Circuit Court for Wicomico County
Case No. C-22-CR-24-000123

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1861

September Term, 2024

MATTHEW BOSTICK MCJILTON

v.

STATE OF MARYLAND

Wells, C.J.
Graeff,
Berger,

JJ.

Opinion by Graeff, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

On May 30, 2024, Matthew Bostick McJilton, appellant, entered a guilty plea in the Circuit Court for Wicomico County to two charges under Md. Code Ann., Crim. Law ("CL") § 3-708 (Repl. Vol. 2021). Count 1 charged him with violating § 3-708(b) by making a threat to a circuit court judge. Count 2 charged him with violating § 3-708(c) by sending a threat to that judge. The court imposed a sentence of three years, all but six months suspended, on Count One, and a three-year consecutive sentence, all suspended, on Count Two.

On appeal, appellant presents the following question for this Court's review:

> Did the circuit court err in imposing separate sentences for violations of CL § 3-708(b) and 3-708(c) when the alleged conduct arose out of a single incident?

For the reasons set forth below, we shall vacate appellant's sentence on Count 2.

FACTUAL AND PROCEDURAL BACKGROUND

On March 14, 2024, the State charged appellant with two counts under CL § 3-708. Count One alleged a violation of § 3-708(b), stating that, on December 24, 2023, appellant "did knowingly and willfully make a threat to cause bodily injury to" a circuit court judge. Count Two alleged a violation of § 3-708(c), stating that, on December 24, 2023, appellant "did knowingly send a threat to cause bodily injury to" the circuit court judge.

At a hearing on May 30, 2024, appellant pleaded guilty to both counts. Based on the terms of the plea offer, the State agreed to recommend a total sentence of six years with all but six months suspended. The State proffered the following statement of facts in support of the plea:

Your Honor, it was 2017 when the [judge] of the Circuit Court for Wicomico County Maryland . . . presided over the appeal of a protective order entered against the Defendant, Matthew McJilton. After taking testimony and weighing the evidence, [the judge] granted the protective order in part and awarded custody of Mr. McJilton's daughter to the child's mother affording Mr. McJilton supervised visitation.

Sometime towards the end of 2023, Mr. McJilton would learn that his daughter and the custodial parent had relocated to China. This both devastated and infuriated Mr. McJilton, and at approximately 7:45 p.m. on Christmas Eve, December 24, 2023, Mr. McJilton recorded a video message to [the judge] and uploaded it to Instagram.

In this video Mr. McJilton, who would be identified as the Defendant seated next to counsel at the trial table, is observed directly addressing the camera and says . . . "fucking honorable [ ], what the fuck, whatever dumb ass Italian fucking name that shit is, bro, you fucked up, you fucked up. Now this is what you do. Now you pray to the Lord Jesus that I wake up tomorrow and I'm not this angry. Now you pray to the Lord fucking God that the motherfuckers I rock with aren't this angry. You get on your fucking knees and you pray for forgiveness for taking away men's children over lies, for incarcerating men for lifetimes over a plant, motherfucker, I am your karma. [Judge], I am your fucking karma, man. Whatever you can do to me for this shit talking it won't last forever and I will be free one day."

Mr. McJilton uploaded the video to his Instagram account, and in the body of the post in which he uploaded the video he would tag [the judge's] wife.

The tagging feature on Instagram, Your Honor, notifies the user of the accountholder of the tagged account of the post.

A community member observed this video, and concerned about its content reported it to law enforcement. A search warrant was executed on Mr. McJilton's Instagram account, which confirmed the aforementioned.

At trial the State would have established both that a reasonable observer familiar with the context and circumstances of the communication would have understood the communication to be a true threat, and that the Defendant subjectively intended the communication to be a true threat.

To that effect the State would have adduced evidence regarding the homicide of another circuit court judge less than three months prior by a litigant also aggrieved by an adverse child custody decision, as well as other posts made by the Defendant on Instagram that evening.

And given that the statement of facts is primarily for the Defendant's benefit for double jeopardy purposes, I don't feel it's necessary to expound further on the content of those Instagram posts, but I think it suffices to say that that would be critical evidence going both to the objective viewer's

> understanding of this communication as a true threat, as well as to Mr. McJilton's subjective intention that this communication be perceived as a true threat.
>
> [The judge] and his wife reside in Wicomico County, Maryland, where they viewed the previously mentioned video vesting this Court with jurisdiction.

