Circuit Court for Baltimore City
Case No. 122207011

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2054

September Term, 2023

SHANIKIQUA SCHNELL JONES

v.

STATE OF MARYLAND

Shaw,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 4, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury, in the Circuit Court for Baltimore City, convicted Shanikiqua Jones, appellant, of two counts of attempted second-degree murder, one count of first-degree assault, one count of reckless endangerment, one count of wearing, carrying, or transporting a handgun, one count of discharging a firearm in Baltimore City, and one count of use of a firearm in the commission of a crime of violence. The court thereafter imposed separate sentences for each of Jones's convictions. Jones noted an appeal, raising four issues:

1. Was the evidence sufficient to sustain Jones's convictions of attempted second-degree murder?

2. Did the trial court err in instructing the jury on concurrent intent?

3. Did the trial court err in failing to merge, for sentencing purposes, Jones's conviction of reckless endangerment into her convictions of attempted second-degree murder or her conviction of first-degree assault?

4. Did the trial court err in failing to merge, for sentencing purposes, Jones's conviction of wearing, carrying, or transporting a handgun into her conviction of use of a firearm in the commission of a crime of violence?

For reasons to follow, we hold that the evidence was sufficient to sustain Jones's convictions of attempted second-degree murder. We also hold that the trial court did not err in instructing the jury on concurrent intent. As to the merger issues, we hold that the court erred in failing to merge Jones's conviction of reckless endangerment and that the court erred in failing to merge Jones's conviction of wearing, carrying, or transporting a handgun. Accordingly, we vacate those sentences. Otherwise, we affirm.

BACKGROUND

On June 27, 2022, Briyana Hudson was sitting in the driver's seat of her vehicle, which was parked near the intersection of Bowland Avenue and Bowleys Lane in Baltimore. Three other individuals were also in the vehicle: "Tim," who was seated in the front passenger seat;[1] Zavon Beasley, who was seated in the rear seat on the driver's side; and Leon Smith, Jr., who was seated in the rear seat on the passenger side. At some point, another vehicle pulled up next to Hudson's vehicle, and the driver of that vehicle, later identified as Jones, fired two shots at Hudson's vehicle and then drove away. Jones was subsequently arrested and charged with, among other things: attempted second-degree murder of Hudson, Beasley, and Smith; first-degree assault of Hudson, Beasley, and Smith; reckless endangerment; wearing, carrying, and transporting a handgun; discharging a firearm in Baltimore City; and use of a firearm in the commission of a crime of violence.

Trial Evidence

At trial, Jeniya Mantilla, Jones's ex-girlfriend, testified that, in the early afternoon hours on the day of the shooting, she and Jones had gotten together so that Mantilla could meet Jones's new puppy. Mantilla testified that, during that meeting, Jones observed that Mantilla had a "hickey" on her neck. According to Mantilla, Jones became upset, and the two parted ways in their separate vehicles. Shortly thereafter, Mantilla observed Jones drive up next to Mantilla's vehicle, pull out a gun, point it at Mantilla, and then drive away. Mantilla then left the scene and drove to her sister's house, which was located on Bowland

[1] There was no testimony as to the last name of Tim.

Avenue. A short time later, Jones came to Mantilla's sister's house "looking for" Mantilla. Mantilla eventually went outside, accompanied by her current boyfriend, Tim, who, according to Mantilla, was responsible for the hickey on Mantilla's neck. Tim and Jones then had a "verbal altercation," after which Jones went back to her vehicle and retrieved a gun. Tim then "walked away," and Jones got into her vehicle and "drove off." Mantilla went back into her sister's house and contacted her friend, Briyana Hudson.

