Circuit Court for Baltimore City
Case No.: 119183003

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 956

September Term, 2022

NICHOLAS ELUDIRE

v.

STATE OF MARYLAND

Nazarian,
Reed,
Moylan, Charles E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 24, 2024

*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).

After a jury trial in the Circuit Court for Baltimore City, Nicholas Eludire, appellant, was convicted of possession of a firearm by a disqualified person, possession of ammunition by a disqualified person, and two counts of possession of ammunition by a prohibited person. On November 8, 2019, he was sentenced to incarceration for a total period of six years. This appeal followed.[1]

QUESTIONS PRESENTED

Eludire presents the following two questions for our consideration:

> I. Did the circuit court err by permitting the State to impeach him with a prior conviction?
>
> II. Should the three convictions for possession of ammunition by a prohibited person merge for sentencing purposes?

For the reasons set forth below, we shall vacate the conviction for possession of ammunition as set forth in the fifth count of the indictment and we shall hold that the conviction for possession of ammunition as set forth in the eleventh count should merge into the conviction for possession of ammunition as set forth in the tenth count.

FACTUAL BACKGROUND

On June 12, 2019, at about 10:30 in the morning, Baltimore City Police Detectives Melinda Walp and Morgan Clasing were conducting a drug investigation when they were

[1] After he was sentenced, Eludire filed a motion for modification and a motion for reconsideration, both of which were denied. Thereafter, on November 4, 2020, Eludire filed a petition for post- conviction relief. At a hearing on July 28, 2022, the circuit court granted Eludire's motion to withdraw his petition for post-conviction relief without prejudice. The State consented to the withdrawal of the petition and to Eludire's belated filing of a notice of appeal pursuant to *Rosales v. State*, 463 Md. 552, 568 (2019). As any objection to the timeliness of Eludire's notice of appeal was waived, we shall address the merits of the appeal. *Rosales*, 463 Md. at 568.

called to the 1200 block of North Potomac Street to serve as backup. Detective Clasing described that location as a "high crime area" with a lot of guns and drugs. When they arrived on the scene, the detectives observed Eludire standing next to another detective in front of a black car. Detective Walp observed t-shirts on the black car and Detective Clasing observed that the car windows were cracked open. Detective Walp recognized Eludire because she had interacted with him about a month earlier.

As the detectives approached the black car, they smelled marijuana. The detectives observed "two marijuana blunts" or "leftover blunts" inside the car. Eludire denied that the black car was his, but Detective Walp's check of motor vehicle records indicated that the black car did, in fact, belong to him. Detective Walp obtained the key to the black car from Eludire's pocket.

As she opened the front driver's side door, which was unlocked, Detective Walp observed a gun, olive green in color, "sitting beside the driver's seat in the door jam." Detective Clasing leaned over, recovered the handgun, and rendered it safe. There was a magazine inserted into the gun and one round in the chamber. The magazine contained a total of 20 cartridges from two different manufacturers. When Detective Walp confronted Eludire about the gun, he stated that he did not know what she was talking about.

A forensic scientist from the Baltimore City Police Department's Firearms Lab testified as an expert in the field of firearms examination, identification, and operability. He test fired the gun and determined that it was an operable 9 mm semi-automatic handgun. The 9mm caliber magazine had a capacity of 21 cartridges and one additional cartridge could be placed in the chamber.

The detectives' encounter with Eludire was captured on their body worn cameras and footage was played for the jury. The gun was not tested for fingerprints or DNA, although Detective Walp testified that she requested those tests.

Eludire testified on his own behalf. He stated that he was a self-employed t-shirt salesperson. About three to four weeks prior to the June 12, 2019 incident, the police had searched the black car but "did not find anything in it." At the time of that search, the vehicle belonged to Eludire's friend, but subsequently, Eludire came to own it. Eludire acknowledged that on June 12, 2019, he lied to the police about his ownership of the car because he was "frightened by the police," "was afraid," had been harassed by the police in the past, and had seen the police harass other people.

At about 10 a.m. on June 12, 2019, Eludire arrived at his usual spot on the 1200 block of North Potomac Street to sell t-shirts. People were out on the street that day and a few neighbors were sitting on steps and porches. Eludire received a phone call concerning the sale of two t-shirts to the mother of one of his friends. When he left his car and walked about two blocks away to make the sale, the car doors were unlocked, about 200 t-shirts were in the vehicle, and there were t-shirts on the trunk. Eludire did not authorize anyone to go into his car. He was away from his vehicle for about 20 minutes. About five minutes after he returned to his car, the police arrived. Eludire denied that the handgun was his and testified that he did not know how it got in his car.

