

Circuit Court for Frederick County
Case No. C-10-CR-22-000199

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1061

September Term, 2024

LOOKMAN-KHALIL ABOLAJO BELLO

v.

STATE OF MARYLAND

Arthur,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 16, 2026

*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).

Following a bench trial in the Circuit Court for Frederick County, Lookman-Khalil Abolajo Bello, appellant, was convicted of attempted first-degree murder, use of a firearm in the commission of a crime of violence, use of a high-capacity magazine in the commission of a crime of violence, possession of a firearm by a prohibited person, possession of ammunition by a prohibited person, and fleeing and eluding the police. The court sentenced Bello to a term of life imprisonment on the conviction of attempted first-degree murder; a consecutive term of ten years' imprisonment, with all but five years suspended, on the conviction of use of a firearm in the commission of a crime of violence; a consecutive term of ten years' imprisonment, with all but five years suspended, on the conviction of use of a high-capacity magazine in the commission of a crime of violence; a consecutive term of five years' imprisonment on the conviction of possession of a firearm by a prohibited person; a concurrent term of one year imprisonment on the conviction of possession of ammunition by a prohibited person; and a concurrent term of three years' imprisonment on the conviction of fleeing and eluding the police.

In this appeal, Bello presents four questions for our review:

1. Did the circuit court err in admitting State's Exhibit 25 because it was not authenticated?
2. Did the circuit court violate the best evidence rule by permitting testimony about the contents of footage unavailable at trial?
3. Did the circuit court err in issuing separate sentences for use of a firearm in the commission of a crime of violence and use of a magazine with a capacity of more than 10 rounds of ammunition in the commission of a crime of violence?
4. Did the circuit court impose an illegal sentence for fleeing and eluding?

For reasons to follow, we hold that the circuit court did not err or abuse its discretion in admitting State’s Exhibit 25 or in permitting testimony about the contents of certain video footage. As to the sentencing issues, we hold that the court erred in imposing separate sentences on Bello’s convictions of use of a firearm in the commission of a crime of violence and use of a magazine with a capacity of more than ten rounds of ammunition in the commission of a crime of violence. We likewise hold that the court imposed an illegal sentence on Bello’s conviction of fleeing and eluding. Accordingly, we vacate Bello’s sentences and remand the case to the circuit court for resentencing. Otherwise, we affirm.

BACKGROUND

At Bello’s bench trial, Frederick County Sheriff’s Deputy Christian Lucente testified that, on March 17, 2022, he was part of a team “doing a DUI saturation patrol” in the area of I-270 in Frederick County. While traveling in his cruiser heading southbound on I-270, Deputy Lucente observed another vehicle traveling in the opposite direction that “appeared to be going well above the posted speed limit of 65 miles an hour.” Deputy Lucente then turned his vehicle around and began pursuing the suspect vehicle, which ultimately exited I-270 heading northbound on Route 85. Deputy Lucente activated his emergency lights and continued following the vehicle, which then made a U-turn, ran a red light, and pulled into the Kingsbrook Apartment complex. Deputy Lucente followed the vehicle into the apartment complex, where he observed the driver, later identified as Bello, get out of the suspect vehicle and run. Deputy Lucente parked his vehicle, exited, and continued pursuing Bello on foot while identifying himself as a police officer and stating

that Bello was under arrest. At some point during the chase, Bello pulled a handgun out of his pocket and fired several rounds in Deputy Lucente’s direction. Deputy Lucente drew his weapon and returned fire, and Bello fell to the ground. While on the ground, Bello “produced the handgun again in a much more aimed fashion and began to fire several more rounds” at Deputy Lucente. Deputy Lucente again returned fire, and, shortly thereafter, Bello “stopped firing and he began to yell out[.]” Around that same time, another officer, Deputy Jessica Dixon, arrived on the scene, and she and Deputy Lucente secured Bello and placed him under arrest.

