Circuit Court for Anne Arundel County
Case No. C-02-CR-23-000151

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1634

September Term, 2023

DENNIS DANIELS

v.

STATE OF MARYLAND

Wells, C.J.,
Beachley,
Albright,

JJ.

Opinion by Albright, J.

Filed: August 12, 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).

Appellant Dennis Daniels was an inmate at a Maryland correctional facility at the time of the offenses in this case. An Anne Arundel County jury found him guilty of second-degree assault of another inmate, Eric Frayne; of reckless endangerment of Mr. Frayne and a third inmate, Moniyu Stokes; and of knowingly possessing a weapon while in a place of confinement. Here, Mr. Daniels challenges (1) the circuit court's failure to instruct the jury as to mutual affray; and (2) the circuit court's failure to merge Mr. Daniels' sentence for reckless endangerment of Mr. Frayne into Mr. Daniels' sentence for second-degree assault of Mr. Frayne.[1] As to this second issue, the State concedes that Mr. Daniels is correct, and we agree. Accordingly, and because we disagree with Mr. Daniels on the first issue, we affirm in part and vacate in part. Given how the circuit court structured Mr. Daniels's sentence,[2] no resentencing is necessary.

BACKGROUND

Mr. Daniels was an inmate at the Maryland Correctional Institution in Jessup

[1] Mr. Daniels presents two questions for our review:

1. Did the trial court abuse its discretion when it refused to give a mutual affray instruction?
2. Must Mr. Daniels's sentence for reckless endangerment relating to Mr. Frayne be merged into his sentence for the second-degree assault of Mr. Frayne, where the convictions arose from a single incident?

[2] The circuit court sentenced Mr. Daniels to ten years for second-degree assault consecutive to any sentence he was currently serving, five years for each of the reckless endangerment convictions to run concurrent with each other (but consecutive to the assault sentence), and to a consecutive ten years, all but five suspended, for knowingly possessing a weapon while in a place of confinement.

when, on August 6, 2022, an altercation occurred in the correctional facility's dining hall between Mr. Daniels, Mr. Frayne, and Mr. Stokes. Mr. Daniels was charged with first-degree assault, second-degree assault, and reckless endangerment of Mr. Frayne and Mr. Stokes.[3] Mr. Daniels was also charged with possession of a weapon while in a place of confinement and possession of contraband while in a place of confinement. Mr. Daniels pleaded not guilty.

A. The State's Case

The incident was captured on video by two surveillance cameras, which the State introduced as exhibits. The State called several witnesses to testify.

First, Officer Aduragbemi Mosaku, a correctional officer, testified that he was in the dining hall at the time of the incident. Officer Mosaku recalled that there was blood on Mr. Daniels back and that another officer was trying to get Mr. Daniels out of the dining hall. Mr. Daniels did not comply and instead ran towards Mr. Stokes, who was already seated. Another correctional officer called for assistance by calling a "10-10"—meaning an inmate fight. Officer Mosaku described Mr. Stokes as being "in a defensive mode." Officer Mosaku testified that pepper spray was administered, and that Mr. Stokes was sprayed as well.

[3] Mr. Daniels was also charged under Section 3-210 of Maryland's Criminal Law Article, which governs the sentencing of an "incarcerated individual" convicted of assaulting another "incarcerated individual," among others. For such an assault, Section 3-210(b) provides that any sentence imposed be consecutive to any sentence the defendant was serving at the time of the assault or that had been imposed but that the defendant was not yet serving when the defendant was sentenced for the assault. *See* Md. Code, Criminal Law ("CR") § 3-210(b).

Officer Bianca Luna, another correctional officer, testified that she was working in the dining hall at the time of the incident and noticed that something was "weird" and "off" about Mr. Daniels. Realizing that Mr. Daniels's clothing was blood-stained, she approached him to escort him out. However, Mr. Daniels started walking away from her and toward other inmates. Shortly after the incident, Officer Luna wrote a report in which she described how multiple inmates who were sitting down stood up as she attempted to escort Mr. Daniels out of the dining hall. Officer Luna then reported that these inmates, including Mr. Stokes, began fighting with Mr. Daniels and that she handcuffed Mr. Stokes. Officer Luna testified that Mr. Daniels initiated the altercation between the inmates.