We shall include additional facts as necessary in the discussion of the issues presented.

DISCUSSION

I.

Eludire contends that the circuit court erred in permitting the State to impeach him with a prior conviction. At trial, Eludire was advised that if he decided to testify, the State could use for impeachment purposes his 2018 conviction for possession with intent to distribute narcotics. The State offered to "stipulate that he has this claim of moral turpitude and that will be it. I won't have to pry into that." Defense counsel rejected that offer stating, "[w]ell, I would rather them know it's drugs[.]" The trial judge questioned why this issue was not addressed in a pretrial motion. In response, defense counsel asked the court to consider the issue and, after the trial judge responded, "[g]o ahead," the following occurred:

> [DEFENSE COUNSEL]: Okay. So, Judge, I would just ask Your Honor to preclude the State from using the PWID. You know, there has been suggestions that they got a call for CDS and that they came to this area and being that it is similar in nature there are similar suggestions of somewhere of being the same offense even though he ultimately wasn't charged with that. I also would argue that it's – It just – The prejudice outweighs the probative value.
>
> [PROSECUTOR]: Your Honor, with regards to as when this was a CDS case I understood the argument that the prejudice outweighed the probative value, but he is not charged with CDS.
>
> This conviction would only go to his truthfulness. As to that I think the jury could give proper weight to whether a drug conviction means you are always going to be deceptive in your contact and put it in a proper context.
>
> It's consistent with case law that this is a permitted crime of moral turpitude and the State would ask for the ability to cross examine this witness as to this particular area.

The trial judge recognized that there "are factors the court must consider in determining whether or not asking [Eludire] about the prior conviction is more prejudicial

than probative[,]" one of which is whether the crimes involved are the same. The court determined that the prior conviction was for a crime that was different from the charges in the instant case and, therefore, "it wouldn't be as prejudicial as a similar type of crime in terms of propensity." The judge also determined that the case was basically going to involve Eludire's word versus the officers' word and that "credibility [was] central to the case[.]" For those reasons, the judge permitted the State to use for impeachment purposes Eludire's prior conviction for possession with intent to distribute narcotics.

During direct examination, defense counsel attempted to draw the sting out of the impeachment evidence.[2] Eludire was questioned as follows:

> [DEFENSE COUNSEL]: Okay. Now you have been convicted of a drug offense, right?
>
> [ELUDIRE]: Yes.
>
> Q. And that was June of 2018, is that right?
>
> A. '17 if I'm not mistaken.
>
> Q. '17 was when you – Right, but the conviction was 2018, if you recall. You have a conviction, right, it's from Baltimore County?
>
> A. Yes.
>
> Q. And you received three years suspended, three years' probation, does that sound right?
>
> A. Yes.

[2] *See Cure v. State*, 421 Md. 300, 305 (2011) ("[W]hen a defendant elects to testify and, in doing so, testifies affirmatively on direct examination to the existence of a prior conviction in order to 'draw the sting out' of that conviction, he or she does not waive necessarily his or her right to appellate review of the merits of the trial judge's prior *in limine* determination that the prosecution may use the conviction for impeachment purposes.").

Q. Okay.

A. Well, no, like I said I believe it was '17 because it was two years' probation and that would have been up August of this year.

On cross-examination, the State followed up on Eludire's testimony:

[PROSECUTOR]: And just in terms of this, sort of everything, have you ever been convicted of a crime, and we've talked on this a little bit, but I want it formally done, either presented by counsel or without counsel that went to your ability to tell the truth, which we call moral turpitude, such as the distribution of narcotics, have you been convicted of that?

[ELUDIRE]: Yes.

Q. Okay. And was that within the last 15 years?

A. Yes.

Q. Okay. Now in terms of this you indicated that you were selling t-shirts on that date?

A. Yes, sir.

Q. Were you selling anything else?

A. No, sir.

Eludire acknowledges that his prior conviction for possession with intent to distribute a controlled dangerous substance was the type that could be used for impeachment, that the conviction was recent, and that his credibility was important in the case. He maintains, however, that the prejudicial impact of evidence concerning the conviction outweighed its probative value because, although he was not on trial for a drug offense, the police detectives were at the scene to conduct a drug investigation. He argues that evidence of his prior conviction would "likely cause jurors to suspect that [he] – the

man whose car the police immediately searched – was selling drugs on the day in question." According to Eludire, absent evidence of his prior conviction, "the jury would have only heard he was at the scene to sell t-shirts." He further asserts that because "there is a 'widely known,' 'notorious,' and 'indisputable' association between guns and drug trafficking," "jurors would be much more likely to believe he possessed a gun." According to Eludire, the prejudice was intensified because there was no "limiting instruction telling the jury to only consider his previous conviction as bearing on his credibility."