Hudson testified that, on the day of the shooting, she received a text message from Mantilla asking Hudson to "come past" and "calm down a situation between [Mantilla] and [Jones]." Sometime later, Hudson drove to Mantilla's sister's house. According to Hudson, as she was approaching Mantilla's sister's house, she observed Jones driving in the opposite direction, and the two "made eye contact." Hudson eventually arrived at the house, parked, and went inside "to see what was going on." After making contact with Mantilla, Hudson told Mantilla that she would "look back out." Hudson then left the house, got back in her vehicle, and drove away. As she was driving away, Hudson saw Tim "just walking, like, down the street." Hudson stopped, and Tim got into the vehicle's front passenger seat. Hudson then drove a short distance to the corner of Bowland Avenue and Bowleys Lane, where she picked up two more passengers, Zavon Beasley and Leon Smith, Jr., who got into the vehicle's rear seats, with Beasley sitting behind Hudson and Smith sitting behind Tim. Hudson then drove a short distance and made a right onto Sinclair Lane, at which point she observed Jones's vehicle "make a U-turn" and drive toward Hudson's vehicle. Hudson testified that she could see into Jones's vehicle and that Jones was the only person inside. Upon making those observations, Hudson pulled her vehicle

over and parked. Jones then pulled next to Hudson's vehicle on the driver's side and "started shooting" at Hudson's vehicle. At that point, Hudson "put [her] seat all the way back" and "ducked." Hudson testified that Jones fired two shots, that the shots left "two bullet holes . . . in the side of [her] door on the driver's side in the back[,]" and that one of the bullets struck Beasley in the back.

Attempted Second-Degree Murder Instruction

The State's primary theory of the crime at trial was that Tim, the current boyfriend of Jones's ex-girlfriend Mantilla, was Jones's intended target when she fired at Hudson's vehicle. In support of that theory, the State asked the court to instruct the jury, as part of the court's instructions as to the charges of attempted second-degree murder, that the jury could find Jones guilty of the attempted murders of Hudson, Beasley, and Smith based on the doctrine of concurrent intent. Defense counsel objected, and the court overruled the objection. The court later instructed the jury as follows:

> Attempted second-degree murder is a substantial step beyond mere preparation towards the commission of murder in the second degree. Second-degree murder does not require premeditation or a deliberation. In order to convict the Defendant of attempted murder of the second degree, State must prove one, the Defendant took a substantial step beyond mere preparation towards the commission of murder in the second degree; two, that the Defendant had the apparent ability at the time to commit the crime of murder in the second degree; and three, that the Defendant actually intended to kill Zavon Beasley, Bri[ya]na Hudson, and/or Leon Smith Jr.
>
> The Defendant is charged with . . . attempted second-degree murder against Zavon Beasley, Bri[ya]na Hudson, and Leon Smith Jr. One element of these offense – it should say offenses – is the requirement of intent. Based on the doctrine of concurrent intent, intent is present if a person attempted to kill one or more person in a manner such as firing multiple shots that creates a zone of killing around that person and other persons such as a bystander or a third person are within that zone of killing.

> A zone of killing is created when the nature and scope of the attack, while directed at a primary victim, are such that you conclude that the Defendant intended to ensure harm to the primary victim by harming everyone in that victim's vicinity. Under the doctrine of concurrent intent, you may infer the Defendant intended to kill anyone within the zone of killing.
>
> You may infer that the Defendant intended to kill Zavon Beasley, Bri[ya]na Hudson, and Leon Smith Jr. if after full and fair consideration of all the facts and circumstances and evidence the State proves one, the Defendant intended to kill Tim; and two, that the Defendant created a zone of killing around Tim by firing multiple shots and Zavon Beasley, Bri[ya]na Hudson, and Leon Smith Jr. were in the zone of killing.

Verdict and Sentencing

Jones was ultimately convicted of: attempted second-degree murder of Beasley; attempted second-degree murder of Hudson; first-degree assault of Smith; reckless endangerment; wearing, carrying, and transporting a handgun; discharging a firearm in Baltimore City; and use of a firearm in the commission of a crime of violence. The court later sentenced Jones to: a term of thirty years' imprisonment, with all but fifteen years suspended, for the attempted second-degree murder of Beasley; a consecutive term of thirty years' imprisonment, with all but ten years suspended, for the attempted second-degree murder of Hudson; a concurrent term of ten years' imprisonment for the first-degree assault of Smith; a consecutive term of five years' imprisonment for reckless endangerment; a concurrent term of three years' imprisonment for wearing, carrying, and transporting a handgun; a concurrent term of five years' imprisonment for use of a firearm in the commission of a crime of violence; and a concurrent term of one year imprisonment for discharging a firearm in Baltimore City.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Parties' Contentions

