Circuit Court for Baltimore County
Case No. C-03-CR-21-005326

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0523

September Term, 2024

DAMIEN MICHAEL LEONE

v.

STATE OF MARYLAND

Friedman,
Shaw,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: April 15, 2026

Pursuant to a twenty-one-count indictment filed in the Circuit Court for Baltimore County, Damien Michael Leone, appellant, was charged with first-degree murder; two counts of reckless endangerment; three counts of first-degree assault; three counts of use of a firearm in the commission of a crime of violence; four counts of unlawful possession of a regulated firearm; and eight counts of wearing, carrying, or transporting a handgun. The State tried appellant jointly with his father, Dominic Michael Leone, III ("Father"), at a bench trial. Testifying in his own defense, appellant effectively admitted to fatally shooting the victim, but maintained that he did so in self-defense. Concluding that appellant had acted in imperfect self-defense, the court acquitted him of the first-degree murder and first-degree assault counts and convicted him instead of voluntary manslaughter and three counts of second-degree assault. It entered guilty verdicts on the remaining seventeen counts as charged. The trial court merged several of appellant's convictions for sentencing purposes and ultimately imposed a total term of thirty-six years' incarceration.

On appeal, appellant presents five questions for our review, which we have rephrased slightly as follows:

I. Did the trial court err in convicting appellant of more than one count of unlawful possession of a regulated firearm?

II. Did the trial court err in convicting appellant of more than one count of wearing, carrying, or transporting a handgun?

III. Did the trial court err by failing to merge appellant's reckless endangerment sentences into his sentences for voluntary manslaughter or second-degree assault?

IV. Did the trial court abuse its discretion by permitting the State to cross-examine appellant regarding his failure to invoke self-defense prior to trial?

V. Did the trial court's factual findings compel the conclusion that appellant acted in perfect, rather than imperfect, self-defense?[1]

For the reasons that follow, we will vacate two of appellant's convictions for unlawful possession of a regulated firearm (Counts 20 and 21) and remand with instructions that the trial court vacate one of the remaining two (Count 14 or 15). We shall also vacate appellant's sentences for reckless endangerment (Count 10) and for wearing, carrying, or transporting a loaded handgun on November 23, 2021 (Count 6). We will otherwise affirm the court's judgments.

[1] In his brief, appellant articulated the issues as follows:

1. Was the evidence legally insufficient to sustain more than one conviction for possession of a regulated firearm by a disqualified person?

2. Was the evidence legally insufficient to sustain more than one conviction for a possessory firearms offense?

3. Must the sentence for reckless endangerment be merged into the assaultive sentences?

4. Did the trial court abuse its discretion, or plainly err, in admitting evidence that Appellant did not come forward prior to trial to reveal his theory of defense to the authorities?

5. Did the trial court's findings of fact fail to sustain its verdict?

BACKGROUND

At approximately 5:00 p.m. on November 23, 2021, appellant, then nineteen years old, met Father at their home on Cedley Street in South Baltimore. There, they drank alcohol and watched movies. About thirty minutes after finishing the pint of Paul Masson they had been sharing, appellant and Father decided to purchase another bottle from the Gateway Tavern ("Gateway"), a bar and liquor store on Annapolis Road in Baltimore County. Appellant testified that he was armed with a handgun as Father drove them to Gateway, explaining that he lived in a dangerous neighborhood and carried the weapon to protect himself and his family.

When they arrived at Gateway, Father parked in the front lot beside a black car. On the other side of the black car was a white GMC Yukon driven by Indalecio Romero Reyes—the homicide victim in this case—and occupied by Jose Hipolito and Israel Garcia. Mr. Garcia testified that he, Mr. Hipolito, and Mr. Reyes were co-workers who had spent the day "digging a basement" and drinking beer. After finishing work at about 5:30 p.m., Mr. Reyes drove Messrs. Garcia and Hipolito to Gateway so they could buy more beer to take home. Mr. Garcia further recounted that, after parking, the three men remained in the Yukon for a few minutes while "finishing up the little beer [they] had" left. Meanwhile, appellant and Father got out of their car, entered the store, withdrew cash from an ATM, and purchased another pint of Paul Masson before returning to the parking lot and walking back toward their vehicle. Mr. Garcia and appellant were the only eyewitnesses to the fatal shooting who testified at trial. They offered conflicting accounts of what occurred.

According to Mr. Garcia, Mr. Reyes exited the Yukon and walked only about four feet toward the store before one of two men approaching him drew a handgun and struck him in the head with it.[2] Mr. Garcia testified that, as Mr. Reyes attempted to retreat to the Yukon, the men opened fire. After hearing the first of six shots, Mr. Garcia fled the Yukon and took cover behind a nearby dumpster, while Mr. Hipolito hid behind the truck. Once the gunfire ceased, Mr. Garcia emerged from behind the dumpster and saw the two men enter their vehicle before driving away.