The court found that there was a sufficient factual basis to find appellant guilty beyond a reasonable doubt of counts one and two, and it entered a guilty verdict on both charges.

The court then addressed sentencing. Appellant argued that the court should merge the two counts under either the required evidence test, the rule of lenity, or the doctrine of fundamental fairness. The State argued that the two counts did not merge under any of those theories. The court declined to merge the two counts for sentencing, stating: "I'm not 100 percent confident with the answer so far as the merger issue is concerned, but I'm going to accept that aspect of the State's recommendation . . . [a]nd we'll just have to see how that plays out." As indicated, the court imposed consecutive three-year sentences on each count, suspending the entirety of the sentence on Count Two and all but six months on Count One.

This appeal followed.

DISCUSSION

Appellant contends that the court "erred in imposing separate sentences for violations of CL [§] 3-708(b) and 3-708(c) arising out of a single incident." The State concedes that appellant's convictions should merge for sentencing purposes, and this Court should vacate his sentence for Count Two. It argues, however, that the basis for merger is the rule of lenity, not the required evidence test.

Merger of convictions for sentencing purposes "derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law." *Clark v. State*, 473 Md. 607, 615-16 (2021). *Accord Pair v. State*, 202 Md. App. 617, 636 (2011) ("One of the twin evils traditionally guarded against by the prohibition against double jeopardy . . . is that of multiple punishment for the 'same offense.'"), *cert. denied*, 425 Md. 397 (2012). Under Maryland law, there are three grounds for merging a defendant's convictions for sentencing purposes: "(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) (quoting *Carroll v. State*, 428 Md. 679, 694 (2012)). "Whether a conviction merges for sentencing purposes is a question of law" that is reviewed *de novo*. *Id.* at 148. When a court fails to merge a conviction for sentencing, it commits reversible error and the sentence is illegal as a matter of law. *Id.* We may review and correct an illegal sentence at any time. Md. Rule 4-345(a).

Under the required evidence test, the court examines "whether the charges 'arose out of the same act or transaction,' then to whether 'the crimes charged are the same offense.'" *Morris v. State*, 192 Md. App. 1, 39 (2010) (quoting *Jones v. State*, 357 Md. 141, 156 (1999)). As the Supreme Court of Maryland has explained:

> "The required evidence test focuses on the elements of each crime in an effort to determine whether all the elements of one crime are *necessarily* in evidence to support a finding of the other, such that the first subsumed as a lesser included offense of the second." *Monoker v. State*, 321 Md. 214, 220, 582 A.2d 525, 527 (1990) (emphasis added). "If each offense requires proof of a fact which the other does not, the offenses are not the same and do not merge. However, if 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." *Newton* [*v. State*, 280 Md. 260, 268 (1977)].

Koushall, 479 Md. at 157. "[E]ven 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 when the legislature intended to permit separate punishments for the two offenses." *Clark*, 473 Md. at 616.

Where the required evidence test does not compel merger of convictions for sentencing, merger "may nonetheless be compelled by the rule of lenity." *Pair*, 202 Md. App. at 637. The rule of lenity requires merger "when there is an unresolvable ambiguity as to whether the General Assembly intended to allow or to prohibit sentences for multiple offenses based on the same acts." *Clark*, 473 Md. at 622. The rule of lenity applies only when at least one of the charges is a statutory offense and only where it is unclear whether the legislature intended the offenses to be punished separately. *Pair*, 202 Md. App. at 638. Where the legislature clearly intended two charges "arising out of a single act to be punished separately, we defer to that legislated choice." *Latray v. State*, 221 Md. App. 544, 555 (2015) (quoting *Walker v. State*, 53 Md. App. 171, 201 (1982)). If there is uncertainty regarding 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." *Alexis v. State*, 437 Md. 457, 485 (2014) (quoting *Monoker v. State*, 321 Md. 214, 222 (1990)).