Detective Sergeant Michael Moran, a Department of Public Safety investigator, also testified. Detective Moran obtained the facility's report and recovered two weapons and the surveillance videos as evidence. He attempted to speak to Mr. Daniels, Mr. Stokes, and Mr. Frayne, but they refused to cooperate. Through his investigation, Detective Moran learned that Mr. Daniels received six to eight puncture wounds. Pepper spray had been disbursed to all three inmates to stop the fighting, and all three were separated and handcuffed. All three were also placed in administrative segregation, i.e., removed from the general population, and were further disciplined within the institution. At the medical unit, Mr. Daniels was treated for his puncture wounds and for having been pepper sprayed. Mr. Stokes and Mr. Frayne only complained about having been pepper sprayed; this was the only injury they were treated for at the medical unit. Detective

Moran produced a report in August 2022 based on his investigation and determined that Mr. Daniels initiated the altercation.

Finally, Lieutenant Adrian Boyd testified. Lieutenant Boyd, a supervisor, was standing just outside the dining hall when the incident started. By the time Lieutenant Boyd arrived, Mr. Daniels had pulled a weapon out of his pocket and had started striking Mr. Frayne with the weapon, at which point Lieutenant Boyd deployed mace[4] to control the situation. The State introduced as an exhibit the sharpened piece of plexiglass recovered when Mr. Daniels dropped it. According to Lieutenant Boyd, Mr. Daniels initiated the fight. Lieutenant Boyd only saw the plexiglass object make contact with Mr. Frayne, not Mr. Stokes. Afterwards, Mr. Frayne complained about the mace but did not complain about being stabbed. Lieutenant Boyd did not notice any physical injury to Mr. Frayne or Mr. Stokes (other than having been maced).

B. Mr. Daniels's Case[5]

Mr. Daniels did not testify and called one witness, Officer Kikelomo Adebanwo, a correctional officer. Officer Adebanwo was working in the dining hall on the day of the incident. She saw Mr. Daniels come in with blood "dripping" on his clothes and asked

[4] We assume that Lieutenant Boyd's reference to "mace" is the same thing Officer Mosaku and Detective Moran were testifying about when they mentioned "pepper spray."

[5] After the State rested its case, the State entered a *nolle prosequi* with respect to the first-degree assault count relating to Mr. Stokes.

Mr. Daniels then moved for judgment of acquittal on all counts. The circuit court granted Mr. Daniels's motion only with respect to the possession of contraband count.

him to stop and exit the dining hall. Mr. Daniels did not answer and instead left the line, went towards other inmates, and started a fight with these inmates. She testified that, although Mr. Daniels started the fight, the other inmates both stood up and started fighting back. Shortly after the incident, Officer Adebanwo wrote a report, which was introduced into evidence. In this report, Officer Adebanwo described the other two inmates as having "squared up."

C. Jury Instructions

After the conclusion of all the evidence, the parties discussed proposed jury instructions, and Mr. Daniels requested that a mutual affray instruction be given. Mr. Daniels claimed that mutual affray "is still an absolute defense to a crime of assault." Mr. Daniels argued that there was evidence generated from "just about every witness" that there was a fight, "which is what a mutual affray is."

The State argued that no such evidence was generated. Instead, the State maintained, the evidence from the witnesses demonstrated that Mr. Daniels approached the other inmates and swung on Mr. Frayne: it was "someone being attacked and then responding to that attack."