Although Mr. Garcia testified that Mr. Reyes said nothing to the shooter before the gunfire began, appellant offered a markedly different account. Appellant testified that, as he walked back toward his car, Mr. Reyes called to him from the Yukon through a rolled-down window and motioned for him to come closer. According to appellant, Mr. Reyes then flashed the Yukon's high beams and continued beckoning him over. As appellant passed the black car parked between the Yukon and his vehicle, Mr. Reyes exited the truck, clenched his fists, waved his arms, and seemed to curse at appellant in Spanish. Appellant described Mr. Reyes's demeanor as "aggressive" and testified that he appeared to be a "belligerent drunk." Appellant further testified that he took a step back as Mr. Reyes began to approach him. When Mr. Reyes came within arm's length, appellant punched him in the mouth before again backing away. Appellant then heard a car door open and turned to see

[2] When asked whether Mr. Reyes had anything in his hands when he got out of the vehicle, Mr. Garcia answered: "No, nothing, nothing."

a second man emerging from the Yukon holding a metal object that appellant believed was a gun.

Appellant testified that, upon seeing what he believed to be a firearm, he alerted Father that the man had a gun and took cover behind the black car. Appellant explained that he did not enter his own vehicle because he feared that the man would fire into it and that, once inside, he would be unable to defend himself. When he saw the man raise a metal object in his direction, appellant, believing that he was in "imminent danger[,]" drew his handgun and discharged it in the man's direction. According to appellant, he continued to fire because the man "wouldn't stay down." As appellant was firing, Mr. Reyes came into view, "popping at different angles around the car[.]" Unable to distinguish between Mr. Reyes and the ostensibly armed man, appellant fired in Mr. Reyes's direction and saw him fall to the ground. After firing about six shots, appellant returned to his car, and he and Father drove home.

Mr. Reyes sustained a single gunshot wound to the chest and was transported from the scene to the University of Maryland Shock Trauma Unit, where he succumbed to his injuries and was pronounced dead on December 3, 2021. An autopsy performed the following day identified the cause of death as a "gunshot wound of the chest with complications" and the manner of death as homicide.

Detective Storm Sheckells was among the officers who responded to Gateway on November 23, 2021. After arriving at the scene, Detective Sheckells met with Gateway's owner, who showed him surveillance footage from the bar, the ATM, and the parking lot

where the shooting occurred. Based on his review of that footage, Detective Sheckells determined that the shooting suspects had entered Gateway and used the ATM. Gateway's owner then provided Detective Sheckells with an ATM receipt reflecting the suspects' ATM withdrawal. Using the last four digits of the debit card used in that transaction, Detective Sheckells ultimately identified the cardholder as Alexis Ernest. A background check on Ms. Ernest revealed that she was the registered owner of a black Honda Civic. Comparing the surveillance images with "historical license plate reader imagery," Detective Sheckells further determined that Ms. Ernest's Honda Civic was missing the same passenger-side hubcap as the vehicle the suspects drove on the night of the shooting.

Within hours of Mr. Reyes's death on December 3, 2021, Homicide Detective Jim Lambert ran Ms. Ernest's name through police databases and determined that her most recent address was the same Cedley Street house where appellant and Father resided. He dispatched fellow detectives to that address, where they found the black Honda Civic parked out front. As the detectives surveilled the house, they observed appellant and Ms. Ernest leave the residence with a child at 12:45 p.m., enter the Civic, and drive away.

The detectives followed appellant to a McDonald's restaurant on Washington Avenue. There, the detectives were joined by members of the Criminal Apprehension Support Team, including Detective Allen Jones. Upon arriving at the McDonald's, Detective Jones observed the Honda Civic parked in the parking lot, with a female sitting in the driver's seat, appellant in the passenger's seat, and a child in the rear of the vehicle. The detectives approached the Honda Civic, identified themselves, and ordered appellant

out of the vehicle. As appellant complied and immediately raised his hands, Detective Jones observed what appeared to be the outline of a gun in his waistband. During a search incident to appellant's arrest, the police recovered a loaded nine-millimeter semiautomatic handgun that had been secreted beneath his shirt.

Jason Birchfield, a firearms examiner for the Baltimore County Police Department, subsequently examined the handgun as well as "seven cartridge cases, one bullet, two bullet fragments, and two lead-like fragments" recovered from the scene of the shooting. Mr. Birchfield identified the handgun as a "Polymer 80 PF940SC semi-automatic pistol" and six of the casings as spent nine-millimeter Lugers. After confirming that the handgun was operable, Mr. Birchfield analyzed the six casings and concluded that they bore "marks consistent with having been fired" from the weapon.

We will include additional facts as necessary to our resolution of the issues presented.

DISCUSSION

I.

Among the counts enumerated above, the trial court convicted appellant of four counts under Maryland Code (2003, 2022 Repl. Vol., 2025 Supp.), § 5-133(b)(15) and (d)(1) of the Public Safety Article ("PS"). Counts 14 and 20 charged appellant with possession of a regulated firearm while under the age of twenty-one, while Counts 15 and 21 charged him with possession of a regulated firearm after having been previously adjudicated delinquent for a disqualifying offense. The indictment reflects that Counts 14

and 15 arose from appellant's possession of the firearm on November 23, 2021, while Counts 20 and 21 arose from his possession of the weapon on December 3, 2021.

Appellant contends that, because the State presented evidence that he possessed only one firearm and "the unit of prosecution for possession of a regulated firearm by a disqualified person is the gun, not the basis for disqualification[,]" "the evidence was insufficient to sustain convictions for all but one of the counts[.]" Accordingly, he concludes that "only a single conviction and sentence for the disqualified person offense can survive."

