UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0117

September Term, 2015

GREGORY ALLEN SHUEY

v.

STATE OF MARYLAND

Woodward,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 6, 2016

Following an overdose for which paramedics were called, appellant Gregory Shuey was charged with possession of a controlled dangerous substance and possession of controlled paraphernalia in the Circuit Court for Washington County. Shuey moved to dismiss the charges, arguing that the recently amended Good Samaritan statute, Md. Code (2001, 2008 Repl. Vol., 2014 Supp.), Criminal Procedure Article ("C.P.") § 1-210, precluded prosecution. The court disagreed, and, on March 2, 2015, convicted Shuey of paraphernalia possession on an agreed statement of facts.[1] After receiving a sentence of four years' imprisonment with all but one year suspended, Shuey appealed on March 24, 2015, and now presents two questions for our review:

1. "Does the 2014 version of CP § 1-210 implicitly extend immunity from prosecution under CL § 5-620 when the context and legislative history indicate that the legislative intent was to encourage bystanders to seek medical assistance for a drug-related medical emergency by, *inter alia,* protecting the person in distress from being prosecuted for drug or paraphernalia possession?"

2. "Does the amended 2015 version of CP § 1-210 apply to this case, even though it was enacted while this appeal was pending, because the provision is remedial and procedural?"

For the following reasons, we reverse the judgment of the circuit court, and vacate Shuey's sentence for controlled paraphernalia possession.

[1] The State *nol prossed* the charge for possession of a controlled dangerous substance.

BACKGROUND

Shuey does not contest the sufficiency of the evidence. Accordingly, we need only recite a summary of the facts that gave rise to this prosecution, or that may be necessary to the resolution of issues raised in this appeal. *See Martin v. State*, 165 Md. App. 189, 193 (2005) (citing *Whitney v. State,* 158 Md. App. 519, 524 (2004)). At trial, the parties proceeded on an agreed statement of facts that described the circumstances of Shuey's arrest.

Around 10:30 PM on November 26, 2013, Patricia Ann Barnhart called 9-1-1 to report that her son, Shuey, was unconscious in her home due to what she believed was a heroin overdose. Officer Samantha Reese of the Hagerstown City Police Department was dispatched to the house to assist the Community Response Service. When Reese arrived at the residence, Shuey was unconscious, seated on a chair near the kitchen table. An aluminum foil wrapper containing white powder and a hypodermic syringe with residue inside were found next to Shuey. Shuey regained consciousness and told Reese that the white powder was heroin and that he had injected himself with the heroin using the hypodermic needle. Reese confiscated the syringe and white power, which was tested and confirmed to be heroin, and Shuey was transported to an acute care facility for medical attention.

That night, Shuey was arrested and charged with possession of controlled paraphernalia and possession of a controlled dangerous substance. The parties agreed that all of the evidence in the case was the result of the emergency services call made by

Shuey's mother after he was found unconscious at his kitchen table because of a suspected heroin overdose.

On January 5, 2015, the court held a hearing on Shuey's motion to dismiss. Shuey argued that the General Assembly's recent enactment of amendments to the Good Samaritan statute, C.P. § 1-210, barred the State from prosecuting him for possession of heroin or for possession of paraphernalia. He acknowledged that, although C.P. § 1-210 specifically exempted prosecution under Md. Code (2002, 2012 Repl. Vol., 2014 Supp.), Criminal Law Article ("C.L.") § 5-619 for "drug paraphernalia," it did not mention C.L. § 5-620, which prohibits the possession of "controlled paraphernalia."[2] Notwithstanding that omission, Shuey urged the court to read C.P. § 1-210 as implicitly providing immunity from prosecution under C.L. § 5-620 because, in this case, both statutes prohibit the same conduct, and he violated the statutes on the same set of underlying facts.

In response, the State *nol prossed* the heroin possession charge under C.L. § 5-601(a)(1), but argued that the remaining paraphernalia charge was valid because C.L. § 5-620 was not included in the immunity provisions of C.P. § 1-210.[3] The circuit court agreed with the State, and denied Shuey's motion to dismiss. On March 2, 2015, Shuey

[2] The relevant statutory text is discussed in detail *infra*, pages 6-11.

