examples of inconsistent verdicts no longer tolerated include: (1) when a judge is involved in rendering one of the inconsistent verdicts; (2) when the judge has failed to give an instruction on the consistency of verdicts; or (3) when the jury has returned guilty verdicts on two inconsistent counts. *Id.* at 19-20, 949 A.2d at 625. The trial court, in its discretion, does not have to accept inconsistent verdicts and may grant its own relief. *Id.* at 21, 949 A.2d at 626. The court determined that it is the role of the jury to decide a criminal case according to the law. *Id.* Further, it is within the duty of the trial court to set aside the verdict when the jury has misapplied the law and returned verdicts that are inconsistent with both the law and the judge’s instructions. *Id.* However, the court has never established a criteria to guide trial courts in deciding whether or not to accept inconsistent verdicts. *Id.*

The court previously held that in civil trials, irreconcilably inconsistent jury verdicts are not allowed. *Id.* (citing *Southern Management v. Taha*, 378 Md. 461, 467, 836 A.2d 627, 630 (2003)). The court explained that if the traditional reasons for tolerating inconsistent jury verdicts are insufficient in civil cases, those reasons clearly are not sufficient in criminal cases. *Price*, 405 Md. at 26, 949 A.2d at 629. In civil cases, generally only money is at stake, but in criminal cases the defendant’s liberty or life is in jeopardy. *Id.* at 22, 949 A.2d at 626. The court stated that it was unwilling to give less protection to a criminal defendant than it has given to a civil defendant. *Id.* at 22, 949 A.2d at 626 (citing *Galloway*, 371 Md. at 417, 809 A.2d at 676). Based on this analysis, the court concluded that there is no longer any justification for tolerating inconsistent jury trial verdicts. *Price*, 405 Md. at 22, 949 A.2d at 626.

According to the Court of Appeals of Maryland, to uphold the inconsistent jury verdicts of guilty in *Price* would be to repudiate the principles set forth in previous decisions of this court. *Id.* Ultimately, the court held that while inconsistent verdicts were allowed under Maryland common law, the court has the authority under the state constitution to change the common law. *Id.* Inconsistent jury verdicts shall no longer be allowed. *Id.* at 29, 949 A.2d at 630.

The concurring opinion set out the proper procedure that a defendant and a trial judge should follow when an inconsistent verdict occurs. *Id.* at 35, 949 A.2d at 634 (Harrell, J., concurring). An objection to inconsistent verdicts is only allowed by the defendant and not by the prosecution. *Id.* at 42 n. 10, 949 A.2d at 638 n. 10 (Harrell, J., concurring). If a defendant does not note his or her objection to the allegedly inconsistent verdicts prior to the verdicts becoming final and the discharge of the jury, the claim is waived. *Id.* at 40, 949 A.2d at 637 (Harrell, J., concurring). Upon a timely objection, the trial court should instruct or re-instruct the jury on the need for consistency and the range of possible verdicts. *Id.* at 41-42, 949 A.2d at 638 (Harrell, J., concurring). The jury would then be allowed to resolve the inconsistency. *Id.* (Harrell, J., concurring). Judge Harrell opined that the court's holding should only apply to verdicts that are legally inconsistent and not those that are factually inconsistent. *Id.* at 35, 949 A.2d at 634 (Harrell, J., concurring).

The Court of Appeals of Maryland changed the common law by prohibiting inconsistent jury verdicts in criminal cases. The court places the responsibility on the defense and on the trial judge to ensure that justice is fulfilled. The lower courts now are responsible for making sure that verdicts returned from the jury are legally consistent. *Price* only discusses legally inconsistent verdicts and opens the door to future debate on the permissibility of factually inconsistent verdicts. This holding helps guarantee that defendants in criminal trials have the fair trial that they are entitled.