The State responds that "[appellant] is entitled to have only two of his convictions under PS § 5-133 vacated." (Capitalization omitted.) It observes that "Count 14 and Count 15[] stemmed from evidence that [appellant] possessed a firearm on November 23, 2021," while "[t]he other two counts, Count 20 and Count 21, stemmed from evidence that [he] possessed a firearm on December 3, 2021[.]" Because appellant's "convictions under PS § 5-133 arise from multiple criminal transactions[,]" the State concludes that he "should retain one conviction . . . associated with the shooting incident on November 23, and one conviction . . . associated with his possession of a firearm on December 3."

PS § 5-133 provides, in pertinent part:

> (b) Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if the person:
>
> * * *
>
> (15) if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

* * *

> (d)(1) Except as provided in paragraph (2) of this subsection, a person who is under the age of 21 years may not possess a regulated firearm.

In *Melton v. State*, 379 Md. 471 (2004), the Supreme Court of Maryland interpreted Article 27, § 449—predecessor to PS § 5-133—and held that the "unit of prosecution for § 449(e) is the prohibited act of illegal possession of a firearm and that the statute does not support multiple convictions . . . where there is only a single act of possession." *Id.* at 486.

In *Wimbish v. State*, 201 Md. App. 239 (2011), *abrogated on other grounds by State v. Davis*, 249 Md. App. 217 (2021), this Court applied the *Melton* holding to a defendant who had been convicted of violating PS § 5-133(c)(1), which prohibits possession of a regulated firearm by a person previously convicted of a violent crime, and PS § 5-133(d), which prohibits such possession by a person under the age of twenty-one. In so doing, we held that, "when [Wimbish] possessed a single regulated firearm, which was illegal under § 5-133 for two reasons (his age and his prior conviction for a crime of violence), he committed only one violation of that section." *Wimbish*, 201 Md. App. at 272. *See also Shannon v. State*, 468 Md. 322, 330 (2020) ("[I]f the prohibited person possesses only one regulated firearm, he or she has committed only one violation of [PS § 5-133(c)(1)], regardless of whether the prohibited person was previously convicted of one predicate offense or a dozen predicate offenses."). Consistent with *Melton*, we concluded that "only one of [Wimbish's] convictions under § 5-133 [could] stand." *Wimbish*, 201 Md. App. at

272. Accordingly, we affirmed the conviction carrying the greater penalty and reversed the conviction with the lesser sentence. *Id.*

Melton and *Wimbish* make clear that, when the State proves a single act of possessing a solitary regulated firearm, PS § 5-133 authorizes only one conviction—even if the defendant was prohibited from possessing the firearm for multiple reasons. Here, the evidence established—and the parties agree—that appellant possessed the same handgun on November 23, 2021, and December 3, 2021. Accordingly, at most, one of appellant's convictions under Counts 14 and 15 and one of his convictions under Counts 20 and 21 can stand.

We must next determine whether the evidence established two separate acts of possession—one on each date—or a single, continuous offense spanning November 23 through December 3. If the evidence established separate acts of possession, the court could properly convict appellant of two counts under PS § 5-133. If appellant's possession was continuous, however, the court erred by entering two convictions for that single course of conduct.

"[A]bsent a clear statutory direction to the contrary, the uninterrupted possession of an item of contraband is ordinarily regarded as one continuing offense under Maryland law." *Anderson v. State*, 385 Md. 123, 134 (2005). *See also Webb v. State*, 311 Md. 610, 615 (1988) ("'When mere possession of a prohibited article is a crime, the offense is a continuing one because the crime is committed each day the article remains in possession, as there is a continuing course of conduct.'" (quoting *Duncan v. State*, 282 Md. 385, 389

(1978))). When, however, "the possession that underlies the first incident ends before the second incident . . . [,] multiple offenses, separately punishable, may arise." *Anderson*, 385 Md. at 135. "'The burden of proving distinct acts or transactions for purposes of separate units of prosecution falls on the State.'" *Alexis v. State*, 437 Md. 457, 486 (2014) (quoting *Morris v. State*, 192 Md. App. 1, 39 (2010)). *See also Webb*, 311 Md. at 619 ("The State did not establish that more than one handgun was involved or that the carrying of the weapon between 1:30 a.m. and 4:30 a.m. was intermittent.").

The State does not direct us to any evidence indicating that appellant's dominion or control over the handgun was interrupted between the shooting on November 23, 2021, and his arrest ten days later. *See* Md. Code (2002, 2021 Repl. Vol., 2025 Supp.), § 5-101(v) of the Criminal Law Article ("CR") (defining "possess" as "to exercise actual or constructive dominion or control over a thing by one or more persons"). Nor does our review of the record reveal any such evidence. In the absence of such evidence, we presume that appellant's dominion and control continued throughout that period, such that the December 3, 2021, possession counts are multiplicitous of the November 23, 2021, counts. Because Counts 20 and 21 charged appellant with unlawful possession of a firearm on December 3, we will vacate those convictions. The only question remaining before us, therefore, is which of the remaining two counts should be vacated—Count 14 or 15.