[3] Shuey was able to benefit from the immunity provisions of the Good Samaritan law, even though Shuey's conduct occurred in 2013 and the amendments to the law did not take effect until 2014, because he had not been tried at the time the amendments took effect.

pled not guilty on an agreed statement of facts. He was convicted of possession of controlled paraphernalia under C.L. § 5-620, and sentenced to four years' incarceration with three years suspended. On March 24, 2015, Shuey filed a notice of appeal.

DISCUSSION

Shuey argues that allowing prosecution for possession of controlled paraphernalia creates an illogical result that does not comport with the purpose of C.P. § 1-210. Shuey contends that the General Assembly intended to remove the fear of prosecution for paraphernalia in order to encourage people to seek medical assistance for drug-related emergencies. By precluding prosecution under C.L. § 5-619, but allowing prosecution under C.L. § 5-620, the function of the Good Samaritan statute is impeded because victims of drug abuse will still fear prosecution under § 5-620. Alternatively, Shuey argues that his conviction must be vacated because a later revision made to C.P. § 1-210—precluding prosecution under C.L. § 5-620—should be given retroactive effect. The State contends that the pre-2015 version of C.P. § 1-210 statute, by its literal text, does not grant immunity from prosecution for possession of controlled paraphernalia (§ 5-620); the language is clear and must be applied as written. Further, the State argues that the 2015 amendments to the statute are substantive, not remedial or procedural, and, thus, they cannot apply while Shuey's case is pending on appeal.

"The interpretation of a statute is a question of law, which we consider *de novo.*" *Harrison-Solomon v. State*, 442 Md. 254, 265 (2015) (citing *Maryland–Nat'l Capital Park & Planning Comm'n v. Anderson,* 395 Md. 172, 181 (2006)). When interpreting a

statute, a court's goal is "to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied." *Seal v. State*, 447 Md. 64, 70-71 (2016) (quoting *Ray v. State,* 410 Md. 384, 404 (2009)). "If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction." *Espina v. Jackson*, 442 Md. 311, 322 (2015) (quoting *Bd. of County Com'rs of St. Mary's County v. Marcas, L.L.C.*, 415 Md. 676, 685 (2010)).

However, when the words of a statute are clear and unambiguous when viewed in isolation, but "become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process." *Espina*, 442 Md. at 322. Indicia of legislative intent include: "a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal[.]" *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 515 (1987).[4] We recognize that "[i]n every case, the statute must be given a reasonable interpretation, not one that is absurd,

[4] In *Kaczorowski*, the General Assembly passed legislation that was intended to, but did not, correct a problem with the formation of Maryland development authorities. *Kaczorowski*, 309 Md. at 507-10. The Court of Appeals refused to adopt an overly literal interpretation of statutory language that would have frustrated the objective of the legislation. *Id.* at 519-20. Instead, the Court looked to the purpose behind the statute to remedy a legislative oversight. *Id.*

illogical, or incompatible with common sense." *Lockshin v. Semsker*, 412 Md. 257, 276-77 (2010) (Citations omitted). With these precepts in mind, we turn to the statutes at issue in this case.

Maryland is one of thirty-four states that have a Good Samaritan law that protects substance abusers from prosecution if they report or experience a medical emergency. *See Good Samaritan Overdose Prevention Laws*, Prescription Drug Abuse Policy System (February 2016), *available at* http://lawatlas.org/files/upload/20160226_Good%20Samaritan_EssentialInformation_PDAPS3.pdf (last accessed June 23, 2016). Maryland first enacted its Good Samaritan statute, C.P. § 1-210, in 2009, and in its initial form, seeking assistance for a medical emergency after ingesting alcohol or drugs was only a mitigating factor for any subsequent criminal prosecution.[5] *See* 2009 Laws, ch. 714, § 1.