The circuit court declined to give the instruction requested by Mr. Daniels, explaining that it "did not see any evidence" that there was a mutual affray.[6]

Mr. Daniels then renewed his request for the instruction. Mr. Daniels maintained

[6] The circuit court considered the definition of a mutual affray to be "[a] fight to which all parties consent[.]"

that the consent is implicit: "[i]f they both do the thing, then that is consent to do the thing . . . [a]n affray is two or more persons who fight, period." Mr. Daniels pointed to Officer Adebanwo's testimony that Mr. Frayne and Mr. Stokes had "squared off"[7] as evidence that there was a mutual affray that Mr. Frayne and Mr. Stokes consented to when they fought. The circuit court denied Mr. Daniels's request (and renewed request) for the mutual affray instruction.

With respect to the charges of second-degree assault of Mr. Frayne and Mr. Stokes, the circuit court instructed the jury that the State must prove, among other requirements, "that the contact was *not consented to* or legally justified" (emphasis added).

D. The Jury Verdict

The jury found Mr. Daniels guilty of second-degree assault of Mr. Frayne, guilty of reckless endangerment of Mr. Frayne and of Mr. Stokes, and guilty of knowingly possessing a weapon while in a place of confinement. The jury found Mr. Daniels not guilty of the remaining charges—first-degree assault of Mr. Frayne and second-degree assault of Mr. Stokes.

E. Sentencing

The circuit court sentenced Mr. Daniels to ten years for second-degree assault consecutive to any sentence he was currently serving, five years for each of the reckless endangerment convictions to run concurrent with each other (but both consecutive to the

[7] We note that the phrase used by Officer Adebanwo in her testimony was "squared up," not "squared off."

assault sentence), and to a consecutive ten years, all but five suspended, for knowingly possessing a weapon while in a place of confinement. The circuit court also imposed five years of supervised probation.

Mr. Daniels timely noted this appeal.

DISCUSSION

I. Mutual Affray Instruction

Maryland Rule 4-325 governs jury instructions in criminal cases and provides that a "court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." Md. Rule 4-325(c). We review a trial court's decision to give (or not to give) a requested jury instruction for abuse of discretion. *Lewis v. State*, 263 Md. App. 631, 646 (2024), *reconsideration denied* (Dec. 30, 2024). "A trial court must give a requested instruction if it is a correct statement of the law, is generated by the evidence, and is not fairly covered by other jury instructions given by the court." *Id.* The requesting party bears the burden to produce "some evidence" to support the giving of the requested instruction, and we review the evidence in the light most favorable to the requesting party. *Id.*

Mr. Daniels argues that the circuit court abused its discretion by declining to give a non-pattern instruction on mutual affray. We disagree.

Preliminarily, we note that nowhere in the record or the parties' briefs is the specific language of Mr. Daniels's proposed non-pattern jury instruction on mutual affray. Without this information, it is difficult for us to engage in meaningful appellate

review. *See* Md. Rule 8-504(a)(4) ("Reference shall be made to the pages of the record extract or appendix supporting the assertions."). What is before us, and what we are able to review, is the transcript of the discussion between the parties and the circuit court regarding Mr. Daniels's request for the instruction, and the circuit court's contemporaneous oral ruling. Based on this review, we see no abuse of discretion in the circuit court's declining to instruct on mutual affray.

First, Daniels's proposed mutual affray instruction—which would have told the jury that engaging in a mutual affray is a defense to second-degree assault—is not a correct statement of law. In *Lewis*, this Court recently addressed a similar question. There, the appellant (Mr. Lewis) contended that the trial court had erred by declining to give a mutual affray instruction in reference to the first-degree assault charge that Mr. Lewis faced. *Lewis*, 263 Md. App. at 658–59. We rejected Mr. Lewis's argument that "[m]utual affray is a defense to assault because it means there was consent." *Id.* at 659. We explained that

> [a]ffray is a common law crime consisting of "the fighting of two or more persons in some public place to the terror of the people[.]" One of the principal *differences between an affray and a common law assault* is that the victim of an affray is the public, not an individual, and its criminalization is to protect the peace. As a result, the *defense of consent is irrelevant with respect to an affray*. An affray does not require the agreement or consent of the fighting parties.