Ordinarily, the appropriate remedy in circumstances such as this would be to "affirm the conviction for the offense with the greater penalty . . . and reverse the conviction for the offense with the lesser penalty[.]" *Wimbish*, 201 Md. App. at 272. Here, however,

appellant's violations of subsections (b) and (d) carry the same maximum sentence of five years' imprisonment and a fine of $10,000. PS § 5-144(b). *See also Jones v. State*, 420 Md. 437, 456 (2011) (holding that former PS § 5-143, now codified as § 5-144, governs sentencing for violations of subsections of PS § 5-133 that do not contain their own penalty provision). One conviction must therefore be vacated, and we leave it to the trial court to determine which on remand.

II.

In addition to the firearm offenses discussed above, appellant was charged with and convicted of two counts each of: (1) wearing, carrying, or transporting a handgun on or about the person (Counts 5 and 17); (2) wearing, carrying, or transporting a *loaded* handgun on or about the person (Counts 7 and 19); (3) wearing, carrying, or knowingly transporting a handgun in a vehicle (Counts 4 and 16); and (4) wearing, carrying, or knowingly transporting a *loaded* handgun in a vehicle (Counts 6 and 18). As with the possession counts, four of those convictions (Counts 4-7) arose from the events on November 23, 2021, while the remaining four (Counts 16-19) arose from those on December 3, 2021.

Appellant contends that, because "possession of a firearm is a single continuing offense comprising one crime, [his] possession of the gun used in this incident should have produced only one . . . conviction" for wearing, carrying, or transporting a handgun, rather than eight. Alternatively, he argues that "the sentences for these crimes should have merged into the sentences for use of a firearm in the commission of a crime of violence" (Counts 3 and 12).

The State responds that we should reject appellant's primary contention because he offers inadequate authority and argument in support of his position. It also asserts that, contrary to appellant's contention, "Maryland law . . . treats . . . convictions under multiple subsections of [CR] § 4-203 as an issue of sentencing merger under the rule of lenity[,]" rather than a matter of multiplicity of convictions. The State concludes that the trial court properly merged for sentencing purposes "the [CR] § 4-203 convictions related to the November 23 incident" as well as those related to the December 3 incident, and imposed sentences only for two counts of wearing, carrying, or transporting a loaded handgun in a vehicle (Counts 6 and 18), one as to each date.

With respect to appellant's alternative contention, the State concedes that his "[CR] § 4-203 convictions related to the November 23 incident should have merged for sentencing [under the rule of lenity] into one of his convictions for use of a [firearm] on that date because the convictions all arose from the same criminal transaction." It maintains, however, that "[appellant] is not entitled to have his convictions that stemmed from the separate date of December 3 merged for sentencing purposes into his use of a firearm convictions." According to the State, the rule of lenity does not require merger where, as here, "the two incidents constituted two discrete criminal transactions, rather than a single continuous [one]."

A. Multiplicity of Convictions

We first address appellant's argument that the trial court erred in entering multiple convictions for wearing, carrying, or transporting a handgun based on his conduct on

November 23 and December 3, 2021. The eight counts at issue charged violations of CR § 4-203(a), which states, in relevant part:

> (a)(1) Except as provided in subsection (b) of this section, a person may not:
>
> (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;
>
> (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;
>
> * * *
>
> (v) violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.

In *Webb v. State*, *supra*, the Supreme Court of Maryland analyzed the appropriate unit of prosecution under former Maryland Code (1957, 1987 Repl. Vol.), Art. 27, § 36B(b), the predecessor to CR § 4-203(a).[3] The appellant in that case was twice convicted, in separate prosecutions, of unlawfully wearing, carrying, or transporting a handgun on or about his person. The two counts arose from separate incidents that occurred approximately three hours apart.

[3] Article 36B(b) then provided, in pertinent part:

> Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or knowingly transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, highways, waterways, or airways or upon roads or parking lots generally used by the public in this State shall be guilty of a misdemeanor[.]

Webb appealed his conviction in the second prosecution, arguing that the State was precluded "from prosecuting, convicting, and punishing him twice for carrying a single handgun over a three hour period[.]" *Webb*, 311 Md. at 614 (cleaned up). In addressing that contention, the Supreme Court of Maryland first observed that the crime was "in the nature of a possession offense[,]" and "'[w]hen mere possession of a prohibited article is a crime, the offense is a continuing one[.]'" *Id.* at 615 (quoting *Duncan*, 282 Md. at 389). Accordingly, the Court concluded that the unit of prosecution under Article 36B(b) was "the wearing, carrying or transporting of any handgun, whether concealed or open, upon or about the person" with "no requirement as to time, use, person at risk or incident." *Id.* at 617-18.

Although the Court determined that the statute ordinarily treats the continuous wearing, carrying, or transporting of the same handgun on or about one's person as a single offense, it explained, in dicta, that multiple violations may arise when the unlawful conduct ends or is otherwise interrupted. Specifically, the Court stated:

> *It may be that were the wearing, carrying, or transporting of the handgun by Webb interrupted by some lawful possession of it, for example, wearing, carrying, or transporting it "within the confines of real estate . . . upon which he resides . . .,"* § 36B(c)(4), *a subsequent unlawful wearing, carrying, or transporting of it would constitute another violation of the statute.*[4] And it may be that had Webb removed the weapon from his actual or constructive possession, it would be a separate violation when he retrieved it and wore it again on his person. And it may be that if it was shown that the

[4] Art. 27, § 36B(c)(4) provided, in part: "Nothing in this section shall prevent a person from wearing, carrying, or transporting a handgun within the confines of real estate owned or leased by him or upon which he resides or within the confines of a business establishment owned or leased by him."