In 2014, the General Assembly amended C.P. § 1-210 to address inadequacies of the earlier provision. The bill's lead sponsor, Delegate Jon S. Cardin, described the rationale behind amending the statute, noting that the leading cause of accidental death is drug and alcohol overdose, but that death is preventable and overdose is reversible if aid is given in a timely fashion. *Hearing on H.B. 416 Before the H. Judiciary Comm.*, 2014 Session of the Maryland General Assembly (Feb. 11, 2014), *video recording available at* http://mgahouse.maryland.gov/mga/play/23b1e26f03ef482b9fb5c95b815d968d/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=4075318. He identified fear of prosecution as the main barrier to the receipt of quick aid for overdose victims, because

[5] This is now reflected in subsection (a) of C.P. § 1-210.

the only persons present at the scene of an overdose are reluctant to call paramedics for fear of being arrested themselves. *Id.*

As amended, C.P. § 1-210 addressed these fears by granting immunity from prosecution to both the person reporting the medical emergency and the person experiencing the medical emergency for certain offenses, which were incorporated by reference to their sections in the Criminal Law Article. This immunity was granted with respect to possession of a controlled dangerous substance (C.L. § 5-601), possession of drug paraphernalia (C.L. § 5-619), underage possession of alcohol (C.L. § 10-114), obtaining alcohol for underage consumption (C.L. § 10-116), and furnishing alcohol to minors or allowing underage consumption (C.L. § 10-117). Omitted from this laundry list was C.L. § 5-620, a statute that criminalizes possession of controlled paraphernalia. At the time of Shuey's prosecution, C.P. § 1-210(b) provided:

> A person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal prosecution for a violation of §§ 5-601, 5-619, 10-114, 10-116, and 10-117 of the Criminal Law Article if the evidence for the criminal prosecution was obtained solely as a result of the person's seeking, providing, or assisting with the provision of medical assistance.

Subsection (c) provided:

> A person who experiences a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal prosecution for a violation of §§ 5-601, 5-619, 10-114, 10-116, and 10-117 of the Criminal Law

> Article if the evidence for the criminal prosecution was obtained solely as a result of another person's seeking medical assistance.[6]

In 2015, the General Assembly amended § 1-210 to provide immunity from arrest or charge (in addition to prosecution) to a person who experienced the medical emergency or the person who sought assistance. *See* 2015 Laws, ch. 375 (S.B. 654). Significantly, the 2015 amendment added C.L. § 5-620 to the sections of the Criminal Law Article that were precluded from arrest, charge, or prosecution.

In this case, Shuey was found in possession of heroin paraphernalia. The Criminal Code contains two sections that criminalize possession of paraphernalia. C.L. § 5-619 prohibits the use of "drug paraphernalia" and the possession of it with the intent to use. C.L. § 5-619(c)(2) provides:

> Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to:
>
> (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or
>
> (ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

Similar to § 5-619, albeit using different language, C.L. § 5-620 prohibits the possession of controlled paraphernalia with intent to use. C.L. § 5-620(a)(2) provides: "Unless authorized under this title, a person may not . . . possess or distribute *controlled paraphernalia* under circumstances which reasonably indicate an intention to use the

[6] Prior versions of H.B. 416 characterized a medical emergency as a "drug overdose." The General Assembly broadened the protections by replacing the term "overdose" with "medical emergency."

controlled paraphernalia for purposes of illegally administering a controlled dangerous substance." (Emphasis added). Both sections contain language that guides the fact finder in determining the intent of the possessor. *See* C.L. §§ 5-619(c)(2), -620(b).