Deputy Dixon testified that, on the day of the shooting, she was on duty in her police vehicle when she received a report that Deputy Lucente was in pursuit of a vehicle. Deputy Dixon eventually joined the pursuit and observed Bello’s vehicle run the red light and turn into the Kingsbrook Apartment complex. After Bello got out of his vehicle and ran, Deputy Dixon got out of her vehicle and gave chase. During the chase, Deputy Dixon lost sight of Bello, so she “slowed down” and started listening for “verbal commands[.]” As she did, Deputy Dixon heard seven gunshots. Deputy Dixon then ran in the direction of the gunshots and found Bello “falling down onto the ground.” Deputy Dixon then met up with Deputy Lucente, and they both “started issuing verbal commands” to Bello. Deputy Dixon could see Bello “rolling towards a gun, a handgun, that was on the ground in front of him[,]” so she “yelled at him to back away.” Bello complied and was subsequently placed under arrest.

Sergeant Joseph McCallion testified that, in March 2022, he was in charge of the Criminal Investigation Section of the Frederick County Sheriff’s Office. Sergeant McCallion testified that he responded to the scene following the shooting. Upon arriving at the scene where Bello was arrested, Sergeant McCallion observed, among other things, a loaded gun with an extended magazine.

Detective Ben Whitehouse of the Frederick County Sheriff’s Office testified that he also responded to the scene following the shooting. After arriving at the scene, Detective Whitehouse canvassed the Kingsbrook Apartment complex to see if there were “any witnesses, any video, as such.” Detective Whitehouse testified that none of the people he talked to observed the shooting. Detective Whitehouse stated that he also looked for surveillance cameras and “Ring and doorbell cameras” but did not see any.

Deputy Richard Matthews of the Frederick County Sheriff’s Office testified that he was part of the crime scene unit that processed the scene following the shooting. When he arrived at the scene, Deputy Matthews observed that the area had already been “[sectioned] off by crime scene tape” and that “evidence markers” had already been put down. Deputy Matthews thereafter assisted two other officers in collecting evidence and documenting that evidence in an evidence log. Deputy Matthews testified that one of the items collected at the scene was a firearm with an extended magazine. Deputy Matthews identified State’s Exhibit 33 – a picture of a firearm with an extended magazine lying on the ground – as the firearm that was recovered from the scene.

The trial court ultimately convicted Bello of attempted first-degree murder, use of a firearm in the commission of a crime of violence, use of a high-capacity magazine in the commission of a crime of violence, possession of a firearm by a prohibited person, possession of ammunition by a prohibited person, and fleeing and eluding the police. The court sentenced Bello to a term of life imprisonment on the conviction of attempted first-degree murder; a consecutive term of ten years' imprisonment, with all but five years suspended, on the conviction of use of a firearm in the commission of a crime of violence; a consecutive term of ten years' imprisonment, with all but five years suspended, on the conviction of use of a high-capacity magazine in the commission of a crime of violence; a consecutive term of five years' imprisonment on the conviction of possession of a firearm by a prohibited person; a concurrent term of one year imprisonment on the conviction of possession of ammunition by a prohibited person; and a concurrent term of three years' imprisonment on the conviction of fleeing and eluding the police.

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

DISCUSSION

I.

Bello's first claim of error concerns an issue that arose during Deputy Matthews's testimony. As noted, Deputy Matthews testified that he assisted in the collection of evidence from the scene of the shooting and that one of the items recovered from the scene was a handgun with an extended magazine. During that testimony, the State introduced State's Exhibit 25 – a box containing a handgun with an extended magazine – and asked

Deputy Matthews if the items in the box fairly and accurately represented what was collected from the scene of the shooting. Deputy Matthews responded in the affirmative.

The State then moved to have State's Exhibit 25 admitted into evidence.¹ Defense counsel objected and asked if he could voir dire Deputy Matthews. The court agreed, and Deputy Matthews thereafter gave testimony about State's Exhibit 25. During that testimony, Deputy Matthews stated that, although the contents of State's Exhibit 25 appeared to be the same firearm and magazine recovered from the scene of the shooting, he was unable to state with certainty that they were the same. Deputy Matthews testified that he did not package the items recovered from the scene or see who did package them. Deputy Matthews added that State's Exhibit 25 had been sealed with crime tape and labeled with a bar code and case number associated with Bello's case.

Defense counsel thereafter renewed his objection to the introduction of State's Exhibit 25. Defense counsel argued that the State had failed to show that State's Exhibit 25 was "the same gun" recovered from the scene. Ultimately, the court overruled the objection, and State's Exhibit 25 was admitted into evidence.