> handgun involved in the first incident was a different weapon from that involved in the second incident, there would be two violations.

Id. at 618 (emphasis added). Because the State had not satisfied its burden of proving such circumstances on the record presented, the Court held that "Webb had committed only one offense in the contemplation of § 36B(b)" and therefore reversed his second conviction. *Id.* at 619.

CR § 4-203 retains its predecessor's exception for "the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides[.]" CR § 4-203(b)(6). That exception is significant here because under *Webb*, a period of lawful possession may interrupt an otherwise continuous unlawful carrying offense and permit a separate conviction when the unlawful conduct resumes. Unlike the defendant in *Webb*, appellant testified that he and Father returned home after the shooting. At that point, appellant was on real property where he resided, and the wearing, carrying, or transporting of the handgun therefore fell within that statutory exception. Thus, although appellant's possession of the handgun may have been continuous, the unlawful wearing, carrying, or transporting of it was interrupted upon his return home. When appellant left the residence with the handgun on December 3, 2021, en route to the McDonald's on Washington Avenue, a new unlawful carrying offense commenced. Accordingly, we hold that the evidence supported treating the November 23, 2021, and the December 3, 2021, incidents as separate units of prosecution under CR § 4-203.

This conclusion does not necessarily end our inquiry, however, as appellant's broader contention implicates whether the four convictions entered for each incident can stand. Appellant correctly observes that a violation of CR § 4-203(a)(1) is essentially a possession offense, and, as such, is a continuing one. *See Webb*, 311 Md. at 615. From that premise, however, appellant takes a logical leap and summarily asserts that violations of multiple subparagraphs of CR § 4-203(a)(1) arising from a single course of conduct necessarily yield only one conviction.[5] To prevail on this contention, appellant cannot merely rely on the fact that a violation of CR § 4-203(a)(1) is a continuous offense. Rather, he must establish that the General Assembly intended subparagraphs (i), (ii), and (v) to provide alternate means of committing the same crime, rather than to set forth separate offenses.

"The unit of prosecution of a statutory offense is generally a question of what the legislature intended to be the act or course of conduct prohibited by the statute for purposes of a single conviction and sentence." *Brown v. State*, 311 Md. 426, 434 (1988). *See also Moore v. State*, 198 Md. App. 655, 680 (2011) ("The key to the determination of the unit of prosecution is legislative intent."). Appellant does not engage that critical question, and "[i]t is not this Court's responsibility to attempt to fashion coherent legal theories to support

[5] Although appellant cites four federal appellate opinions in support of this proposition, he discusses only one of those cases in a single sentence, writing: "The *Benjamin* Court explained that gun possession is a single course of conduct, yielding only a single conviction." *See United States v. Benjamin*, 711 F.3d 371 (3d Cir. 2013). As the State notes, moreover, appellant neither "presents . . . argument connecting those authorities to existing Maryland law" nor invokes any Maryland case law in support of his position.

[his] sweeping claims." *Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002). *See also Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); *DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it."); *Diallo v. State*, 186 Md. App. 22, 33 (2009) ("[W]e are not required to . . . seek out the law in support of a party's appellate contentions[.]" (quotation marks and citations omitted)), *aff'd in part, vacated in part on other grounds*, 413 Md. 678 (2010).

As appellant's brief does not include the legislative-intent analysis necessary to support his request to vacate convictions under multiple subparagraphs of CR § 4-203(a)(1), we decline to address that pivotal issue and therefore affirm his convictions under Counts 4-7 and 16-19.

B. Merger of Sentences

We turn now to appellant's argument that his sentences for wearing, carrying, or transporting a handgun should have merged into his sentence for use of a firearm in the commission of a crime of violence. As noted above, the State concedes that the CR § 4-203 convictions stemming from the November 23 shooting "should have merged for sentencing [purposes] into one of [appellant's] convictions for use of a [firearm] on that date[.]" However, it maintains that merger is not required for any CR § 4-203 convictions based on appellant's possession of a handgun on December 3 because appellant's act of

wearing, carrying, or transporting the handgun on that date constituted a separate criminal episode, distinct from the shooting on November 23.

In Maryland, "[i]t is well settled that when convictions for use of a [firearm] in the commission of a crime of violence, and wearing, carrying, or transporting a handgun are based upon the same acts, separate sentences for those convictions will not stand." *Holmes v. State*, 209 Md. App. 427, 456, *cert. denied*, 431 Md. 445 (2013). Under such circumstances, the rule of lenity requires courts to merge a conviction for wearing, carrying, or transporting a handgun into the conviction for use of a firearm in the commission of a crime of violence for sentencing purposes. *See Hunt v. State*, 312 Md. 494, 510 (1988) (holding that the defendant's sentence for wearing, carrying, or transporting a handgun merged with his sentence for use of that firearm in the commission of a violent crime where the evidence established that he carried the weapon for two hours before using it to shoot the victim); *see also Abeokuto v. State*, 391 Md. 289, 356 (2006) ("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." (quotation marks and citations omitted)). Conversely, when two convictions arise from distinct criminal acts or transactions, the rule of lenity is generally inapplicable, and the defendant ordinarily may be separately sentenced for both convictions. *State v. Smoot*, 200 Md. App. 159, 169 ("The rule of lenity . . . provides that doubt or ambiguity as to whether the legislature intended that there be multiple punishments *for the same act or transactions*

will be resolved against turning *a single transaction* into multiple offenses." (cleaned up; emphasis added)), *cert. denied*, 423 Md. 452 (2011).