The definition of "drug paraphernalia" is broad and includes nearly every device or substance that could be used in the preparation or delivery of a controlled dangerous substance.[7] C.L. § 5-101(p). This includes a "container used [for]. . . packaging small

[7] "Drug paraphernalia" includes:

> (i) a kit used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
> (ii) a kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled dangerous substance;
> (iii) an isomerization device used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled dangerous substance;
> (iv) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled dangerous substance;
> (v) a scale or balance used, intended for use, or designed for use in weighing or measuring a controlled dangerous substance;
> (vi) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used, intended for use, or designed for use in cutting a controlled dangerous substance;
> (vii) a separation gin or sifter used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
> (viii) a blender, bowl, container, spoon, or mixing device used, intended for use, or designed for use in compounding a controlled dangerous substance;

(Continued . . .)

quantities of a controlled dangerous substance;" and "a hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled dangerous substance into the human body[.]" C.L. § 5-101(p)(2)(ix), (xi). The definition of "controlled paraphernalia," on the other hand, is more narrow, and

(. . . continued)

> (ix) a capsule, balloon, envelope, or other container used, intended for use, or designed for use in packaging small quantities of a controlled dangerous substance;
> (x) a container or other object used, intended for use, or designed for use in storing or concealing a controlled dangerous substance;
> (xi) a hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled dangerous substance into the human body; and
> (xii) an object used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body such as:
>
> 1. a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without screen, permanent screen, hashish head, or punctured metal bowl;
> 2. a water pipe;
> 3. a carburetion tube or device;
> 4. a smoking or carburetion mask;
> 5. an object known as a roach clip used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
> 6. a miniature spoon used for cocaine and cocaine vials;
> 7. a chamber pipe;
> 8. a carburetor pipe;
> 9. an electric pipe;
> 10. an air-driven pipe;
> 11. a chillum;
> 12. a bong; and
> 13. an ice pipe or chiller.

C.L. § 5-101(p).

includes only syringes, packaging for individual use, and adulterants and diluents.[8] *See* C.L. § 5-101(h). Thus, the definition of "drug paraphernalia" wholly subsumes the definition of "controlled paraphernalia."

Legislative history elucidates the reasoning behind the enactment of two, similar statutes. Prior to the recodification of Article 27 into the Criminal Law and Criminal Procedure Articles, §§ 5-619 and 5-620 were codified at §§ 287A and 287(d) respectively. A form of C.L. § 5-620 has been present in Maryland law since 1935 and prohibited the possession of any "hypodermic syringe or needle or any instrument or implement adapted for" the illegal administration of controlled dangerous substances "by hypodermic injections," and placed restrictions on packaging of controlled dangerous substances for individual use and on the use of adulterants.

C.L. § 5-619 (formerly Art. 27 § 287A) was a more recent enactment, authorized in 1980 as "an emergency measure[.]" The statute was based on the "Model Drug Paraphernalia Act" developed by the U.S. Drug Enforcement Administration. As noted by the Attorney General, in an opinion published in 1981, "[§ 5-619] is a much broader

[8] C.L. § 5-101(h) defines controlled paraphernalia as:

> (1) a hypodermic syringe, needle, or any other object or combination of objects adapted to administer a controlled dangerous substance by hypodermic injection;
>
> (2) a gelatin capsule, glassine envelope, or other container suitable for packaging individual quantities of a controlled dangerous substance; or
>
> (3) lactose, quinine, mannite, mannitol, dextrose, sucrose, procaine hydrochloride, or any other substance suitable as a diluent or adulterant.

statute than [§ 5-620]." 66 Md. Op. Att'y Gen. 125, 127. "[§ 5-619], unlike [§ 5-620], covers virtually every item of drug paraphernalia that can be used in connection with *any* of the many and diverse controlled dangerous substances." *Id.* at 127-28. This contrasts with the controlled paraphernalia provision, which addresses paraphernalia that can be used principally in connection with injectable narcotics. *See* C.L. § 5-620. The Attorney General's opinion went on to conclude that the enactment of C.L. § 5-619 did not impliedly repeal C.L. § 5-620 because "they are not identical statutes applicable to identical offenses[,]" and it is possible "to give both laws effect."[9] *Id.* at 128. However, in our view, the fact that the statutes are not identical does not mean that they do not contain some substantially overlapping prohibitions, provisions that are factors in this case's determination.