A. Standard of Review

We give considerable deference to a trial court's decision to admit, for impeachment purposes, a defendant's prior conviction and disturb such a decision only when the court's discretion has been "clearly abused." *Cure v. State*, 421 Md. 300, 323 (2011). An abuse of discretion occurs where "no reasonable person would take the view adopted by the [trial] court." *Fontaine v. State*, 134 Md. App. 275, 288 (2000) (quotation marks and citation omitted), *cert. denied*, 362 Md. 188 (2000). When a trial court's ruling is reasonable, "even if we believe it might have gone the other way, we will not disturb it on appeal." *Id.*

Maryland Rule 5-609[3] provides a three-part test for determining whether a prior conviction may be admitted for impeachment purposes. First, the conviction must be

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[3] Maryland Rule 5-609 provides, in relevant part:

> **(a) Generally**. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the

(continued)

within the "eligible universe" of convictions that are relevant to impeach a witness's credibility. Md. Rule 5-609(a); *Cure*, 421 Md. at 324. Second, the conviction must not have occurred more than fifteen years ago, been reversed on appeal, nor been the subject of a pardon or pending appeal. Md. Rule 5-609(b) Third, the trial court must determine whether the probative value of admitting the conviction outweighs the danger of unfair prejudice to the witness. Md. Rule 5-609(a).

In the instant case, there is no dispute that Eludire's prior conviction satisfied the first and second parts of the test. Eludire argues that the court abused its discretion in determining that the probative value of his prior conviction outweighed the risk of unfair prejudice and allowing the State to impeach him with evidence of that conviction. In weighing the probative value of impeachment evidence against the danger of unfair prejudice, the trial court considers five non-exhaustive factors: "(1) the impeachment value of the prior crime; (2) the time that has elapsed since the conviction and the witness's history subsequent to the conviction; (3) the similarity between the prior crime and the

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probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

(b) Time limit. Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.

(c) Other limitations. Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:

(1) the conviction has been reversed or vacated;

(2) the conviction has been the subject of a pardon; or

(3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.

conduct at issue in the instant case; (4) the importance of the witness's testimony; and (5) the centrality of the witness's credibility." *King v. State*, 407 Md. 682, 700-01 (2009) (relying on *Jackson v. State*, 340 Md. 705, 717 (1995)).

B. Analysis

The trial court did not abuse its discretion in determining that the probative value of Eludire's prior conviction outweighed the risk of unfair prejudice and allowing the State to use that conviction for impeachment purposes. The parties agreed that possession with intent to distribute a controlled dangerous substance was an impeachable offense. *See Brewer v. State*, 220 Md. App. 89, 108 (2014). The court found that the impeachment value of Eludire's prior conviction had bearing on his ability to be truthful. There was no dispute that only a short time had elapsed since the prior conviction. The court determined that the charges involved in the two cases were not the same. The instant case involved weapons and ammunition charges and the prior case involved a drug possession conviction. Lastly, the court recognized that this was essentially a credibility case between Eludire and the detectives. As our Supreme Court has stated, "[w]here credibility is the central issue, the probative value of the impeachment is great, and thus weighs heavily against the danger of *unfair* prejudice." *Jackson*, 340 Md. at 721 (emphasis in original). For these reasons, we perceive no abuse of discretion in the trial court's decision to permit the State to impeach Eludire's credibility with evidence of his prior conviction.

Lastly, we pause briefly to address Eludire's argument that the prejudice he suffered was intensified because there was no limiting instruction to tell the jury the prior conviction could be considered only for impeachment purposes. Eludire never requested such an

instruction. Maryland Rule 4-325(e) provides that "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." After the jury was instructed, the trial judge asked if counsel needed to approach before closing arguments, and both attorneys responded, "[n]o, Your Honor." No objection to the instructions was lodged. Thus, Eludire's argument with respect to the limiting instruction is not before us.

II.

Eludire contends that he should not have received three separate convictions for possession of ammunition by a prohibited or disqualified person. He argues that the proper unit of prosecution was not used and, as a result, all but one of his possession of ammunition convictions must be vacated. He also maintains that the fifth count of the indictment set forth a charge under an entirely inapplicable statute. Alternatively, he asserts that the three possession of ammunition convictions should merge under the required evidence test, the rule of lenity, or principles of fundamental fairness.