Because the convictions for wearing, carrying, or transporting a handgun on November 23, 2021 (Counts 4-7), and appellant's convictions for use of a firearm in the commission of violent crimes arose from the same criminal transaction, the rule of lenity requires merger for sentencing. Given that the trial court merged appellant's convictions for Counts 4, 5, and 7 with Count 6, we need only vacate his sentence for that conviction. As established above, however, appellant's violations of CR § 4-203(a)(1) on November 23 and December 3, 2021, were not part of "'one single and continuous course of conduct[.]'" *Alexis*, 437 Md. at 486 (quoting *Morris*, 192 Md. App. at 39). Because the convictions relating to appellant's conduct on December 3, 2021, arose from a separate act or transaction, the rule of lenity is inapplicable to them. Accordingly, we will not disturb the sentence imposed for wearing, carrying, or transporting a loaded handgun in a vehicle on December 3 (Count 18).[6]

III.

Appellant next contends that the trial court erred in failing to merge his reckless endangerment sentence into his sentence for voluntary manslaughter or second-degree assault. The State concedes that appellant's "reckless endangerment convictions should

[6] As noted above, the trial court merged appellant's remaining CR § 4-203 convictions arising from his December 3 arrest into Count 18 for sentencing purposes.

have merged for sentencing purposes with the corresponding convictions for assault[,]" and that his reckless endangerment sentence should therefore be vacated. We agree.

The trial court convicted appellant of second-degree assault and reckless endangerment of Messrs. Garcia and Hipolito. It entered two convictions for each offense—one for each victim. The court imposed five-year sentences for each of the two second-degree assault counts, to be served concurrently with appellant's sentences for use of a firearm in the commission of a violent crime. It then sentenced appellant to another concurrent five-year term for one of the reckless-endangerment counts and merged the second reckless-endangerment conviction into the first for sentencing purposes.[7] All four convictions arose from the shooting on November 23, 2021.

In *Williams v. State*, 100 Md. App. 468, 510 (1994), this Court held that reckless endangerment is a lesser-included offense of assault with intent to maim when the convictions for those crimes arise from the same act against a single victim. Citing *Blockburger v. United States*, 284 U.S. 299 (1932), we explained:

> [T]he subjective *mens rea* of reckless indifference to a harmful consequence at a certain point along the rising continuum of blameworthiness may ripen into the even more blameworthy specific intent to inflict the harm. At that point, the lesser included offense of reckless endangerment merged into the greater inclusive offense of assault with intent to maim.

[7] Thus, although appellant was convicted of two counts of reckless endangerment, he was only sentenced on one.

Williams, 100 Md. App. at 510. Accordingly, we concluded that the defendant's conviction for reckless endangerment merged into his aggravated assault conviction and vacated his separate sentence for the former offense.

This Court was confronted with a similar issue in *Marlin v. State*, 192 Md. App. 134, *cert. denied*, 415 Md. 339 (2010). There, Marlin was sentenced to ten years' incarceration for first-degree assault by use of a firearm and a concurrent five-year term for reckless endangerment. Relying on *Williams*, Marlin argued on appeal that the trial court erred in failing to merge reckless endangerment with first-degree assault. This Court disagreed, reasoning that, in contrast to the "serious bodily harm" modality of first-degree assault at issue in *Williams*, first-degree assault by use of a firearm and reckless endangerment "each . . . contains elements not required for conviction of the other" and therefore did not merge pursuant to the required evidence test. *Id.* at 167. We nevertheless held that, although "the singular act of shooting [the victim] properly resulted in two convictions[,]" it "warranted only one sentence" under either "principles of fundamental fairness or the rule of lenity[.]" *Id.* at 171. In so holding, we observed:

> Here, the use of the firearm spawned multiple charges against appellant. Yet, the evidence at trial pertained solely to a single act of shooting a single victim. Marlin's conduct as to the reckless endangerment involved the same conduct that formed the basis for the first degree assault by firearm; no other conduct was involved in proving either offense.

Id.

As in *Williams* and *Marlin*, appellant's convictions for reckless endangerment arose from the same acts against the same victims as did his convictions for second-degree

assault—namely, his shooting at Messrs. Garcia and Hipolito. The trial court was therefore required to merge his sentences for the former offense into those for second-degree assault.[8] Accordingly, we must vacate appellant's separate five-year sentence for reckless endangerment (Count 10).

IV.

Appellant also contends that the trial court abused its discretion by permitting the State to cross-examine him regarding his "pre-arrest silence[.]" He argues that such silence is "sufficiently ambiguous to lack probative value[,]" and that any probative value it might have "is outweighed by the danger of unfair prejudice." Although appellant acknowledges that his attorney did not object to the State's question, he maintains that Father's objection "satisfied the purpose of the preservation rule" by affording the trial court "a fair opportunity to rule on the merits[.]" Alternatively, appellant asks that we review this issue for plain error.

