

RECENT DEVELOPMENT

MCNEAL V. STATE: THE COURT OF APPEALS OF MARYLAND INTERPRETED PRICE V. STATE TO ALLOW ILLOGICAL OR FACTUALLY INCONSISTENT JURY VERDICTS IN CRIMINAL TRIALS, BUT HELD THAT LEGALLY INCONSISTENT JURY VERDICTS ARE IMPERMISSIBLE.

By: Nicholas E. Kosmas

The Court of Appeals of Maryland held that while a legally inconsistent jury verdict is prohibited, a factually inconsistent one is not a reversible error. *McNeal v. State*, 426 Md. 455, 44 A.3d 982 (2012). Specifically, the court drew a distinction between legally and factually inconsistent verdicts in criminal trials when it upheld a jury verdict that found the defendant guilty of possession of a regulated firearm, but not guilty of wearing, carrying, or transporting a handgun. *Id.*

On October 15, 2008, four Baltimore City police officers approached David McNeal (“McNeal”) while he was standing on the sidewalk. The officers asked McNeal if he had “anything he shouldn’t have,” at which point McNeal revealed that he had a handgun in his pants pocket. The officers arrested McNeal and charged him with unlawful possession of a firearm after prior conviction of a disqualifying crime, wearing, carrying, or transporting a handgun, and resisting arrest. At his trial in the Circuit Court for Baltimore City, the jury found McNeal guilty of the possession charge, but not guilty of wearing, carrying, or transporting a handgun. McNeal’s objection that the verdict was inconsistent and that it should go back to the jury was denied.

McNeal appealed to the Court of Special Appeals of Maryland. A three-judge panel vacated the sentence for resisting arrest, but affirmed the remainder of his convictions. The intermediate appellate court relied on *Price v. State* in affirming the factually inconsistent verdicts. Specifically, the *McNeal* court agreed with the concurring opinion in *Price* that found a factually inconsistent or illogical verdict should be allowed as a jury’s conclusions of fact, not law. Subsequently, McNeal petitioned for a writ of certiorari with the Court of Appeals of Maryland, asking the court to clarify if *Price* applied to both logically inconsistent and legally inconsistent verdicts. The Court of Appeals of Maryland granted McNeal’s petition.

The Court of Appeals of Maryland began its analysis by reviewing the holding in *Price v. State*. *McNeal*, 426 Md. at 462-63, 44 A.3d at 986-87.

In *Price*, police officers observed what they thought was Leonard Price selling drugs. *McNeal*, 426 Md. at 462, 44 A.3d at 986 (citing *Price v. State*, 405 Md. 10, 12-13, 949 A.2d 619, 621 (2008)). The police arrested Price and discovered that he was carrying cash and a handgun. *McNeal*, 426 Md. at 462, 44 A.3d at 987 (citing *Price*, 405 Md. at 13, 949 A.2d at 621). Price was subsequently charged with eighteen counts of drug and firearm offenses, including possession of a firearm during and in relation to a drug trafficking crime. *McNeal*, 426 Md. at 463, 44 A.3d 987 (citing *Price*, 405 Md. at 13-14, 949 A.2d at 621-22). Prior to deliberations, the trial judge instructed the jury that they could convict Price on the charge of possession of a firearm during and in relation to a drug trafficking crime only if they found him guilty of one of the drug trafficking charges. *McNeal*, 426 Md. at 463, 44 A.3d 987 (citing *Price*, 405 Md. at 14, 949 A.2d at 622). The jury ignored the judge's instruction and acquitted Price on the drug trafficking charges, but found him guilty of possession of a firearm during a drug trafficking crime. *McNeal*, 426 Md. at 463, 44 A.3d 987 (citing *Price*, 405 Md. at 15, 949 A.2d at 622).