Jones contends that the evidence adduced at trial was insufficient to sustain her convictions of attempted second-degree murder because there was no evidence of concurrent intent. Jones argues that, to meet the standard of proof under the doctrine of concurrent intent, the State needed to show that Jones's actions created a "zone of harm" around the intended target and that she intentionally escalated her attack to create that "zone of harm." Jones contends that the State failed to present any evidence to satisfy either element.

The State argues that Jones's claim is unpreserved because she did not raise that claim when she moved for judgment of acquittal at trial. The State argues that, even if preserved, Jones's claim is without merit. The State contends that the evidence reasonably supported an inference that Jones either directly or concurrently intended to kill Hudson and Beasley.

Standard of Review

"The standard for appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (cleaned up). "When making this determination, the appellate court is not required to determine 'whether *it* believes that the

evidence at the trial established guilt beyond a reasonable doubt.'" *Roes v. State*, 236 Md. App. 569, 583 (2018) (quoting *State v. Manion*, 442 Md. 419, 431 (2015)). "This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber*, 236 Md. App. at 344 (cleaned up). "We defer to any possible reasonable inferences the [fact-finder] could have drawn from the admitted evidence and need not decide whether the [fact-finder] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Fuentes v. State*, 454 Md. 296, 308 (2017). In short, "the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Scriber*, 236 Md. App. at 344 (cleaned up).

Analysis

A.

We hold that Jones failed to preserve her sufficiency claim. "Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion." *Whiting v. State*, 160 Md. App. 285, 308 (2004). "The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal." *Id.* (internal citation omitted). "Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal." *Jones v. State*, 213 Md. App. 208, 215 (2013).

Here, though Jones did move for a judgment of acquittal as to the charges of attempted second-degree murder at the conclusion of the State's case-in-chief, she did so on the grounds that the State had failed to adequately establish that she had possessed or fired a gun. Later, when Jones renewed her motion at the conclusion of the defense's case, she again raised that same argument. At no point in arguing her motion did Jones raise the claim she now raises on appeal. As such, that issue is not preserved for our review.

Jones contends that the issue was properly preserved because, when the State asked for the concurrent intent instruction following Jones's initial motion for judgment of acquittal, defense counsel argued that the evidence did not support the instruction. Jones notes that, when defense counsel later renewed the motion for judgment of acquittal, she specifically stated that she was "incorporat[ing] all of [her] previous statements." Jones insists that defense counsel's statement adequately preserved the issue.

We are not persuaded by Jones's argument. Defense counsel's ambiguous allusions to her "previous arguments" was insufficient to preserve the issue. *See Correll v. State*, 215 Md. App. 483, 498 (2013) ("When a defendant only argues a generality, he does not preserve for review more particularized insufficiency arguments that could have been made but were not.").

B.

Assuming, *arguendo*, that Jones's appellate claim was properly preserved, we hold that the evidence was sufficient to sustain her convictions of attempted second-degree murder. Before discussing the merits of that claim, we note that Jones's sufficiency argument is based solely on the State's theory of concurrent intent. But, as the State notes

in its brief, that theory was not the only theory under which the jury could have found Jones guilty of attempted second-degree murder. When instructing the jury on those charges, the court informed the jury that the State needed to show, among other things, that Jones "actually intended to kill Zavon Beasley, Bri[ya]na Hudson, and/or Leon Smith Jr." The court then explained that the requisite intent could be established if the jury found, in the alternative, that Jones had intended to kill Tim by creating a "zone of killing" in which Beasley, Hudson, and/or Smith were contained. In short, the jury was presented with two distinct ways it could find the requisite intent to support a conviction of attempted second-degree murder. Because Jones only challenges the concurrent intent theory, we could affirm the court's judgment under the alternate grounds that Jones does not challenge, regardless of whether the evidence was sufficient to sustain the convictions under the concurrent intent theory. *See Wallace v. State*, 237 Md. App. 415, 434-36 (2018).