Because the fear of prosecution is what discourages people from calling emergency services, we must consider the penalty for a violation of each statute. C.L. § 5-620(d) provides, for offenses not involving marijuana, that "a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not

[9] Our opinion does not conflict with the Attorney General's conclusion. Although not applicable to the charges against Shuey, we note that certain subsections of §§ 5-619 and 5-620 criminalize disparate conduct related to paraphernalia. For example, C.L. § 5-619(e) contains language not found in C.L. § 5-620, prohibiting a person from advertising "under circumstances where one reasonably should know, that the purpose of the advertisement, wholly or partly, is to promote the sale or delivery of drug paraphernalia." C.L. § 5-620(a) prohibits obtaining or attempting to obtain controlled paraphernalia by "fraud, deceit, misrepresentation, or subterfuge," a prohibition not present in C.L. § 5-619. Shuey was charged with possession of paraphernalia, conduct prohibited by both statutes.

exceeding 4 years or a fine not exceeding $25,000 or both." C.L. § 5-619 provides "A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to: (i) for a first violation, a fine not exceeding $500; and (ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding $2,000 or both." Thus, the penalty for a violation of C.L. § 5-620 is more severe than the penalty for a violation of C.L. § 5-619.

The difficulty we confront here is that the General Assembly provided safeguards from prosecution under the broader "drug paraphernalia" statute, C.L. § 5-619, but did not clearly articulate those same protections for its counterpart, C.L. § 5-620, even though in numerous circumstances, both laws prohibit identical conduct. Shuey argues that we must adopt a contextual interpretation over the literal language of C.P. § 1-210, because a plain language interpretation is inconsistent and leads to an absurd result. This context, Shuey contends, indicates that the General Assembly broadly intended to protect individuals from prosecution for paraphernalia such as hypodermic needles if the evidence of possession was obtained after the person sought help for a medical emergency. The State contends that the literal language of C.P. § 1-210 statute does not grant immunity from prosecution for possession of controlled paraphernalia, because the language "is clear and must be applied as written[.]"

We agree with the appellant—the State's literal reading of C.P. § 1-210 leads to an absurd result. In arguing that the omission of immunity for prosecution of possession of controlled paraphernalia was intentional instead of an oversight, the State ignores the

purpose of the statute and the consequences that its interpretation would have. An analysis of legislative purpose includes a consideration of "the ends to be accomplished, [and] the evils to be remedied." *Seal*, 447 Md. at 70-71 (quoting *Ray*, 410 Md. at 404). By enacting C.P. § 1-210, the General Assembly sought to reduce the number of deaths resulting from drug-induced medical emergencies, i.e. drug and alcohol overdoses, by removing a barrier to seeking help—the fear of prosecution for the possession of controlled dangerous substances and related paraphernalia.

Following Shuey's apparent overdose, he was in possession of a foil wrapper filled with heroin powder and a hypodermic syringe containing heroin residue—items that constitute both drug paraphernalia and controlled paraphernalia. Shuey faced the exact situation that C.P. § 1-210 was designed to prevent—prosecution for possession of paraphernalia after a medical emergency. Allowing prosecution under C.L. § 5-620 for identical conduct immunized under C.P. § 1-210 and C.L. § 5-619 frustrates C.P. § 1-210's purpose—to incentivize people experiencing a medical emergency but in possession of paraphernalia to seek medical assistance.

The State characterizes the literal language of the statute as "plain." However, as the Court of Appeals has stated, "[t]he plain meaning rule 'is not a complete, all-sufficient rule for ascertaining a legislative intention....'" *Rose v. Fox Pool Corp.*, 335 Md. 351, 359-60 (1994) (quoting *Morris v. Prince George's County*, 319 Md. 597, 603-04 (1990)) (Citation omitted). Instead, we consider the "plain" language of the statute within its statutory scheme and in view of subsequent legislation.