The State responds that, because appellant did not contemporaneously object to the question at issue, "[h]is appellate claim of error should . . . be deemed waived." Alternatively, it maintains that appellant's contention is meritless, arguing that the question

[8] Because appellant was convicted of reckless endangerment as to Messrs. Garcia and Hipolito, his corresponding sentence does not merge into his ten-year sentence for voluntary manslaughter of Mr. Reyes—a different victim. *Cf. Price v. State*, 261 Md. 573, 580 (1971) ("[W]here the same general transaction affects different victims, the offenses would not merge."); *Smith v. State*, 23 Md. App. 177, 185 (1974) ("[N]o question of merger of offenses is involved" where "[e]ach of the crimes of which the appellants were found guilty was committed against a different victim."), *disapproved on other grounds, Butcher v. State*, 196 Md. App. 477 (2010), *cert. denied*, 418 Md. 398 (2011).

posed was a permissible attempt by the prosecution to impeach "[appellant's] credibility as a witness and, by extension, his self-defense-related testimony."

During its cross-examination of appellant, who testified in his own defense, the State asked: "[S]o[,] the first time that we're hearing about you saying this was self-defense today, is your first time telling anyone about what happened?" Father's counsel made a general objection. The following colloquy ensued:

THE COURT: Counsel, he's not your witness.

[FATHER'S COUNSEL]: Okay. All right.

THE COURT: You'll get a chance to examine the witness.

[THE STATE]: Your Honor, no further questions.

THE COURT: All right, any redirect?

[APPELLANT'S COUNSEL]: No, Your Honor.

A. Preservation & Plain Error

"[T]o preserve an objection, a party must either object each time a question concerning the matter is posed or request a continuing objection to the entire line of questioning." *Fone v. State*, 233 Md. App. 88, 113 (2017) (cleaned up). *See also* Md. Rule 4-323(a). Conversely, "'[a] complete lack of objection by trial counsel to the State's question on cross-examination . . . ' does not preserve the question for appellate review." *Marshall v. State*, 85 Md. App. 320, 329 (quoting *Leonard v. State*, 36 Md. App. 385, 387 (1977)), *cert. denied*, 323 Md. 2 (1991).

Under Maryland law, "in cases involving multiple defendants, 'each defendant must lodge his [or her] own objection in order to preserve it for appellate review and may not rely, for preservation purposes, on the mere fact that a co-defendant objected.'" *Hayes v. State*, 247 Md. App. 252, 276 (2020) (quoting *Williams v. State*, 216 Md. App. 235, 254, *cert. denied*, 438 Md. 741 (2014)). *See also Holt v. State*, 129 Md. App. 194, 210 (1999) ("When one co-defendant objects, but the other does not, the latter has not preserved the issue for appellate review."). Alternatively, "[a] defendant 'may expressly join in an objection made by a co-defendant but he [or she] must expressly do so.'" *Hayes*, 247 Md. App. at 276 (quoting *Williams*, 216 Md. App. at 254). Accordingly, in a joint trial, a defendant must make or expressly join an objection to preserve the issue for appellate review. This general rule is subject to an exception where the court's ruling clearly applies to all defendants. *See Ray-Simmons v. State*, 446 Md. 429, 440-42 (2016); *In re Emileigh F.*, 353 Md. 30, 36-38 (1999); *Bundy v. State*, 334 Md. 131, 145-47 (1994).

In this case, appellant did not object to the question at issue or expressly join in Father's objection. The court, in turn, neither requested the grounds for Father's general objection nor ruled on its merits. Rather, in responding to the objection, it simply noted that appellant was not Father's witness. As appellant was testifying in his own defense, that rationale for declining to entertain the objection applied exclusively to Father's counsel. Accordingly, the exception to the general preservation rule does not apply, and this issue is not preserved for our review.

Finally, we decline appellant's invitation to exercise our discretion to review this issue for plain error. "Plain error review is 'reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). We decline to consider this unpreserved issue. *See Morris v. State*, 153 Md. App. 480, 506-07 (2003) (stating that the five words "[w]e decline to do so" are "all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation" (emphasis omitted)). The matter is better addressed in a post-conviction proceeding, where the court may determine counsel's reasons, if any, for failing to object to the State's question. *See Collins v. State*, 164 Md. App. 582, 608 (2005) ("The ramifications of trial counsel's error in failing to object on confrontational grounds will be better addressed in a post-conviction proceeding.").

V.

Finally, appellant contends that the trial court's factual findings did not support his convictions for voluntary manslaughter or second-degree assault. To the contrary, he argues that "the . . . court's findings were fully consistent with 'complete' or 'perfect' self[-]defense, and in no way negated that theory." Accordingly, appellant concludes that the court erred by applying imperfect self-defense to mitigate the murder and first-degree assault charges to voluntary manslaughter and second-degree assault, rather than outright acquitting him of the charges based on perfect self-defense.