Nevertheless, we need not affirm on those grounds because we are convinced that sufficient evidence was presented to convict Jones of attempted second-degree murder under the doctrine of concurrent intent. Concurrent intent can be found where "the nature and scope of the attack, while directed at a primary victim, are such that we can conclude the perpetrator intended to ensure harm to the primary victim by harming everyone in that victim's vicinity." *Ford v. State*, 330 Md. 682, 716 (1993). "In concurrent-intent analyses, courts focus on the 'means employed to commit the crime' and the 'zone of harm around [the] victim.'" *Harrison v. State*, 382 Md. 477, 495 (2004) (quoting *Ford*, 330 Md. at 717). The essential questions, therefore, become "(1) whether a fact-finder could infer that the defendant intentionally escalated his mode of attack to such an extent that he or she created

a 'zone of harm,' and (2) whether the facts establish that the actual victim resided in that zone when he or she was injured." *Id.* The Supreme Court of Maryland has provided, by way of illustration, the following example of concurrent intent:

> [C]onsider a defendant who intends to kill A and, in order to ensure A's death, drives by a group consisting of A, B, and C, and attacks the group with automatic weapon fire or an explosive device devastating enough to kill everyone in the group. The defendant has intentionally created a "kill zone" to ensure the death of his primary victim, and the trier of fact may reasonably infer from the method employed an intent to kill others concurrent with the intent to kill the primary victim. When the defendant escalated his mode of attack from a single bullet aimed at A's head to a hail of bullets or an explosive device, the factfinder can infer that, whether or not the defendant succeeded in killing A, the defendant concurrently intended to kill everyone in A's immediate vicinity to ensure A's death.

Ford, 330 Md. at 716-17.

In the present case, the following evidence was adduced. In the early afternoon hours on the day of the shooting, Jones became upset after discovering a "hickey" on the neck of her ex-girlfriend, Mantilla. Jones then got into her car, drove past Mantilla, brandished a gun, and then drove away. Sometime later, Jones went to Mantilla's sister's home and got into an altercation with Mantilla's current boyfriend, Tim, who was responsible for the hickey on Mantilla's neck. During that altercation, Jones went to her vehicle to retrieve a gun, and Tim walked away. Jones then got in her vehicle and drove away. As Jones was driving away from the house, Mantilla's friend, Hudson, was driving toward the house, and she and Jones made eye contact. A short time later, Hudson drove away from the house, picked up Tim and two other friends, Smith and Beasley, and began driving down a nearby road. As she was driving, Hudson observed Jones's vehicle in her rearview mirror, and Hudson could see that Jones was alone in her car. Hudson then saw

Jones's vehicle "make a U-turn" and approach Hudson's vehicle, which prompted Hudson to stop her vehicle. While Hudson's vehicle was parked, Jones pulled her vehicle along the driver's side of Hudson's vehicle, brandished a handgun, and fired two shots which hit the rear driver's side of Hudson's vehicle. One of the bullets struck Beasley, who was sitting in the rear of the vehicle behind Hudson. During the shooting, Hudson "put [her] seat . . . back" and "ducked." Jones then drove away.

Viewing that evidence in a light most favorable to the State, we hold that the evidence was sufficient to sustain Jones's convictions of attempted second-degree murder under the doctrine of concurrent intent. Shortly before the shooting, Jones had an altercation with Tim, the current boyfriend of Jones's ex-girlfriend. During that altercation, Jones went to her car to retrieve a gun. From that, a reasonable inference could be drawn that Jones was intending to use the gun against Tim. A short time later, after Hudson had picked up Tim in her car and drove a short distance away from where Jones's altercation had occurred, Hudson observed Jones's vehicle "make a U-turn" and drive directly at Hudson's car. From that, a reasonable inference could be drawn that Jones saw Tim in Hudson's car and that she turned her vehicle around to continue her conflict with Tim. Then, upon pulling up next to Hudson's car on the driver's side, Jones fired two shots into the side of Hudson's car in the direction of Tim, who was seated in the front passenger seat of Hudson's vehicle. From that, a reasonable inference could be drawn that Jones was intending to hit Tim with the gunfire. Given that, in her efforts to kill Tim, Jones fired multiple shots into the side of an occupied vehicle, and given that two of those occupants, Beasley and Hudson, were situated between Jones and Tim, a reasonable inference could

be drawn that Jones intentionally escalated her attack against Tim by creating a "zone of harm" and that Beasley and Hudson were within that zone. As such, the evidence was sufficient to sustain Jones's convictions of attempted second-degree murder of Hudson and Beasley.

