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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Recommended Citation
Available at: http://scholarworks.law.ubalt.edu/lf/vol25/iss2/21

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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 treatment of juveniles would be circumvented and thwarted.

- Timothy Sean Daugherty

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 sim­
ple possession charge, should
merge into the possession with
intent to distribute conviction.
The trial judge, with little expla­
nation, 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 stat­
utory enhancement requirement.
Wadlow cross-appealed, argu­
ing 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 exist­
ence offactors requiring impo­
sition of an increased sentence
must be determined by the trial
judge, not the jury, and that the
trial judge in this case had im­
plicitly made such a finding in
resentencing Wadlow. Accord­
ingly, the court of special ap­
ppeals affirmed Defendant’s con­
viction, but remanded the case
with instructions for the trial
judge to explicitly state that the
resulting sentence had been given
based on mandatory enhance­
ment guidelines. Wadlow peti­
tioned the Court of Appeals of
Maryland for a writ of certiora­
ri. The court granted the peti­
tion in order to

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 prohibit­
ed the possession of a “con­
trolled dangerous substance in
sufficient quantity to reasonably
indicate . . . an intent to . . .
dispense.” Id. In addition,
Section 286(f) provided for en­
hanced sanctions for violations
of Section 286(a)(1) involving
possession of larger quantities
of the controlled dangerous sub­
stance. Id. Wadlow was charged
with unlawfully possessing a
quantity of cocaine that permit­
ted 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 quali­
fied for an increased sentence
under § 286(f), the jury had not
been charged with deciding
whether the amount possessed
satisfied the sentencing enhance­
ment provision. Id. The simple
possession, and conspiracy con­
victions, Counts II and III re­
spectively, were given only brief
consideration by the court of
appeals. Id. at 127, 642 A.2d at 215.

The court primarily fo­
cused on the initial and subse­
quent 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 permit­
ted imposition of an enhanced
penalty based on factual deter­
minations made by a sentencing
judge. Id. The court agreed,
but noted that in Maryland such
factual determinations were per­
missible 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 depend­
ed 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 legis­
lature 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 legisla­
tive intent, the prosecution must
allege and prove such circum­
stances beyond a reasonable
doubt. Id. The court provided a
useful analogy using the offense
of malicious destruction of prop­
erty. Id. at 130, 642 A.2d at
216. Much like the multiple-
punishment scheme of Section
286, the prohibition against de­
struction of property had also
been separated into varied pen­
alties. Id. While similarly clas­
sified as a single offense, the
value of property destroyed
could serve to elevate the par­
ticular sanction dispensed. Id.
at 131, 642 A.2d at 217. Ap­
propriately, 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 finding 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