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Recent Developments: Wadlow v. State: Prosecution Is Required to Prove beyond a Reasonable Doubt Specific Factors Necessary for Imposition of Enhanced Sentence

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technical rules of criminal procedure were to be introduced to the juvenile court system, the purpose behind the creation of

the juvenile court system in providing a simplified, informal setting in which to better effectuate the rehabilitation and treat-

ment of juveniles would be circumvented and thwarted.

- Timothy Sean Daugherty

Wadlow v. State:

**PROSECUTION
IS REQUIRED TO
PROVE BEYOND A
REASONABLE
DOUBT SPECIFIC
FACTORS
NECESSARY FOR
IMPOSITION
OF ENHANCED
SENTENCE.**

In *Wadlow v. State*, 335 Md. 122, 642 A.2d 213 (1994), the Court of Appeals of Maryland formally classified enhanced sentencing requirements as elements of offenses which must be alleged and proven beyond a reasonable doubt by the prosecution. The State cannot rely on the discretion of the trial court to conclude that the aggravating factors or quantity necessary to elevate a particular offense have been resolved. Following *Wadlow v. State*, such a conclusion may not be reached by the sentencing judge, but must be determined by the trier of fact.

Lauren Marie Wadlow was indicted by a Montgomery County Grand Jury for unlawful possession with intent to distribute (Count I), simple possession (Count II), and conspiracy to distribute cocaine (Count III). The charging documents alleged possession of a certain

quantity of cocaine sufficient to subject Wadlow to an enhanced statutory penalty for the possession with intent to distribute charge. At trial in the Circuit Court for Montgomery County, however, the jury had not been instructed to determine the exact quantity of cocaine that the Defendant had possessed for enhancement purposes. Nevertheless, the jury found Wadlow guilty of all three counts. At sentencing, the simple possession count was merged into possession with intent to distribute. Wadlow was then given a four year sentence for possession with intent to distribute and a consecutive one-year sentence for the conspiracy charge.

At the conclusion of the jury trial, the State filed a motion seeking to correct an illegal sentence, arguing that the quantity of cocaine seized mandated imposition of a five year, no

parole sentence, and that the conspiracy, rather than the simple possession charge, should merge into the possession with intent to distribute conviction. The trial judge, with little explanation, merged the conspiracy charge and imposed a five year sentence for possession with intent to distribute. The trial judge, however, refused to state for the record that the revised sentence had been imposed in accordance with the increased penalty provision found within the possession statute. The State appealed, insisting that the trial judge had not followed the statutory enhancement requirement. Wadlow cross-appealed, arguing that an increased sentence could only result following a jury finding of the statutorily required quantity of cocaine. The Court of Special Appeals of Maryland held that the existence of factors requiring imposition of an increased sentence must be determined by the trial judge, not the jury, and that the trial judge in this case had implicitly made such a finding in resentencing Wadlow. Accordingly, the court of special appeals affirmed Defendant's conviction, but remanded the case with instructions for the trial judge to explicitly state that the resulting sentence had been given based on mandatory enhancement guidelines. Wadlow petitioned the Court of Appeals of Maryland for a writ of certiorari. The court granted the petition in order to clarify the respective duties of judge and jury regarding mandatory en-

hanced sentencing provisions.

The court of appeals first examined the offenses charged and the corresponding Maryland Code references. *Wadlow*, 335 Md. at 126, 642 A.2d at 214. Possession with the intent to distribute (Count I) was made unlawful by Article 27, Section 286. *Id.* Section 286(a)(1) specifically prohibited the possession of a "controlled dangerous substance in sufficient quantity to reasonably indicate . . . an intent to . . . dispense." *Id.* In addition, Section 286(f) provided for enhanced sanctions for violations of Section 286(a)(1) involving possession of larger quantities of the controlled dangerous substance. *Id.* Wadlow was charged with unlawfully possessing a quantity of cocaine that permitted the inference of an intent to distribute under Section 286(a)(1). *Id.* at 126, 642 A.2d at 215. Although the quantity of cocaine allegedly in Wadlow's possession would have qualified for an increased sentence under § 286(f), the jury had not been charged with deciding whether the amount possessed satisfied the sentencing enhancement provision. *Id.* The simple possession, and conspiracy convictions, Counts II and III respectively, were given only brief consideration by the court of appeals. *Id.* at 127, 642 A.2d at 215.

The court primarily focused on the initial and subsequent sentences imposed as a result of the Count I conviction. *Id.* at 128, 642 A.2d at 216. The

State argued that the United States Constitution and federal courts of appeals both permitted imposition of an enhanced penalty based on factual determinations made by a sentencing judge. *Id.* The court agreed, but noted that in Maryland such factual determinations were permissible only in situations where a defendant's prior conduct was in question. *Id.* at 129, 642 A.2d at 216. In the instant case, the increased sentence depended not on the applicability of Wadlow's previous convictions, but upon a possessory offense with multiple degrees. *Id.* at 132, 642 A.2d at 218. The court noted that where the legislature had provided different sentences for the same offense, based on a particular variable, that variable must be treated as an element of the offense. *Id.* In the absence of contrary legislative intent, the prosecution must allege and prove such circumstances beyond a reasonable doubt. *Id.*