Jones contends that there was no evidence that her actions created a "zone of harm" because there was no "automatic weapon fire" or "explosive device," but instead only "two bullet holes found at the bottom of Ms. Hudson's vehicle." (Emphasis omitted.) Jones also contends that there was no evidence that she intentionally escalated her attack to create a "zone of harm" because there was "no testimony or evidence about what could be seen from [her] perspective at the time of the shooting."

We find Jones's arguments unpersuasive. Although Jones did not exhibit the sort of behavior highlighted by the Supreme Court in *Ford*, the fact remains that Jones fired multiple shots into the driver's side of an occupied vehicle with the intention of killing the vehicle's front seat passenger. That Jones's aim was somewhat indiscriminate, as opposed to being directed solely at Tim, suggested that Jones intended to create a "zone of harm" around Tim, her intended target. *See Harvey v. State*, 111 Md. App. 401, 434-35 (1996) (holding that the defendant's act of firing multiple shots toward a crowd was sufficient to establish concurrent intent, where "[w]hat was unleashed toward the crowd . . . was not a single, well-aimed bullet but a fusillade of no less than five shots that sprayed the area"). That inference is in no way diminished by the fact that Jones fired "only" two bullets. *See Harrison*, 382 Md. at 496 (noting that "three random shots directed behind a door" was sufficient to permit a reasonable inference of a "killing zone").

As to Jones's visibility inside Hudson's vehicle, although there was no direct evidence as to what Jones could or could not see, there was sufficient circumstantial evidence from which a reasonable inference could be drawn that Jones was able to see Hudson and her passengers. The shooting occurred during the summertime in the daylight hours.[2] Furthermore, Hudson testified that, prior to the shooting, she drove past Jones, who was driving in the opposite direction, and the two "made eye contact." Hudson then testified that, immediately before the shooting, she could see that Jones was alone inside of her vehicle. Finally, there was no evidence that Jones's view, either out of her own vehicle or into Hudson's vehicle, was in any way obstructed, nor was there any evidence that any of Hudson's passengers were hidden inside of the vehicle.[3] Given that evidence, and given the other evidence suggesting that Jones was targeting Tim in shooting at Hudson's vehicle, a reasonable inference could be drawn that Jones could see all of the vehicle's occupants, including Hudson and Beasley, when she opened fire.

II.

Parties' Contentions

Jones next contends that the trial court erred in instructing the jury on concurrent intent. Jones argues that, for the reasons given in support of her sufficiency argument,

[2] Baltimore City Police Detective Trevor Hinton testified that he responded to the scene of the shooting at 7:37 p.m. He added that "[i]t was the summertime" and "still light."

[3] It is noteworthy that Jones was in the vicinity when Tim, Beasley and Smith got into the vehicle driven by Hudson and therefore was aware that there were several other people in the car.

there was insufficient evidence to support the instruction. Jones also argues that the wording of the instruction was "non-neutral and prejudicial." Jones notes that the court instructed the jury that concurrent intent is present "if a person attempted to kill one or more person in a manner such as firing multiple shots[.]" Jones argues that such wording "significantly misleads the jury that 'firing multiple shots' by itself is dispositive of whether [she] intentionally escalated her method of attack to create a zone of harm." Jones concludes that the jury "had a high likelihood of believing that so long as more than one bullet was fired, [she] had the intent to escalate her attack to create a zone of harm."

The State contends that, because the evidence was sufficient to sustain Jones's conviction for attempted second-degree murder under the doctrine of concurrent intent, the evidence was necessarily sufficient to justify the court's instruction. The State also contends that the court's instruction was a correct statement of the law and was therefore not erroneous.