Id. at 659–60 (emphasis added) (citations omitted). We concluded that "the requested instruction misstated the law with respect to affray and the requirement of consent for that crime" because, with respect to affray, "Maryland law does not require an agreement

or consent of both parties to fight[.]" *Id.* at 661. As in *Lewis*, the circuit court in this case "properly declined to give a legally incorrect instruction on a crime that was not charged and was not relevant to the crime that was charged." *See id.* Mutual affray and second-degree assault are independent crimes; a person can commit—and be charged with—both crimes, and neither is a defense to the other. *See id.* at 660 (discussing *Hickman v. State*, 193 Md. App. 238, 257–58 (2010)). In short, because Mr. Daniels's mutual affray instruction was improper, he gains no ground by claiming that the circuit court should have given it.

Further, although we agree with Mr. Daniels that the threshold for the evidence necessary to generate an instruction is "relatively low," *McMillan v. State*, 428 Md. 333, 355 (2012), we disagree that there was evidence to generate his requested instruction. As in *Lewis*, "[t]here was no charge of mutual affray in this case, and therefore the evidence did not generate an instruction on that crime[.]" *See Lewis*, 263 Md. App. at 660–61.

Finally, we highlight that the circuit court instructed the jury that, for second-degree assault of Mr. Frayne and Mr. Stokes, the State had to prove that the contact was not consented to. To the extent that what Mr. Daniels sought to raise in requesting a so-called mutual affray instruction was the issue of consent, this was fairly covered by the instructions given. Again, we see no abuse of discretion in the circuit court's decision not to give a mutual affray instruction.

II. Merger of Reckless Endangerment Sentence into Second Degree Assault Sentence

Mr. Daniels argues that, under the rule of lenity or as a matter of fundamental fairness,[8] his (currently consecutive) sentence for reckless endangerment of Mr. Frayne should merge into his sentence for second-degree assault of Mr. Frayne. The State agrees that the sentence should be merged under the rule of lenity, as do we. As the State points out, however, Mr. Daniels's overall sentence remains the same because Mr. Daniels's sentence for reckless endangerment of Mr. Frayne is already concurrent with his sentence for reckless endangerment of Mr. Stokes.

"The Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, applicable to the states by way of the Fourteenth Amendment, generally bars successive prosecutions and multiple punishments for the same offense." *Marlin v. State*, 192 Md. App. 134, 158 (2010) (citation omitted). Under Maryland law, we generally determine whether two offenses rising out of the same act merge for double jeopardy purposes under the "required evidence test." *Id.* at 158–59. However, courts sometimes apply the rule of lenity or the principle of fundamental fairness even when two offenses do not

[8] As Mr. Daniels acknowledges, his argument under the doctrine of "fundamental fairness" was not raised to the circuit court and is not preserved. In light of our decision to merge the sentence for reckless endangerment of Mr. Frayne into the sentence for second-degree assault of Mr. Frayne based on the rule of lenity, we decline to exercise our discretion under Maryland Rule 8-131(a) to reach this unpreserved issue. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.").

merge under the required evidence test. *Alexis v. State*, 437 Md. 457, 484 (2014).

Maryland Rule 4-345(a) provides that a "court may correct an illegal sentence at any time." Md. Rule 4-345(a). The failure to merge a sentence, when the rule of lenity requires that it be merged, renders the sentence illegal and subject to appellate review even if not raised below. *White v. State*, 250 Md. App. 604, 643 (2021). However, we will not review a merger claim based on fundamental fairness if that claim is not raised below. *Koushall v. State*, 479 Md. 124, 163 (2022); *see also White*, 250 Md. App. at 643 (explaining that in order to appeal the failure to merge a sentence on the basis of fundamental fairness, contemporaneous objection is required).

We agree with the parties that, under the rule of lenity, Mr. Daniels's sentence for reckless endangerment of Mr. Frayne should have merged into his sentence for second-degree assault of Mr. Frayne.