Parties' Contentions

Bello now claims that the circuit court erred in admitting State's Exhibit 25 because it was not properly authenticated. Bello argues that the State failed to present sufficient proof that State's Exhibit 25 was the same firearm recovered from the scene of the shooting.

¹ State's Exhibit 25 had previously been admitted during the testimony of a different officer, but the court later struck that officer's testimony, and all exhibits admitted during his testimony, after the court found that the officer had violated the court's sequestration order.

Bello contends that Deputy Matthews's testimony was insufficient because it was “inconsistent” and because Deputy Matthews did not have “direct knowledge” of the collection or processing of the firearm recovered from the scene.

The State claims that the court did not abuse its discretion in admitting State’s Exhibit 25 over Bello’s objection. The State argues that Deputy Matthews’s testimony was sufficient because he observed the firearm at the scene of the shooting. The State further argues that, even if the court abused its discretion in admitting the evidence, any error was harmless.

Standard of Review

“An appellate court reviews for abuse of discretion a trial court’s determination as to whether an exhibit was properly authenticated.” *Mooney v. State*, 487 Md. 701, 717 (2024).

Analysis

“A threshold requirement of admissibility of evidence is whether the authenticity of the evidentiary matter may be established.” *Jackson v. State*, 460 Md. 107, 115 (2018). “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Md. Rule 5-901(a). Maryland Rule 5-901 contains an inexhaustive list of ways in which evidence may be authenticated, including “[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be.” Md. Rule 5-901(b)(1). “[T]he burden of proof for authentication is slight, and the

court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the *jury* ultimately might do so.”” *Johnson v. State*, 228 Md. App. 27, 59 (2016) (emphasis in original) (quoting *Dickens v. State*, 175 Md. App. 231, 239 (2007)).

We hold that the circuit court did not abuse its discretion in admitting State’s Exhibit 25. Deputy Matthews testified that a firearm with an extended magazine had been recovered from the scene of the shooting. He then testified that State’s Exhibit 25 – a box containing a firearm with an extended magazine – fairly and accurately represented the items recovered from the scene. Because Deputy Matthews was “a witness with knowledge that the offered evidence is what it is claimed to be,” his testimony was sufficient to authentic State’s Exhibit 25 as the items recovered from the scene. That Deputy Matthews could not say with absolute certainty that the contents of State’s Exhibit 25 were the same as those recovered from the scene is irrelevant. That Deputy Matthews did not package the firearm recovered from the scene of the shooting is also irrelevant. His observation of the items at the scene, and his subsequent identification of State’s Exhibit 25 as being a fair and accurate representation of those items, was enough to meet the State’s burden of proof for authentication.

Assuming, *arguendo*, that the admission of State’s Exhibit 25 was erroneous, we are persuaded that any error was harmless. Both Deputy Lucente and Deputy Dixon testified that Bello was in possession of a firearm during the shooting, and Deputy Matthews testified that a handgun with an extended magazine was recovered from the

scene of the shooting. In addition, the court accepted into evidence, without objection, a photograph from the scene of the shooting that showed a firearm with an extended magazine on the ground, and Deputy Matthews testified that the photograph fairly and accurately captured what he observed at the scene shortly after the shooting. Given that evidence, which overwhelmingly supported the court’s guilty findings, we are convinced that there is no reasonable possibility that the court’s admission of State’s Exhibit 25 contributed to the guilty verdict. *See Gross v. State*, 481 Md. 233, 254 (2022) (stating that error may be deemed harmless when the reviewing court is “satisfied that there is no reasonable possibility that evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict” (cleaned up)).

II.

Bello’s next claim of error concerns an issue that arose during the testimony of Detective Whitehouse. As noted, Detective Whitehouse testified on direct that he conducted an investigation of the shooting, which included canvassing the Kingsbrook Apartment complex where the shooting occurred to see if there were “any witnesses” or “video.” Detective Whitehouse testified that he was unable to locate any surveillance cameras or videos.

On cross-examination, defense counsel questioned Detective Whitehouse about the thoroughness of his investigation. Notably, defense counsel asked Detective Whitehouse about his investigation into the existence of surveillance cameras or videos. During that questioning, Detective Whitehouse admitted that, in his report of the incident, he

referenced a Ring doorbell video belonging to a resident, Samuel Otchere. Detective Whitehouse testified that he did not remember reviewing any such video. Detective Whitehouse also testified that he had obtained a cell phone video from a witness, Kiersten Neilsen, and that he had subsequently “put it in the safe[.]”