Standard of Review

"'The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge."' *Bazzle v. State*, 426 Md. 541, 550 (2012) (quoting *Dishman v. State*, 352 Md. 279, 292-93 (1998)).

Analysis

Where a party requests a jury instruction, the trial court must give the instruction if, among other things, the instruction is '"applicable under the facts of the case[.]"' *Hayes v. State*, 247 Md. App. 252, 288 (2020) (quoting *Thompson v. State*, 393 Md. 291, 302 (2006)). An instruction meets that standard if the evidence adduced at trial "is sufficient

to permit a jury to find its factual predicate." *Bazzle*, 426 Md. at 550. In reviewing that determination, our task is to assess whether the requesting party "produced th[e] minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Id.* (cleaned up). "This threshold is low, in that the requesting party must only produce 'some evidence' to support the requested instruction." *Page v. State*, 222 Md. App. 648, 668 (2015). The "some evidence" test is not confined by a specific standard and "calls for no more than what it says – 'some,' as that word is understood in common, everyday usage." *Bazzle*, 426 Md. at 551 (cleaned up) (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)). Moreover, "[u]pon our review of whether there was 'some evidence,' we view the facts in the light most favorable to the requesting party[.]" *Page*, 222 Md. App. at 668-69.

We hold that the trial court did not err in instructing the jury on concurrent intent. As discussed in Part I, sufficient evidence was adduced to establish that Jones had the requisite concurrent intent to sustain the convictions for attempted second-degree murder. For those same reasons, there was "some evidence" to support the court's decision to instruct the jury on concurrent intent.

We likewise hold that the instruction itself was not erroneous. Despite Jones's claims to the contrary, the court's instruction did not imply that firing multiple shots was dispositive of whether Jones created a "zone of harm." That is, the court did not simply instruct the jury, as Jones suggests, that concurrent intent is present "if a person attempted to kill one or more person in a manner such as firing multiple shots[.]" Rather, the court

instructed the jury that "intent is present if a person attempted to kill one or more person in a manner such as firing multiple shots *that creates a zone of killing around that person and other persons*[.]" From that additional language, it is clear that the court was not instructing the jury that it should only consider the number of shots; rather, the court was instructing the jury that it should consider whether the firing of multiple shots created a zone of killing around the intended target.

That conclusion is further supported by the remainder of the court's instruction. The court went on to state that "[a] zone of killing is created when the nature and scope of the attack, while directed at a primary victim, are such that you conclude that the Defendant intended to ensure harm to the primary victim by harming everyone in the victim's vicinity." The court concluded the instruction by stating that, to prove concurrent intent, the State needed to show that Jones intended to kill Tim, that she created a "zone of killing" around Tim, and that Beasley, Hudson, and Smith were within that "zone of killing."

When considered in its entirety, the court's instruction was a correct statement of the law. *See Harrison, supra*, 382 Md. at 495. As such, we cannot say that the court's instruction was erroneous.

III. and IV.

Parties' Contentions

Jones's final two claims concern the trial court's failure to merge two of her convictions for sentencing purposes. First, Jones contends that the court should have merged her conviction of reckless endangerment into one of her convictions of attempted second-degree murder pursuant to the "required evidence test." Jones contends, in the

alternative, that the court should have merged her conviction of reckless endangerment into her conviction of first-degree assault pursuant the "rule of lenity." Second, Jones contends that the court should have merged her conviction of wearing, carrying, or transporting a handgun into her conviction of use of a handgun in the commission of a crime of violence pursuant to the "rule of lenity."

The State argues that Jones's conviction of reckless endangerment should not merge because the reckless endangerment charge was against "the general public," whereas the other charges were against specific individuals. The State argues, therefore, that the court did not err in imposing separate sentences for those convictions. The State concedes, however, that the court should have merged Jones's conviction of wearing, carrying, or transporting a handgun into her conviction of use of a firearm in the commission of a crime of violence.