Finally, in rare cases, merger for sentencing may be required based on the principle of fundamental fairness. *Latray*, 221 Md. App. at 558. "In deciding whether fundamental

fairness requires merger, we have looked to whether the two crimes are 'part and parcel' of one another, such that one crime is 'an integral component' of the other." *Clark v. State*, 246 Md. App. 123, 138 (2020) (quoting *Carroll*, 428 Md. at 695), *aff'd* 473 Md. 607 (2021). Merger based on fundamental fairness "is dependent on circumstances surrounding the defendant's convictions, and not just the elements of the crime." *Id.* at 139. Accordingly, it is a fact-driven inquiry. *Id.* Where the offenses at issue punish separate misconduct, fundamental fairness does not require merger. *Id. Accord Latray*, 221 Md. App. at 558 ("The principal justification for rejecting a claim that fundamental fairness begs merger in a given case is that the offenses punish separate wrongdoing.").

The State concedes that appellant's convictions were part of the same transaction, stating that appellant's "recording of the video, uploading [it] to social media, and tagging the judge's wife were essentially simultaneous." *See Morris*, 192 Md. App. at 39 (same transaction if there was a "'single and continuous course of conduct,' without a 'break in conduct' or 'time between the acts'") (quoting *Purnell v. State*, 375 Md. 678, 698 (2003)). We agree.

The State argues, however, that the offenses do not merge under the required evidence test because the offenses do not share the same elements. To assess that claim, we look at the statutory elements of the offenses.

CL § 3-708 prohibits threats against State or local officials, and provides, in relevant part, as follows:

> (b) *Prohibited — Making threat.* — A person may not knowingly and willfully make a threat to take the life of, kidnap, or cause physical injury to

> a State official, a local official, a deputy State's Attorney, an assistant State's Attorney, or an assistant Public Defender.
>
> (c) *Prohibited — Sending or delivering threat.* — A person may not knowingly send, deliver, part with, or make for the purpose of sending or delivering a threat prohibited under subsection (b) of this section.

Here, Count One charged appellant with knowingly and willfully *making* a threat to cause bodily injury to a judge. Count Two charged appellant with knowingly *sending* a threat to cause bodily injury to a judge. In his written plea agreement, appellant agreed to plead guilty to Count One, making a threat, and Count Two, sending a threat. Thus, each charge contained an element that the other did not and "required proof that the other did not." *Clark*, 246 Md. App. at 134-35 ("[B]ecause . . . each offense can exist without the other, the conviction for possession of an assault weapon does not merge with possession of a firearm by a person previously convicted of a felony."). Accordingly, we agree with the State that the convictions do not merge under the required-evidence test.

We now address whether appellant's convictions merge for sentencing based on the rule of lenity. To determine whether the rule of lenity requires merger of convictions for sentencing

> we look first to whether the charges 'arose out of the same act or transaction,' then to whether 'the crimes charged are the same offense,' and then, if the offenses are separate, to whether 'the Legislature intended multiple punishment[s] for conduct arising out of a single act or transaction which violates two or more [statutory provisions.]

Jones v. State, 240 Md. App. 26, 45 (2019) (quoting *Clark v. State*, 218 Md. App. 230, 255 (2014)). As indicated, it is undisputed that the charges here arose from a single transaction,

and the two charges are not the same offense. Accordingly, we turn to whether the legislature intended for violations of § 3-708(b) and § 3-708(c) to be punished separately.

In assessing whether the legislature intended to allow for separate punishments for multiple violations arising out of the same transaction, courts use ordinary tools of statutory construction to determine legislative intent. *Oglesby v. State*, 441 Md. 673, 681 (2015) (rule of lenity "applie[s] only when all other tools of statutory construction fail to resolve an ambiguity"). This includes examining whether the plain language provides for separate punishment, the existence of an express anti-merger provision, clear evidence of intent in the legislative history, and the provision's overall statutory scheme. *Clark*, 473 Md. at 626-28 (finding rule of lenity did not apply after examining statutory scheme, legislative history, and underlying policy goals). *Accord Alexander v. State*, 263 Md. App. 529, 557 (2024) (rule of lenity invoked after plain words of statute, and its purpose and legislative history, revealed uncertainty in legislative intent).