On redirect, the State asked Detective Whitehouse about the two videos. Detective Whitehouse reiterated that he did not recall watching the Otchere video. As to the Neilsen video, Detective Whitehouse testified, over objection, that the video did not capture the shooting.

Following Detective Whitehouse’s testimony, the State called Samuel Otchere, who lived in the Kingsbrook Apartment complex and was home at the time of the shooting. Otchere testified that he heard the shooting but did not see anything of note. Otchere then testified that he had a Ring camera on the front of his apartment and that he had reviewed the footage from the night of the shooting. Before Otchere could testify about what he saw on the footage, defense counsel objected, arguing that testimony regarding the contents of the footage would violate the “best evidence rule.” The court sustained the objection but permitted additional testimony on the issue. Otchere thereafter testified that he no longer had copies of the footage, that his Ring subscription only stored footage for three months, and that the police never asked him to preserve the footage. Otchere also testified that his camera only captured the front of his apartment and that the area where the shooting occurred was on the other side facing his rear balcony. Otchere stated that the Ring camera footage from the night of the shooting only showed the front of his apartment and did not

capture any part of the shooting. After defense counsel renewed his objection as to what Otchere saw on the Ring footage, the court overruled the objection and permitted Otchere’s testimony to stand.

Parties’ Contentions

Bello now claims that the circuit court erred in permitting Detective Whitehouse to testify about the contents of the Neilsen video and in permitting Otchere to testify about the contents of his Ring camera footage. Bello argues that the court’s admission of the testimony violated the best evidence rule, which required the State to produce the original recordings to prove the contents of the footage in question. Bello notes that, for secondary evidence to be admissible in lieu of an original, the proponent of the evidence must show good and sufficient reasons for failing to produce the original. Bello claims that the State failed to make such a showing here.

The State argues that the court properly admitted the disputed testimony. The State contends that the best evidence rule does not apply because the recordings were devoid of any content relevant to the proceedings. The State further contends that, even if the best evidence rule applied, there existed good and sufficient reasons for why the original recordings were not produced. Finally, the State contends that, even if the court erred, any error was harmless.

Standard of Review

“An appellate court typically reviews a trial court’s ruling on the admission of evidence for abuse of discretion.” *State v. Galicia*, 479 Md. 341, 389 (2022). “Appellate

courts generally defer to the trial court’s evidentiary findings and ‘are loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.’” *Covel v. State*, 258 Md. App. 308, 322-23 (2023) (quoting *Merzbacher v. State*, 346 Md. 391, 404-05 (1997)).

Analysis

Generally, the “best evidence rule” requires a party to produce an original document instead of a duplicate or copy. *Whittlesey v. State*, 340 Md. 30, 69 (1995). “[T]he underpinning of the best evidence rule is that the best evidence of the contents of a writing is deemed to be the writing itself.” *Gordon v. State*, 204 Md. App. 327, 347 (2012). The rule is codified in Maryland Rule 5-1002, which states that, “[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.”

That said, “the best evidence rule ‘is misleadingly named, as it is not a general requirement that each party present only the “best evidence” available on every point, so as to preclude other probative evidence.’” *Gordon*, 204 Md. App. at 347 (quoting 6A L. McLain, MARYLAND EVIDENCE, § 1001:1, at 535 (2001)). As the language of Rule 5-1002 makes plain, it is *the content* of a writing, recording, or photograph that is at issue when applying the best evidence rule. In *Gordon*, for example, we held that the best evidence rule did not apply to testimony by a police officer regarding a defendant’s date of birth, which the officer had gleaned from the defendant’s driver’s license and which the State had offered to prove that the defendant was a certain age. *Id.* at 344-49. In so holding,

we rejected the defendant’s claim that the best evidence rule required the State to produce the defendant’s actual driver’s license. *Id.* at 348. We noted that the State had not offered the officer’s testimony to establish the validity of the license or “to prove the content of the license itself as it would if it had been attempting to prove the terms of a contract or will.” *Id.* at 347-48. Rather, the State merely “sought to prove that [the defendant] was over the age of twenty-one though the testimony of a witness who viewed a driver’s license that [the defendant] supplied to him[.]” *Id.* at 348. We concluded that, because the content of the license was not at issue and the defendant did not challenge the validity of the license itself, the best evidence rule did not preclude the officer from testifying about his observations regarding the defendant’s license. *Id.*