Standard of Review

We review *de novo* a court's decision whether to merge a defendant's convictions for sentencing purposes. *Butler v. State*, 255 Md. App. 477, 488 (2022).

Analysis

"The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law." *Brooks v. State*, 439 Md. 698, 737 (2014). "Merger protects a convicted defendant from multiple punishments for the same offense." *Id.*

For two or more convictions to be merged for sentencing purposes, the convictions must be based on the same act or acts. *State v. Frazier*, 469 Md. 627, 641 (2020). If so,

we then look at whether the offenses meet one of the three principles of merger recognized in Maryland: (1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness. *Koushall v. State*, 479 Md. 124, 156 (2022).

Under the required evidence test, we look at the elements of each offense and determine if each offense contains an element that the other does not. *Potts v. State*, 231 Md. App. 398, 413 (2016). "'If each offense requires proof of a fact which the other does not, the offenses are not the same and do not merge.'" *Koushall*, 479 Md. at 157 (quoting *Newton v. State*, 280 Md. 260, 268 (1977)). If, however, "only one offense requires proof of a fact which the other does not, the offenses are deemed the same, and separate sentences for each offense are prohibited." *Id.* (quotation marks and citation omitted).

"The rule of lenity, applicable only where a defendant is convicted of at least one statutory offense, requires merger when there is no indication that the legislature intended multiple punishments for the same act." *Potts*, 231 Md. App. at 413. "The rule of lenity is a common law doctrine that directs courts to construe ambiguous criminal statutes in favor of criminal defendants." *Alexis v. State*, 437 Md. 457, 484-85 (2014). "'[I]f we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in effect, give the defendant the benefit of the doubt and hold that the crimes do merge.'" *Koushall*, 479 Md. at 161 (quoting *Monoker v. State*, 321 Md. 214, 222 (1990)). "The relevant inquiry is whether the two offenses are 'of necessity closely intertwined' or whether one offense is '*necessarily* the overt act' of the other." *Pineta v. State*, 98 Md. App. 614, 620-21 (1993) (quoting *Dillsworth v. State*, 308 Md. 354, 366-67 (1987)).

A.

The crime of reckless endangerment is codified in § 3-204 of the Criminal Law Article of the Maryland Code, which states, in pertinent part, that "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" Crim. Law § 3-204(a). As we have explained, "the crime of [r]eckless [e]ndangerment is quintessentially a crime against persons[,]" and "the unit of prosecution for the crime of [r]eckless [e]ndangerment is each person who is recklessly exposed to the substantial risk of death or serious physical injury."[4] *Albrecht v. State*, 105 Md. App. 45, 58 (1995). Reckless endangerment "is an inchoate crime and is intended to deal with the situation in which a victim is put at substantial risk of death or serious bodily harm but may, through a stroke of good fortune, be spared the consummated harm itself." *Id.* As an inchoate crime:

> reckless endangerment was intended to plug a gap in the law. Inchoate crimes are designed to inhibit criminal conduct before it goes too far or to punish criminal conduct even when, luckily, it misfires. Reckless endangerment is, indeed, doubly inchoate. At the *actus reus* level, it is one element short of consummated harm. At the *mens rea* level, it is one element short of the specific intent necessary for either an attempt or for one of the aggravated assaults.
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> * * *
>
> In any event, the entire range of consummated crimes from which the inchoate crime of reckless endangerment is either one step removed (no actual harm) or two steps removed (neither actual harm nor intent to harm) represents the very paradigm of crime against the person – homicides and batteries and assaults, simple and aggravated, intended and unintended. In all of their forms and degrees, they are classically crimes against the person.

[4] As this explanation makes clear, the State is incorrect in claiming that reckless endangerment is a crime against "the general public" rather than specific individuals.

Id. at 59 (cleaned up).

As to whether the legislature intended multiple punishments, there is nothing in the statute's plain language or its legislative history to indicate that the Maryland General Assembly intended multiple punishments for the same act. In fact, in *Marlin v. State*, 192 Md. App. 134 (2010), we held that, under the principles of fundamental fairness or the rule of lenity, the defendant's conviction of reckless endangerment should have merged into his conviction of first-degree assault, where "the evidence at trial pertained solely to a single act of shooting a single victim." *Id.* at 171.