The State counters that appellant's argument is unpreserved because he "did not object to the trial court's findings or rendering of the verdict." On the merits, the State concedes "that the court found that [appellant] honestly and reasonably believed he was in imminent danger of death or serious bodily harm[.]"[9] It maintains, however, that the court neither determined that appellant had not been the initial aggressor nor addressed whether he could have safely retreated from the altercation. The State therefore concludes that "the elements of perfect self-defense were not established here."

A. Pertinent Procedural History

After the bench trial, the trial court determined that appellant had acted in imperfect self-defense and therefore convicted him of voluntary manslaughter while acquitting him of first-degree murder. In announcing those verdicts, the court stated:

> The first count is first-degree murder. What I find is that the victim started a confrontation with the [appellant], but it was a verbal exchange. The [appellant] then elevated that to a physical assault when he punched the victim. I do not believe that he hit the victim in the head with a gun, as was testified to by Mr. Garcia. The medical examiner found no injury to the victim's head, and [appellant] testified that he had punched him with his fist. What happened next was that [appellant] proceeded to walk away from the victim when someone, a passenger in the truck, exited the truck carrying something that looked like a shiny metal object that [appellant] believed to be a gun.
>
> I find that that was an honest belief on his part, and that, given all of the circumstances, was reasonable. He then ducked between his car, a car that was next to the truck, with his car being on the other side, and began to

[9] In reviewing the court's ruling, we are not bound by this concession. *See Greenstreet v. State*, 392 Md. 652, 667 (2006) ("[A] party may not concede a point of law to the exclusion of appellate review, as necessary and proper to decide the case.").

> fire. He fired a total of six shots. That took all of ten seconds, and [appellant] believed that he was in imminent danger of death or serious bodily harm at the time. He believed that someone was about to shoot at him. Therefore, I find that he meets the elements of imperfect self-defense. What that means is that the first-degree murder charge is reduced to a voluntary manslaughter, and I'm finding him guilty of voluntary manslaughter.

After rendering its verdicts with respect to first-degree murder and voluntary manslaughter, the court found appellant guilty of three counts of first-degree assault, reasoning:

> [I]n my view, the law with regard to the application of imperfect self-defense to first-degree assault is murky. However, I'm required to apply the law as it exists today. The law that exists today is that imperfect self-defense is not a defense to an assault. But I think that this issue is ripe for review by the appellate courts, and because of that, I want to make the record clear that if it were applicable to assault, I would apply it to the assault charges in this indictment . . . . So[,] at this time, I'm going to find [appellant] guilty of first-degree assault.

On February 16, 2024, appellant filed a motion for a new trial, in which he argued, in relevant part, that imperfect self-defense mitigates first-degree assault to second-degree assault. *See Christian v. State*, 405 Md. 306, 333 (2008). At the ensuing sentencing hearing on May 6, 2024, the trial court denied that motion, but reduced appellant's assault convictions from first- to second-degree based on its prior determination that he had acted in self-defense. In so doing, the court stated: "[T]he charges of first-degree assault are mitigated to second-degree assault by virtue of the [c]ourt's finding of the issue of voluntary manslaughter."

B. Preservation

We agree with the State that appellant's challenge is unpreserved. "Ordinarily, an appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). A "core reason for the preservation requirement" is "to permit the judge to clarify what can readily be clarified if he [or she] is given the opportunity to do so." *Chisum v. State*, 227 Md. App. 118, 140 (2016). *See also Robson v. State*, 257 Md. App. 421, 461 ("A . . . purpose of the preservation requirement is to protect the trial judge from being charged with error without having been alerted to the risk by counsel."), *cert. denied*, 483 Md. 520 (2023). Although defendants are not required to object or to move for judgment of acquittal in bench trials in order to preserve a sufficiency of the evidence argument for appellate review, the Supreme Court of Maryland has "strongly suggested . . . that it would reject attempts to expand the scope of" that exception. *Rivera v. State*, 248 Md. App. 170, 183 (2020) (citing *Bryant v. State*, 436 Md. 653, 669 (2014)). Moreover, this Court has explained that allegations that "a trial judge made specific findings of fact that would not support a verdict of guilty" are "other than and different from a challenge to the legal insufficiency of the evidence[,]" and must therefore be "timely preserved." *Chisum*, 227 Md. App. at 131 n.2. *See also Purnell v. State*, 250 Md. App. 703, 717 n.4, *cert. denied*, 476 Md. 252 (2021).

Appellant does not challenge the sufficiency of the evidence to sustain his manslaughter and second-degree assault convictions. Rather, he contends that the trial

court's factual findings established perfect self-defense and were therefore incompatible with those convictions. To preserve that contention, appellant was required to bring the matter to the court's attention. He did not, however, object during or immediately after the rendition of the verdict. Nor did he otherwise request that the court clarify the factual findings underlying its determination that he had acted in imperfect—rather than perfect—self-defense. Accordingly, this issue is not preserved for our review, and we decline to address it for the reasons expressed in Part IV of our analysis.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND VACATED IN PART.

CONVICTIONS AND SENTENCES FOR COUNTS 20 AND 21 VACATED. CASE REMANDED WITH INSTRUCTIONS TO VACATE THE CONVICTION AND SENTENCE FOR EITHER COUNT 14 OR COUNT 15.

SENTENCES FOR COUNTS 6 AND 10 VACATED.

JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND BALTIMORE COUNTY.