Against that backdrop, we hold that the best evidence rule did not preclude Detective Whitehouse from testifying about the contents of the Neilsen video, nor did it preclude Otchere from testifying about the contents of his Ring camera footage. The disputed testimony was not offered to prove the contents of the video footage, and there was no dispute as to the validity of the footage itself. The purpose of the testimony was to refute issues raised during defense counsel’s cross-examination of Detective Whitehouse. During that cross-examination, defense counsel questioned Detective Whitehouse about the two videos and, in so doing, raised the implication that the videos were, or should have been, relevant to the investigation. On redirect, the State asked Detective Whitehouse about the two videos, and Detective Whitehouse testified that he did not remember reviewing the Otchere video and that the Neilsen video did not capture the shooting. Shortly thereafter,

the State called Otchere, who testified that his Ring camera did not capture the shooting. Given those circumstances, we are convinced that the State was not attempting to establish the validity of the videos; rather, the State was attempting to provide an explanation as to why the videos were not an integral part of Detective Whitehouse’s investigation. As such, the best evidence rule was not implicated by the disputed testimony.

Even if the best evidence rule were implicated, we are not persuaded that the circuit court erred or abused its discretion in permitting the disputed testimony. As noted, Rule 5-1002 states that an original is required “except as otherwise provided in these rules or by statute.” One such exception can be found in Maryland Rule 5-1004, which allows the contents of a writing, recording, or photograph to be proved by other evidence under certain circumstances. Those circumstances include: where the original has been lost or destroyed; where the original is not attainable by judicial process or procedure; where the original is in the possession of a party opponent; and where “[t]he writing, recording, or photograph is not closely related to a controlling issue.” Md. Rule 5-1004. Here, the videos in question were not closely related to a controlling issue because, as the record makes plain, the videos did not show anything related to the shooting or any other relevant event. Thus, their contents could be proved by evidence other than the original.

Finally, even if we assume that the originals were somehow required and that the court erred in permitting testimony as to the contents of the videos, any error was harmless. The videos were, in effect, evidence of nothing because they contained no information to inculpate or exculpate Bello. We are convinced, therefore, that the court’s admission of the

disputed testimony in lieu of the original recordings could not have contributed, in any meaningful way, to the court’s guilty verdict. *See Gross, supra*, 481 Md. at 254.

III.

Parties’ Contentions

Bello next contends that the circuit court erred in imposing separate sentences for his conviction of use of a handgun in the commission of a crime of violence and his conviction of use of a magazine with a capacity of more than ten rounds of ammunition in the commission of a crime of violence. Bello contends that the convictions should have been merged for sentencing purposes under either the required evidence test or the rule of lenity.

The State contends that the court properly imposed separate sentences on the two convictions. The State argues that neither the required evidence test nor the rule of lenity is applicable because the General Assembly intended separate sentences.

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). That said, “even if it is concluded that the two offenses share the same elements under the required evidence test, the protection against double jeopardy, at least in the constitutional sense, does not require merger where the legislature intended to permit separate punishments for the two offenses.” *Clark v. State*, 473 Md. 607, 616 (2021).

“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 two crimes at issue here are both statutory crimes. Use of a firearm in the commission of a crime of violence is codified in § 4-204 of the Criminal Law Article (“CR”) of the Maryland Code, which states:

(a)(1) In this section, “firearm” means:

- (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
- (ii) the frame or receiver of such a weapon.

(2) “Firearm” includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

(b) A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.

(c)(1)(i) A person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

(2) For each subsequent violation, the sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

CR § 4-204.

Use of a high-capacity magazine in the commission of a crime of violence is codified in CR § 4-306, which states, in pertinent part:

(b)(1) A person who uses an assault weapon, a rapid fire activator, or a magazine that has a capacity of more than 10 rounds of ammunition, in the commission of a felony or a crime of violence as defined in § 5-101 of the Public Safety Article is guilty of a misdemeanor and on conviction, in addition to any other sentence imposed for the felony or crime of violence, shall be sentenced under this subsection.