Applying those principles to the facts of the instant case, we conclude that Jones's conviction of reckless endangerment should have merged into one of her convictions of attempted second-degree murder. The relevant elements of each of those crimes, per the court's instructions to the jury, were as follows. To prove reckless endangerment, the State needed to show that Jones "engaged in conduct that created a substantial risk of death or serious physical injury to another[.]" To prove attempted second-degree murder of Beasley and Hudson, the State needed to show that Jones intended to kill both individuals. It is beyond dispute that all of those offenses were based on Jones's singular act of firing two bullets into Hudson's vehicle. By committing that act, Jones was guilty of "recklessly endangering" Beasley and Hudson. By committing that act with the intent to kill, Jones also was guilty of attempted second-degree murder. Both crimes, reckless endangerment and attempted second-degree murder, were essentially the same, except that attempted second-degree murder required the additional *mens rea* of the intent to kill. *See Williams*

v. State, 100 Md. App. 468, 490 (1994) ("To move from reckless endangerment, where one is simply indifferent to the threat to the victim, to one of the more malicious crimes where death or serious bodily harm is affirmatively desired or specifically intended . . . primarily involves ra[t]cheting the *mens rea* up to the next level of blameworthiness."). As such, the attempted second-degree murder offenses and the reckless endangerment offense were the "same offense." *See id.* at 510 (holding that the defendant's conviction of reckless endangerment merged into his conviction of assault with intent to maim under the required evidence test).

We reach a similar conclusion with respect to Jones's conviction of first-degree assault of Smith. To prove that offense, the State needed to show that Jones attempted to cause physical harm to Smith either while using a firearm or with the intention of causing serious physical injury. Although that offense, unlike the attempted second-degree murder offenses, would not merge under the required evidence test (due to the disparity in the elements), the first-degree assault offense was based on the conduct, *i.e.*, Jones's act of firing two bullets into Hudson's vehicle, that formed the sole basis for the reckless endangerment conviction. Thus, under either the rule of lenity or the principle of fundamental fairness, those offenses would merge. *Marlin*, 192 Md. App. at 154-71.

To be sure, there was one other person, Tim, who, in light of the evidence presented, could have been the "victim" of Jones's reckless endangerment. But there is nothing in the record to indicate that the jury's verdict of guilty on the reckless endangerment charge was specific to Tim. Although it was possible that the jury found that Jones had engaged in conduct that created a substantial risk of death or serious physical injury to Tim, thereby

permitting multiple punishments, it is equally possible that the jury found that Jones engaged in conduct that created a substantial risk of death or serious physical injury to Hudson, Beasley, and/or Smith. If the latter were true, then, as discussed in greater detail above, multiple punishments would be impermissible. Given the likelihood that the jury's guilty verdict on the reckless endangerment offense was not based solely on Jones's actions against Tim but rather encompassed, at least in part, Jones's actions against Hudson, Beasley, and/or Smith, we are convinced that, under the circumstances, it would be unfair to subject Jones to multiple punishments for that conviction. *See Marlin*, 192 Md. App. at 169 (noting that the "fairness of multiple punishments in a particular situation is obviously important" when conducting a merger analysis (cleaned up)). Jones's reckless endangerment sentence should therefore be vacated under merger principles.

B.

Finally, we hold that Jones's conviction of wearing, carrying, or transporting a handgun should have merged, for sentencing purposes, into her conviction of use of a handgun in the commission of a crime of violence. As both parties correctly note, where, as here, the two convictions arose out of the same transaction, the conviction of wearing, carrying, or transporting a handgun should be merged. *Carpenter v. State*, 196 Md. App. 212, 232-33 (2010). As such, we vacate that sentence.

APPELLANT'S SENTENCES FOR RECKLESS ENDANGERMENT AND WEARING, CARRYING, OR TRANSPORTING A HANDGUN VACATED; JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED; COSTS TO BE PAID 1/2 BY APPELLANT AND 1/2 BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.