The State contends that the omission of C.L. § 5-620 was a deliberate choice by the General Assembly, no different from its omission of immunity for possession of a controlled, dangerous substance with intent to distribute. According to the State:

> [T]he Legislature obviously had to make certain judgment calls about which crimes to include in the grant immunity in order to balance the desire to prevent overdoses with the need to enforce the criminal laws. It included, for example, possession of CDS, but excluded possession with intent to distribute, even though in many cases, both charges might available. By the same token, the Legislature included possession of drug paraphernalia, but excluded the more serious offense (as judged by the penalty provisions) of possession of controlled paraphernalia.

We find the comparison to possession with intent to distribute to be inapt. The crime of possession with intent to distribute a controlled, dangerous substance is distinct from simple possession and from possession of paraphernalia. By its nature, distribution involves the transfer of potentially dangerous substances to others, i.e. to those not experiencing or reporting a medical emergency.[10] It is easy to see why the General Assembly did not include possession with intent to distribute in C.P. § 1-210's list of immunized provisions—the proliferation of drug abuse and addiction through substance distribution cuts against the purpose of the statute—to save lives. On the other hand, it is not so clear why one provision immunizing liability for possession of paraphernalia was included in C.P. § 1-210, while a provision that prohibits identical conduct was not. In fact, it creates situations that directly undermine the purpose of C.P. § 1-210, e.g., when a

[10] C.L. § 5-602 prohibits a person from distributing or dispensing a controlled dangerous substance, and from possessing "a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance."

person experiencing or reporting a drug-related medical emergency chooses not to call 9-1-1 for fear of arrest under C.L. § 5-620, even though he or she is immune from prosecution under C.L. § 5-619.

In interpreting C.P. § 1-210, we may consider amendments that were contemplated as the provision passed through the General Assembly, and the statute's relationship to earlier and subsequent legislation as persuasive evidence of legislative purpose. *Maryland Nat'l Bank v. Pearce,* 329 Md. 602, 619 (1993); *see Kaczorowski*, *supra*, 309 Md. at 515. The legislative history of the 2014 amendments makes it clear that the General Assembly intended to provide immunity for possession of paraphernalia after a drug overdose. It is not the case that a provision granting immunity from prosecution under C.L. § 5-620 was proposed but ultimately removed from the final version of the bill nor is there any indication that § 5-620 was even considered during the debate on the bill in 2014. In the hearings on H.B. 416, proponents only mentioned paraphernalia to state that the bill would prohibit prosecution for paraphernalia possession, a purpose opponents did not contest. *See Hearing on H.B. 416 Before the H. Judiciary Comm.*, 2014 Session of the Maryland General Assembly (Feb. 11, 2014), *video recording available at* http://mgahouse.maryland.gov/mga/play/23b1e26f03ef482b9fb5c95b815d968d/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=4075318; *Hearing on H.B. 416 Before the Sen. Judicial Proc. Comm.*, 2014 Session of the Maryland General Assembly (Mar. 18, 2014), *video recording available at* http://mgahouse.maryland.gov/mga/play/ba92c74e1f4f4df2add206e289301530/?catalog/03e481c7-8a42-4438-a7da-

93ff74bdaa4c&playfrom=299882. In short, nothing in the legislative history of C.P. § 1-210 indicates that the General Assembly intended to authorize prosecution for any drug paraphernalia, controlled or otherwise, in the context of a medical emergency. *See In re Nancy H.*, 197 Md. App. 419, 427 (2011) (applying a similar analysis to C.P. §§ 10-106 and 4-202.2).

When the General Assembly returned in 2015, it quickly amended C.P. § 1-210 to include immunity from prosecution for a violation of C.L. § 5-620.[11] In the words of the 2015 bill's sponsor, Senator C. Anthony Muse, the bill "add[ed] a missing paraphernalia charge" to the sections immune from prosecution. *Hearing on S.B. 654 Before the Sen. Judicial Proc. Comm.*, 2015 Session of the Maryland General Assembly (Mar. 4, 2015), *video recording available at* http://mgahouse.maryland.gov/mga/play/154e90ea8c134b8bb5c90c04dc0fa471/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=12405313. In this case, we are dealing with two acts, passed in successive years, concerning the same subject matter. *Kaczorowski*, 309 Md. at 516 (Citations omitted). We find persuasive the fact that C.P. § 1-210 was amended shortly after the enactment of the 2014 legislation to bar prosecution under C.L. § 5-620 in the