Here, § 3-708 does not contain an anti-merger provision,[1] and its plain language and structure do not indicate that the legislature intended to allow for multiple punishments for

[1] An anti-merger provision expressly permits separate sentences for distinct offenses arising out of the same act. *See State v. Wilson*, 471 Md. 136, 184-85 (2020) (permitting separate sentences for witness tampering and obstruction of justice based on an anti-merger provision). If such a provision is present, there is no merger of the offenses. *Id.* ("There can be no greater demonstration that the General Assembly intended to permit separate sentences for the two offenses than the enactment of this subsection."). "The absence of an anti-merger provision indicates that the Legislature did not address explicitly the topic of merger in the statutory scheme, but nothing more may be inferred from it." *Latray v. State*, 221 Md. App. 544, 557 (2015).

a defendant who makes a threat and sends a threat in one single transaction. Both provisions are in the same statutory section and address "[t]hreat[s] against State or local official[s]." CL § 3-708. CL § 3-708(d), the statute's penalty provision, states that, "[a] person who violates *this section* is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $2,500 or both." (Emphasis added).

Our review of the legislative history does not clarify whether the General Assembly intended to allow for multiple punishments for separate violations of § 3-708. The Floor Report for House Bill 1618, which enacted the predecessor statute to CL § 3-708, Section 561A of Article 27, states that "[a] violation of *this provision* is a misdemeanor punishable by imprisonment for up to 3 years, a fine of up to $2,500, or both." Floor Report, Senate Judicial Proceedings Comm., H.B. 1618, 1989 Leg., 395th Sess. (Md. 1989) (emphasis added). H.B. 1618, as adopted by the House, on the other hand, states that "[a] person who violates *any provision* of this section is guilty of a misdemeanor and upon conviction is subject to imprisonment . . . or a fine." H.B. 1618, 395th Sess. (Md. 1989) (emphasis added). The Revised Fiscal Note for House Bill 1618 states: "The bill provides that a person found guilty of violating *the provisions* of this bill is guilty of a misdemeanor and subject to imprisonment for not more than 3 years or a fine not to exceed $2,500, or both." Fiscal Note (Revised), H. B. 1618, 395th Sess., at 1 (Md. 1989) (emphasis added).

The Bill File contains a copy of 18 U.S.C. § 871(a), which prohibits knowingly and willfully depositing a threat by mail to specified government officials *and* knowingly and

willfully making a threat to certain specified government officials in the *same* subsection. As the State notes, the predecessor statute to CL § 3-708 was "patterned on [the] substantially similar provision in 18 U.S.C. § 871(a)." *Pendergast v. State*, 99 Md. App. 141, 145 (1994). This suggests that the legislature did not intend to allow for multiple punishments, but it is not definitive given the ambiguous language used in the statute and legislative history.

As the State notes, § 3-708 is similar to the "[w]earing, carrying, or transporting a handgun" statutory provisions at issue in *Clark*, 218 Md. App. at 256. In that case, we held that the provisions prohibiting wearing, carrying, or transporting a handgun on or about the person, CL § 4-203(a)(1)(i), and wearing, carrying, or knowingly transporting a handgun in a vehicle traveling on a road, CL § 4-203(a)(1)(ii), merged for purposes of sentencing under the rule of lenity because, although the defendant committed two distinct offenses, the provisions were in the same statute and provided for the same penalty. *Id.*

In contrast, in *Jones*, 240 Md. App. at 46, we held that separate statutes which criminalized human trafficking and receiving the earnings of a prostitute did not merge under the rule of lenity because the two statutes "punish[ed] different actions by appellant" and the language in the statute prohibiting human trafficking expressly stated that a person "charged with a crime under this subtitle may also be prosecuted and sentenced for violating any other applicable law." (quoting Md. Code Ann., Crim. Law § 11-302 (2021 Repl. Vol.)). We held that this language reflected a "clear intent on the part of the

Legislature to provide for separate punishments for a conviction of human trafficking and receiving the earnings of a prostitute." *Id.*

Here, we are unable to determine the General Assembly's clear legislative intent regarding punishment for multiple offenses under § 3-708. Because there is ambiguity as to whether the legislature intended to allow for separate punishments for offenses arising out of a single transaction, the rule of lenity "is the final tiebreaker," *Alexander*, 263 Md. App. at 557, and we must "opt for the construction that favors the defendant." *Oglesby*, 441 Md. at 681. Accordingly, we agree with the State that the rule of lenity requires that the convictions merge for sentencing. We shall vacate appellant's sentence on Count Two.[2]

SENTENCE FOR COUNT TWO VACATED. JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID BY WICOMICO COUNTY.

[2] Because we hold that appellant's convictions require merger under the rule of lenity, we need not address merger based on the doctrine of fundamental fairness.