The court provided a useful analogy using the offense of malicious destruction of property. *Id.* at 130, 642 A.2d at 216. Much like the multiple-punishment scheme of Section 286, the prohibition against destruction of property had also been separated into varied penalties. *Id.* While similarly classified as a single offense, the value of property destroyed could serve to elevate the particular sanction dispensed. *Id.* at 131, 642 A.2d at 217. Appropriately, the court held that the property value should be

deemed an element of the offense that the prosecution must allege and prove. *Id.* at 132, 642 A.2d at 217 (citing with approval *Hagans v. State*, 316 Md. 429, 559 A.2d 792 (1989)). Since Section 286 also provided for varied punishments based upon the quantity of a controlled dangerous substance possessed, the specific quantity is such an element that the State must allege and prove. *Id.*

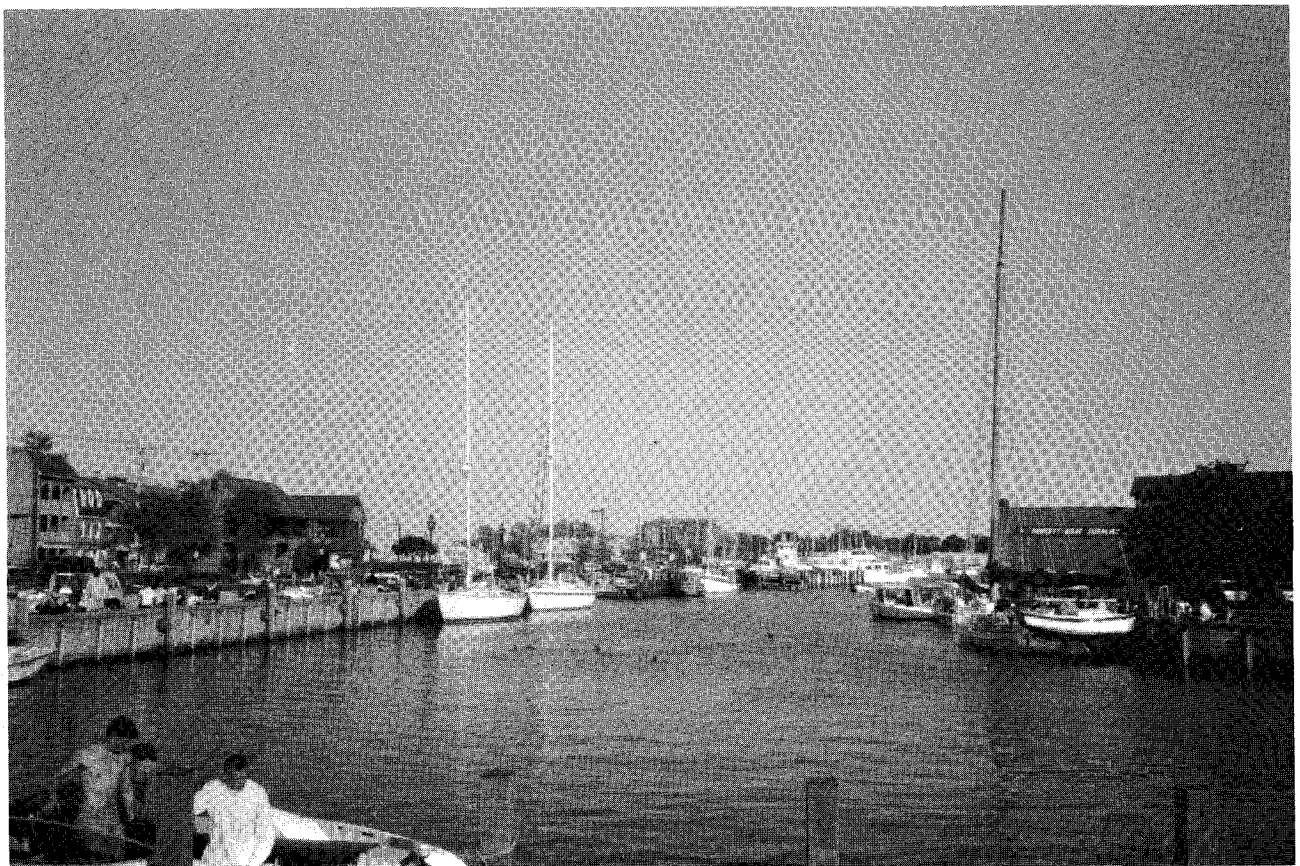
In this case, the State had not charged Wadlow with a possessory violation of Section 286(f), only of Section 286(a)(1). *Id.* at 126, 642 A.2d at 215. Moreover, contrary to the accepted judicial treatment of other multi-faceted offenses, the jury had not been properly instructed to make a factual find-

ing regarding the quantity of cocaine in Wadlow's possession. *Id.* at 127, 642 A.2d at 215. Since the sentencing judge had made such a determination, the court of appeals held that the prosecution had neither met the allegation nor the burden of proof. *Id.* at 134, 642 A.2d at 218. Wadlow's revised sentence was therefore vacated and replaced with the trial judge's original imposition of a four year term of imprisonment. *Id.*

In *Wadlow v. State*, the Court of Appeals of Maryland explicitly held that the quantity of controlled dangerous substance necessary to activate Section 286(f)'s enhanced penalty provision was to be treated as an element of the possessory offense that must be alleged and

proven beyond a reasonable doubt by the prosecution. The State, in meeting its burden of proof, must persuade the trier of fact, not the sentencing judge of the actual quantity possessed. This holding prohibits the State from vaguely charging potential defendants, then seeking severe, unexpected, mandatory penalties during the sentencing phase of trial. The holding also sets forth the requirement that the prosecution accurately put defendants on notice as to the maximum sanctions that they may be subjected to upon conviction. The court, by placing such burdens on the prosecution, implicitly safeguarded individual rights and restrained future oppressive State conduct.

- Christopher R. Rahl



Notes