(2)(i) For a first violation, the person shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 5 years.

(iii) The mandatory minimum sentence of 5 years may not be suspended.

(iv) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

(3)(i) For each subsequent violation, the person shall be sentenced to imprisonment for not less than 10 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 10 years.

(iii) A sentence imposed under this paragraph shall be consecutive to and not concurrent with any other sentence imposed for the felony or crime of violence.

CR § 4-306(b).

Against that backdrop, we hold that Bello's conviction for use of a firearm in the commission of a crime of violence should have been merged, for sentencing purposes, into

his conviction for use of a magazine with a capacity of more than ten rounds of ammunition in the commission of a crime of violence. First, both crimes were based on the same act or acts, i.e., Bello’s use of a handgun with an extended magazine to fire multiple shots at Deputy Luente during their foot chase near the Kingsbrook Apartment complex. Furthermore, although both statutes include express anti-merger provisions with respect to the underlying crime of violence, we could find nothing in either statute’s plain language or legislative history to indicate that the General Assembly intended for the two offenses to be punished as a single merged crime or as distinct offenses. As such, we conclude that, at the very least, the two offenses should have been merged pursuant to the rule of lenity. And, because use of a magazine with a capacity of more than ten rounds of ammunition in the commission of a crime of violence has the greater penalty, the conviction for use of a firearm in the commission of a crime of violence would merge, for sentencing purposes, into that offense. *Spitzinger v. State*, 340 Md. 114, 125-26 (1995).

The State insists that there is no substantive difference in the penalties for the two crimes and that, consequently, merger would render CR § 4-306 “meaningless” because “a defendant would receive the same 5-20 year sentence regardless of whether they used an extended magazine or a single bullet loaded directly into the chamber.” We disagree. Although both crimes require a defendant to be sentenced “to imprisonment for not less than 5 years and not exceeding 20 years[,]” CR § 4-306 prohibits a court from suspending any portion of the mandatory minimum sentence of five years. CR § 4-306(b)(2)(iii). CR § 4-204 contains no such restriction. In addition, subsequent violations of CR § 4-204 carry

the same mandatory minimum sentence of five years’ imprisonment. Subsequent violations of CR § 4-306, on the other hand, carry a mandatory minimum sentence of ten years’ imprisonment. Thus, merger does not render CR § 4-306 “meaningless,” as a defendant convicted under that statute could not have any portion of his mandatory minimum sentence suspended, and any subsequent conviction would carry a mandatory minimum sentence of ten years’ imprisonment.

IV.

Bello’s final contention is that his three-year sentence for fleeing and eluding is illegal because it exceeds the statutory maximum sentence for that crime. The State concedes that Bello’s sentence is illegal.

We agree. Bello was convicted pursuant to § 21-904 of the Transportation Article (“Transp.”) of the Maryland Code, which prohibits, among other things, a person from eluding a police officer by willfully failing to stop the person’s vehicle or by fleeing on foot. Transp. § 21-904(c). The statute provides that, upon conviction, a person is subject to “imprisonment not exceeding 1 year” for a first offense and “imprisonment not exceeding 2 years” for any subsequent offense. Transp. § 21-904(f)(1). Bello’s three-year sentence exceeded those maximums and was therefore illegal. *See State v. Bustillo*, 480 Md. 650, 658-59 (2022) (noting that a sentence is illegal if it exceeds the statutory maximum).

Accordingly, we must vacate Bello’s sentences and remand the case for resentencing. At resentencing, the circuit court must impose a sentence on Bello’s conviction for fleeing and eluding that is within the statutory maximum. In addition, as

discussed in greater detail in Part III, the court should merge, for sentencing purposes, Bello’s conviction for use of a firearm in the commission of a crime of violence into his conviction for use of a magazine with a capacity of more than ten rounds of ammunition in the commission of a crime of violence.

**APPELLANT’S SENTENCES VACATED;
CASE REMANDED TO THE CIRCUIT
COURT FOR FREDERICK COUNTY FOR
RESENTENCING CONSISTENT WITH
THIS OPINION; JUDGMENTS
OTHERWISE AFFIRMED; COSTS TO BE
PAID 1/2 BY APPELLANT AND 1/2 BY
FREDERICK COUNTY.**