A. The Possession of Ammunition Charges

Eludire was charged with numerous crimes including, but not limited to, one count of illegal possession of a firearm and the following three counts pertaining to possession of ammunition:

> FIFTH COUNT
>
> …the aforesaid DEFENDANT(S)…did **POSSESS** ammunition, to wit: **POLYMER 80 INC. PF940V2 – 9MM LUGER SEMI AUTOMATIC PISTOL – SERIAL # NONE**, being prohibited from possessing a regulated firearm under PS 5-133(b) and PS 5-133(c), in violation of Public Safety

Article, Section 5-133.1 of the Annotated Code of Maryland … **[PS 5-133.1] 1 1285**

* * *

TENTH COUNT

…the aforesaid DEFENDANT(S)…did **POSSESS** ammunition, to wit: **15 WINCHESTER CARTRIDGES, CALIBER 9MM LUGER, FULL METAL JACKETS**, being prohibited from possessing a regulated firearm under PS 5-133(b) and PS 5-133(c), in violation of Public Safety Article, Section 5-133.1 of the Annotated Code of Maryland …
[PS 5-133.1] 1 1285

ELEVENTH COUNT

…the aforesaid DEFENDANT(S)…did **POSSESS** ammunition, to wit: **6 AGUIGA CARTRIDGES, CALIBER 9MM LUGER, FULL METAL JACKETS**, being prohibited from possessing a regulated firearm under PS 5-133(b) and PS 5-133(c), in violation of Public Safety Article, Section 5-133.1 of the Annotated Code of Maryland… **[PS 5-133.1] 1 1285**

At trial, Detective Walp testified that there were 20 cartridges in the magazine and one in the chamber of the gun found in Eludire's car. There were two different brands of cartridges, but all of them were "the same type[.]" The firearms examiner's report identified the 21 cartridges as including 15 Winchester cartridges and 6 Aguila cartridges.[4]

Without objection from either party, the verdict sheet distinguished the three possession of ammunition charges as follows:

QUESTION 4. POSSESSION OF AMMUNITION BY A DISQUALIFIED PERSON (POLYMER 80 9MM SEMI-AUTO PISTOL)

[4] Eludire notes that the indictment and verdict sheet referenced "AGUIGA" cartridges and suggests that this appears to be a typographical error because the proper name of the ammunition company is Aguila Ammunition. The forensic expert who examined the gun and ammunition identified the six cartridges as "AGUILA" cartridges. No issue pertaining to the proper name of the manufacturer of the ammunition was raised below.

QUESTION 5. POSSESSION OF AMMUNITION BY A PROHIBITED PERSON (15 WINCHESTER 9MM LUGER FULL METAL JACKETS)

QUESTION 6. POSSESSION OF AMMUNITION BY A PROHIBITED PERSON (6 AGUIGA CARTRIDGES 9MM LUGER, FULL METAL JACKET)

B. The Fifth Count of the Indictment

In the possession of ammunition charge set forth in the fifth count of the Indictment, the State appears to allege that the gun itself was ammunition. Section 5-133.1 of the Public Safety Article ("PS") defines "ammunition" as "a cartridge, shall, or any other device containing explosive or incendiary material designed and intended for use in a firearm." PS § 5-133.1(a). Eludire argues that "the evidence was plainly insufficient to support [his] conviction under Count 5[,]" but he acknowledges that no objection on that ground was raised in the circuit court.[5] Eludire also argues that his conviction under Count 5 should be vacated because he was charged and convicted under an inapplicable statute and the resulting sentence was illegal.[6] Lastly, he argues that his conviction should be vacated because his attorney "was obviously ineffective for not moving for judgment of acquittal."

[5] In an omnibus motion filed in the circuit court on August 22, 2019, Eludire moved to have the case dismissed "because the Criminal Information and/or Indictment is defective[.]" That motion did not point to any particular defect in the indictment. At no time after the motion was filed did Eludire seek to have that issue addressed by the court.

[6] This Court has the power to correct an illegal sentence. Under Maryland Rule 4-345(a), such an error may be raised and corrected "at any time" and cannot be waived by the defendant's acquiescence.