[11] The State argues that the title of the 2015 bill suggests that the alteration was a substantive addition, not a correction to previous legislation. However, in our view, the 2015 amendment can be both. Although a subsequent legislative amendment of a statute is not controlling as to the meaning of the prior law, nevertheless, subsequent legislation can be considered helpful to determine legislative intent. *Chesek v. Jones*, 406 Md. 446, 462 (2008) (citing *Reier v. State, Dept. of Assessments and Taxation,* 397 Md. 2, 35 (2007)). The 2015 amendment indicates that the General Assembly intended § 1-210 to immunize prosecution for paraphernalia in the context of a medical emergency, without regard to a specific paraphernalia statute.

context of a medical emergency. In our view, this indicates that the General Assembly intended to immunize possession of drug and controlled paraphernalia, but realized that it had failed to do so with the 2014 bill, and corrected the issue the very next year. *See Kaczorowski*, 309 Md. at 519-20. Considering the evils intended to be remedied, we believe that the legislature's omission in 2014 is more appropriately seen as an oversight, not as a deliberate choice. *See Kaczorowski*, 309 Md. at 519; *In re Nancy H.*, 197 Md. App. at 427.

The State also argues that excluding C.L. § 5-620 was not "illogical" or "inconsistent" with the purpose of C.P. § 1-210 because, "although the two offenses [§§ 5-619 and 5-620] are similar, they do not overlap entirely." As mentioned in footnote 9, *supra*, we recognize that there is some conduct prohibited by C.L. § 5-620 that is not prohibited by C.L. § 5-619 and vice versa.[12] However, these dissimilar provisions are not at issue here. In the instances where these two paraphernalia statutes prohibit identical conduct, it would be absurd to deny immunity from prosecution under one but not the other.

Finally, the State contends that the language of C.P. § 1-210 indicates that the purpose of the law was only to grant "limited" immunity from criminal prosecution in the case of a medical emergency. The State is correct in that the text of C.P. § 1-210 does not grant immunity for the wide range of criminal conduct that could occur before or

[12] For example, C.L. § 5-619 prohibits advertising paraphernalia, while C.L. § 5-620 prohibits obtaining paraphernalia through deceit or attempting to do so.

during a drug-related medical emergency. However, the State omits the fact that the statute does confer its "limited" immunity to the conduct for which Shuey was prosecuted—possession of heroin paraphernalia. In fact, the prohibition on possession of controlled paraphernalia focuses on instruments primarily utilized by abusers of opiate drugs such as heroin—a major cause of substance abuse death, and alleviating the fear of prosecution abusers of these drugs when they require medical assistance was the goal of the legislation. We would be remiss if we failed to point out that the penalties for controlled paraphernalia possession under § 5-620 are more severe than the penalties for possession under § 5-619; thus, its omission from C.P. § 1-210 further disincentives potential good Samaritans from seeking professional assistance. Plainly, C.P. § 1-210 cannot be given full effect if Shuey's prosecution under C.L. § 5-620 for possession of paraphernalia—conduct identical to that immune from prosecution under C.L. § 5-619—is upheld.

Because we resolve this issue through a consideration of legislative intent, we need not address Shuey's argument regarding the retroactive effect of the 2015 amendment to C.P. § 1-210. For the above reasons, we hold the General Assembly did not intend to permit prosecution under C.L. § 5-620 for possession of paraphernalia under the circumstances here because it would lead to an absurd result in the context of the

goals of C.P. § 1-210. Therefore, we reverse the conviction and vacate Shuey's sentence. *See Evans v. State*, 420 Md. 391, 414 (2011).

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY REVERSED. COSTS TO BE PAID BY WASHINGTON COUNTY.