The Court of Appeals of Maryland reversed and held that legally inconsistent jury verdicts are not permissible in Maryland criminal trials. *McNeal*, 426 Md. at 465, 44 A.3d at 988 (citing *Price*, 405 Md. at 34, 949 A.2d at 633). Judge Harrell, in his concurring opinion in *Price*, drew a distinction between legally inconsistent and factually inconsistent jury verdicts. *McNeal*, 426 Md. at 466, 44 A.3d at 988 (citing *Price*, 405 Md. at 35, 949 A.2d at 634 (Harrell, J., concurring)). Judge Harrell argued that while a legally inconsistent verdict requires a jury to ignore a judge's instructions on how to apply the law, a factually inconsistent verdict could come from many sources, any of which would require a court to delve into jury deliberations in order to reverse. *McNeal*, 426 Md. at 466, 44 A.3d at 988 (citing *Price*, 405 Md. at 36, 949 A.2d at 635 (Harrell, J., concurring)).

After discussing *Price*, the court proceeded to review how other jurisdictions addressed factually inconsistent criminal jury verdicts. *McNeal*, 426 Md. at 467, 44 A.3d at 989. Florida, New York, Missouri, Rhode Island, Massachusetts, and Iowa all allow a jury to reach illogical factual conclusions, provided that they are consistent with judicial instruction and the law. *Id.* at 467-68, 44 A.3d at 989-90. Only Alaska rejects both factually and legally inconsistent verdicts. *Id.* at 468, 44 A.3d at 990.

The court then considered two of McNeal's arguments for reversal. *McNeal*, 426 Md. at 469-72, 44 A.3d at 991-92. First, the court considered and dismissed McNeal's claim that collateral estoppel prevented the conviction, reasoning that if McNeal had been tried separately for each charge, collateral estoppel may apply, but since he was tried for both crimes in the same trial, it does not. *Id.* Second, the

court rejected McNeal's argument that the Court of Appeals of Maryland has already held that factually inconsistent verdicts are prohibited in *Williams v. State*, noting that *Williams* was a bench trial and only juries are given deference when it comes to inconsistent verdicts. *McNeal*, 426 Md. at 470, 44 A.3d at 991 (citing *Williams v. State*, 397 Md. 172, 189-90, 916 A.2d 294, 305 (2007)).

Finally, the court analyzed two important features of a criminal jury. *McNeal*, 426 Md. at 471-72, 44 A.3d at 992. First, the court emphasized that the jury has the role of fact-finding in a criminal trial. *Id.* at 471, 44 A.3d at 992. As such, if a judge properly instructs the jury on the law, it is up to the jury alone to decide how to apply the facts to that instruction. *Id.* Because the State charged McNeal with two crimes that contained separate and distinct legal elements, the court reasoned that it is legally possible and permissible for the jury to convict him of one but not the other. *Id.*

The court also acknowledged that juries sometimes exercise leniency through their verdicts. *McNeal*, 426 Md. at 472, 44 A.3d at 992. Although the court emphasized that this is not the primary function of a criminal jury, it reasoned that preventing such outcomes would require more stringent judicial instruction that could improperly influence the jury. *Id.* at 471-72, 44 A.3d at 992. Also, the court pointed out that juries often engage in compromise and negotiation. *Id.* at 471, 44 A.3d at 992. Concerned with disturbing a verdict for the wrong reasons, the court refused to look into the minds of the jurors and concluded that McNeal's factually inconsistent verdict was permissible. *Id.* at 473, 44 A.3d at 993.

In *McNeal*, the Court of Appeals of Maryland adopted the concurring opinion in *Price* and articulated a distinction between legally inconsistent and factually inconsistent verdicts. In doing so, the court preserved the right of a jury to apply the facts as it sees fit in a criminal trial, provided that the verdict fits the judge's instructions as to the law. As a result of this holding, defense attorneys may find the State hesitant to drop related charges because a jury, that follows the judge's instructions, may pick and choose which charges to convict on regardless of whether the verdict is logical. Practitioners should carefully examine the elements of the charges with the understanding that while it may not seem logical, if the elements are separate and distinct, the jury may exercise leniency and find a defendant guilty of one offense but not another.