As Eludire acknowledges, defense counsel did not raise this issue either before or during the trial. Maryland Rule 4-324(a) provides that a defendant requesting judgment of acquittal "shall state with particularity all reasons why the motion should be granted." At the close of the State's case, defense counsel made a motion for judgment of acquittal but, in support of that motion, stated "I would submit at this juncture I think there probably is enough to go to the factfinder." At the close of all the evidence, defense counsel again made a motion for judgment of acquittal. There was some discussion about the sixth count of the indictment, and the court ultimately granted judgment on that count, but no argument was raised with respect to the fifth count.

Maryland Rule 4-252(a) and (b) require that a "defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense" must be raised by motion filed "within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c)[.]" Eludire does not argue that he raised any defect in the charging document within the 30-day period; however, when a charging document fails to show jurisdiction in the court or to charge an offense, the defect may be raised at any time. Md. Rule 4-252(a)(2), (d). These exceptions "amount to the same thing, for if a charging document fails to charge a cognizable crime, a court "lacks fundamental subject matter jurisdiction to render a judgment of conviction[.]" *Shannon v. State*, 468 Md. 322, 328-29 (2020) (quoting *Williams v. State*, 302 Md. 787, 792 (1985)). In *Baker v. State*, 6 Md. App. 148, 151 (1969), we determined that a court exercising criminal jurisdiction does not have the power, in a jury trial, to allow a case to go to the jury, or to impose sentence, under an indictment which

charges no offense. *See also Williams v. State*, 302 Md. 787, 792 (1985) ("Manifestly, where no cognizable crime is charged, the court lacks fundamental subject matter jurisdiction to render a judgment of conviction, *i.e.*, it is powerless in such circumstances to inquire into the facts, to apply the law, and to declare the punishment for an offense.")

The question then is whether the defect in the fifth count of the charging document constituted a failure to charge an offense. Or, stated otherwise, did the fifth count charge Eludire with a cognizable crime. This is a question of law and, accordingly, we apply the non-deferential *de novo* standard of review. *Shannon*, 468 Md. at 335.

It is well established that a "charging document need not be flawless to vest a court with jurisdiction to adjudicate the charge; rather, the charging document must provide the defendant with notice of the nature of the charge and of the basic facts supporting the elements of that charge." *Id.* at 336. Here, Eludire was charged with violating PS § 5-133.1 by possessing ammunition after having been prohibited from possessing a regulated firearm under PS §§ 5-133(b) and (c). The fifth count specifically identified the ammunition allegedly possessed as a semi-automatic pistol. We note that this was the same pistol Eludire was charged with possessing in other counts of the charging document. It is beyond cavil that the pistol, in and of itself, did not meet the definition of ammunition set forth in the Public Safety Article. The actual ammunition recovered by the police consisted of 21 cartridges and they formed the basis of the possession of ammunition charges set forth in the tenth and eleventh counts of the indictment. Because the fifth count did not identify any ammunition that could have been possessed, it failed to charge Eludire with a cognizable crime and the court was without power to render a verdict or impose a sentence

under that count. Eludire's conviction and sentence for possession of ammunition under the fifth count of the indictment must be vacated.

C. Unit of Prosecution and Merger

We are left to consider, then, the two remaining convictions for possession of ammunition that were set forth in the tenth and eleventh counts of the indictment. Eludire urges that the sentences for those charges must be vacated, whether viewed as an issue of unit of prosecution or under traditional merger principles. We agree.

"We apply the 'normal rules of statutory construction in determining the legislative intent regarding the proper unit of prosecution and the appropriate unit of punishment in respect to violations of any criminal statute.'" *Handy v. State*, 175 Md. App. 538, 576-77 (quoting *Melton v. State*, 379 Md. 471, 478 (2004)). Under those rules, we first look to the text of the statute, giving the words used "their ordinary and usual meaning." *Id.* at 577. "If the statute is not ambiguous, we generally will not look beyond its language to determine legislative intent." *Id.* If, on the other hand, the language is ambiguous, we consider the statute in light of its objectives and purpose and may "consider the particular problem or problems the legislature was addressing and the objectives it sought to attain." *Id.*

In addition to considering the specific words of the statute, we may consider the general history and prevailing mood of the legislature with respect to the type of criminal conduct involved. *See Randall Book Corp. v. State*, 316 Md. 315, 326-27 (1989). Further, in attempting to determine what the legislature intended to be the unit of prosecution, we may look to the penalty provided for each offense. If the maximum penalty permitted is

quite substantial, that fact may militate against an intent to create multiple units of prosecution. *Payne v. State*, 243 Md. App. 465, 498 (2019) (quoting *Randall Book Corp.*, 316 Md. at 326-27).