The rule of lenity, which applies when at least one of the offenses is a statutory offense, "directs courts to construe ambiguous criminal statutes in favor of criminal defendants." *Alexis*, 437 Md. at 484–85 (explaining that "[t]wo crimes created by legislative enactment may not be punished separately if the legislature intended the offenses to be punished by one sentence"). Because reckless endangerment is "purely a statutory crime[,]" the rule of lenity may apply to merge Mr. Daniels's sentences.[9] *Marlin*, 192 Md. at 155; CR § 3-204.

[9] Second-degree assault is also a statutory crime. *Koushall*, 479 Md. at 162; *Quansah v. State*, 207 Md. App. 636, 647 (2012); Md. Code, Criminal Law ("CR") §§ 3-201 & 3-203.

When determining whether the rule of lenity applies, we first consider whether the charges arose out of the same act or transaction, i.e., whether the defendant's conduct was "one single and continuous course of conduct[.]" *Alexis*, 437 Md. at 485–86. If it was not, our analysis ends. If two separate offenses arise out of the same conduct, we look to whether the Legislature intended multiple punishments for them. *Id.*

We start by observing that reckless endangerment and second-degree assault are two separate offenses. As to Mr. Frayne, Mr. Daniels was charged under different provisions of the Criminal Law Article: Section 3-203 for second-degree assault and Section 3-204 for reckless endangerment. *See* CR §§ 3-203 & 3-204.

Nonetheless, as to Mr. Frayne, Mr. Daniels's reckless endangerment and second-degree assault charges arose out of the same act. The second-degree assault was based on the same conduct, i.e., the single act of attacking Mr. Frayne with a sharpened piece of plexiglass, that formed the sole basis for the reckless endangerment of Mr. Frayne. *Cf. Morgan v. State*, 252 Md. App. 439, 469 (2021) (merging sentence for violation of a protective order into sentence for second-degree assault where both convictions "arose from the same assaultive behavior"); *Quansah*, 207 Md. App. at 647 (merging sentence for violation of a peace order into sentence for second-degree assault where "the likely factual basis for both verdicts was that [the defendant] grabbed [the victim]"); *Marlin*, 192 Md. App. at 171 (merging sentence for reckless endangerment into first-degree assault, where "both convictions were based on one assaultive act of shooting").

Finally, there is nothing in the plain language or history of the relevant statute to

indicate that the Maryland General Assembly intended multiple punishments for a single assaultive act such as the one Mr. Daniels committed on Mr. Frayne. *Cf. Quansah*, 207 Md. App. at 656 ("We find nothing to indicate whether the Legislature intended to authorize multiple punishments for a second-degree assault and a violation of a protective order based on the same assaultive behavior."). Under the rule of lenity, "the defendant is given the benefit of the doubt if the court is uncertain as to the legislature's intent." *Morgan*, 252 Md. App. at 469.

Where there is a merger under the rule of lenity, "the offense carrying the lesser maximum penalty ordinarily merges into the offense carrying the greater maximum penalty." *Id.* (quoting *Abeokuto v. State*, 391 Md. 289, 356 (2006)). Reckless endangerment is subject to a maximum penalty of five years' incarceration. CR § 3-204(b). Second-degree assault is subject to a maximum penalty of ten years' incarceration. CR § 3-203(b). Accordingly, we hold that Mr. Daniels's five-year sentence for reckless endangerment of Mr. Frayne must be merged into his ten-year sentence for second-degree assault of Mr. Frayne. We therefore vacate the sentence for reckless endangerment of Mr. Frayne.[10]

SENTENCE FOR RECKLESS ENDANGERMENT OF MR. FRAYNE VACATED. JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL

[10] Neither party asks for resentencing, and we decline to remand for resentencing. *See Carroll v. State*, 202 Md. App. 487, 518 (2011) ("Typically, . . . where merger is deemed to be appropriate, this Court merely vacates the sentence that should be merged without ordering a new sentencing hearing."). As the State points out, Mr. Daniels's sentencing package remains unchanged.

COUNTY OTHERWISE AFFIRMED. COSTS TO BE DIVIDED EVENLY BETWEEN APPELLANT AND ANNE ARUNDEL COUNTY.