"The merger doctrine derives from the Fifth Amendment protection against double jeopardy afforded by the U.S. Constitution and Maryland common law and prohibits multiple punishments for the same offense." *Jones v. State*, 240 Md. App. 26, 44 (2019). A subset of the merger doctrine – the rule of lenity – "provides that two statutory offenses may not be separately punished if the Legislature intended for them to be punished in one sentence." *Id.* at 45. *See also Alexis v. State*, 437 Md. 457, 484-85 (2014) ("Two crimes created by legislative enactment may not be punished separately if the legislature intended the offenses to be punished by one sentence."). In *Walker v. State*, 53 Md. App. 171, 201 (1982), we explained:

> If the Legislature intended two crimes arising out of a single act to be punished separately, we defer to that legislated choice. . . .If the Legislature intended but a single punishment, we defer to that legislated choice. If we are uncertain as to what the Legislature intended, we turn to the so-called 'Rule of Lenity' by which we give the defendant the benefit of the doubt.

In deciding whether to apply the rule of lenity, "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][.]" *Alexis*, 437 Md. at 485-86 (quoting *Morris v. State*, 192 Md. App. 1, 39 (2010) (internal quotation marks and citations omitted)). If there is any doubt or ambiguity as to whether the Legislature intended multiple punishments, it must be resolved "in favor

of the accused, and against the State." *Handy*, 175 Md. App. at 578 (quoting *Cantine v. State*, 160 Md. App. 391, 413 (2004)).

All three of the counts charging Eludire with possession of ammunition by a person prohibited from possessing a regulated firearm were based on PS § 5-133.1, which has not been amended since it was enacted in 2013. The charges arose out of the same transaction. One of the cartridges was located in the chamber and the other cartridges were in the magazine of the gun recovered from Eludire's car. The State suggests that it could have charged Eludire with 21 counts of illegal possession of ammunition, one count for each cartridge recovered by the police. In its Brief, the State asserts that it "did not charge Eludire with 21 counts of illegal possession of ammunition," but "chose to go forward on two counts for the two different manufacturers of the ammunition." Although the cartridges that formed the basis for the tenth and eleventh counts of the indictment were made by two different manufacturers, they were all "Caliber 9mm luger, full metal jacket" cartridges.

As we have already noted, the statute defines ammunition to mean "a cartridge, shell, or any other device containing explosive or incendiary material designed and intended for use in a firearm." PS § 5-133.1(a). A person who violates the section "is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $1,000 or both." In defining ammunition to mean "a" cartridge, shell, or other device, it could be argued that the Legislature intended the unit of prosecution to be each individual cartridge, shell or other device possessed by an accused. On the other hand, the statute's definition of ammunition provides that the cartridge, shell or other device must, in addition to containing explosive or incendiary material, be

designed and intended for use in "a" firearm. The use of the phrase "a firearm" might suggest that all ammunition that can be used in a particular firearm would constitute the unit of prosecution. There is nothing in the language of the statute to suggest that the unit of prosecution is the manufacturer of a cartridge, shell, or other device. Our review of the legislative history of the statute did not reveal anything to suggest the Legislature's intent with respect to the unit of prosecution.

In light of the ambiguity as to whether the Legislature intended multiple punishments for each individual cartridge, shell, or device recovered from an accused, we resolve this issue in Eludire's favor and against the possibility of multiple punishments. *Cunningham v. State*, 318 Md. 182, 185-86 (1989) (quoting *Randall Book Corp.*, 316 Md. at 327). Under the rule of lenity, a court "may merge a conviction for a statutory offense with another conviction for sentencing purposes where there is no indication that the General Assembly intended for a defendant to receive a separate sentence for each offense. *Williams v. State*, 478 Md. 99, 129 (2022). We therefore hold that Eludire's conviction for possession of ammunition by a person prohibited from possessing a regulated firearm,

as set forth in the eleventh count of the Indictment, must merge for sentencing purposes into his conviction under the tenth count of the Indictment.

CONVICTION AND SENTENCE IMPOSED FOR CRIME CHARGED IN COUNT FIVE OF THE INDICTMENT VACATED; SENTENCE IMPOSED FOR CRIME CHARGED IN COUNT ELEVEN OF THE INDICTMENT VACATED; JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN ALL OTHER RESPECTS; COSTS TO BE PAID ONE HALF BY APPELLANT AND ONE HALF BY MAYOR AND CITY COUNCIL OF BALTIMORE CITY.