Circuit Court for Harford County
Case No. C-12-CR-23-000594

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2152

September Term, 2023

LANDO THORPE

v.

STATE OF MARYLAND

Reed,
Shaw,
Zic,

JJ.

Opinion by Reed, J.

Filed: April 27, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The police pulled over Lando Leon Thorpe ("Appellant") and his passenger for speeding on Interstate 95. After smelling what they believed to be marijuana, officers conducted a search of the car and found a bag with a white substance under the hood of the car. Appellant was arrested and charged with possession of cocaine and related offenses.

Later, the State indicted Appellant and charged him with possession of fentanyl and handgun offenses, among other charges. After a bench trial in the Circuit Court for Harford County, the court found Appellant guilty of four counts: possession of five grams or more of fentanyl in violation of Maryland Code Annotated, Criminal Law ("CL") § 5-612 ("Count Two"), possession with intent to distribute fentanyl ("Count Three"), knowing possession with intent to distribute fentanyl ("Count Four"), and possession of fentanyl in violation of Criminal Law § 5-601 ("Count Five"). The court then sentenced Appellant under each count: as to Count Two, ten years of imprisonment with all but seven years suspended, with the first five years to be served without the possibility of parole; as to Count Three, ten years, all suspended, to run concurrently to the sentence imposed for Count Two; as to Count Four, ten years, all suspended, to run consecutively to the sentences previously imposed. The court also imposed five years of active probation.

Appellant filed a timely appeal and presents three questions for our review, which we distill into two[1]:

[1] Appellant's questions presented were originally phrased as follows:

I. Was the evidence sufficient to convict Mr. Thorpe of counts two through five where the State presented no evidence that Mr. Thorpe possessed the fentanyl recovered from under the hood of a rental car?

I. Was the evidence sufficient to sustain Appellant's convictions?

II. Under the rule of lenity, should the sentence imposed for possession with the intent to distribute fentanyl merge into the sentence imposed for possession of five or more grams of fentanyl?

For the following reasons, we affirm the judgment of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

On December 13, 2022, Officer Daniel McLhinney of the Maryland Transportation Authority Police was working in Harford County on Interstate 95. He observed a Nissan Altima with New York plates travelling 73 miles per hour in a 65 miles per hour zone and initiated a traffic stop. Officer McLhinney identified Appellant as the driver of the car along with a female passenger, Harris.[2]

At trial, Officer McLhinney noted Appellant had appeared nervous during the stop because "his hands were shaking." Appellant told the officer he was travelling back to his home in Hanover, Maryland after seeing his mother in New York. Officer McLhinney testified he smelled marijuana coming from the vehicle, which Harris said she had smoked.

II. Was the evidence sufficient to convict Mr. Thorpe of count four where the State offered no evidence that Mr. Thorpe knew that the substance found under the hood of the rental car was fentanyl?

III. Under the rule of lenity, should the sentence imposed on count three merge into the sentence imposed on count two?

[2] Ms. Harris' full name is not in the record.

Officer McLhinney also learned that the car was a rental.[3] The officer then returned to his car and called for backup to conduct a search of the Nissan.[4]

Three officers soon arrived, including a canine handler, and they asked Appellant and Harris to exit the car before conducting a search. After searching the passenger compartment, Officer McLhinney searched beneath the hood of the car. There, he found a plastic bag with a large block of a white powdery substance resting against the air filter and the battery. Officer McLhinney believed this powder to be cocaine.

After this discovery, Officer McLhinney arrested Appellant and Harris. After the arrest, Officer McLhinney found approximately $3,800.00 in cash in Appellant's satchel. The cash was in various denominations.[5] The drug-detecting canine did not alert positively to the cash. Appellant said he was using the cash to pay his rent.

The police towed the car from the scene and returned it to the rental facility.[6] Seven days later, an employee of the rental company found a handgun on the driver's side floor, directly under the steering wheel.[7]

[3] The State did not determine who rented the vehicle.

[4] Appellant did not contest the constitutionality of the search, so we assume, without deciding, that the stop and subsequent search were proper.

[5] Officer McLhinney testified that the money "wasn't in denominations that you would get from a bank. There were numerous denominations across the board from ones to, I believe, hundreds. And no rhyme or reason to the sequencing of the denominations."

[6] The car was towed to two different lots before making its way to the BWI facility. There was no information on the security present on those lots.

[7] The gun was not seen in the initial search by the officers on December 13, 2022, and was first noted when the employee saw it in plain view on the floor of the car.

Ultimately, the State indicted Appellant on eight offenses: importation into the State of Maryland of at least four grams of fentanyl, in violation of CL § 5-614 ("Count One"); possession of 5 grams or more of fentanyl, in violation of CL § 5-612 ("Count Two"); possession with intent to distribute fentanyl, in violation of CL § 5-602 ("Count Three"); knowing possession with intent to distribute fentanyl, in violation of CL § 5-608.1 ("Count Four"); possession of fentanyl, in violation of CL § 5-601 ("Count Five"); using, wearing, and transporting a firearm during and in relation to a drug trafficking crime, in violation of CL § 5-621(b)(2) ("Count Six"); wearing, carrying, and transporting a loaded handgun in a vehicle, in violation of CL § 4-203 ("Count Seven"); and wearing, carrying, and transporting a loaded handgun upon his person, in violation of CL § 4-203 ("Count Eight").

The case proceeded to a bench trial. The State called three witnesses. First, Officer McLhinney testified to the traffic stop and his observations. He also testified as an expert on the "identification, packaging, and sale of fentanyl." He opined that the quantity of drugs recovered, 99.86 grams, indicated Appellant's intent to sell the drug rather than use it personally. Bolstering this theory was the fact that Appellant had almost $3,800 on his person in odd denominations. Further, Officer McLhinney testified that drug dealers use rental vehicles "all of the time" either because the dealer does not possess a car, or they would prefer not to use their own vehicles during the commission of a crime. Officer McLhinney opined that the value of the fentanyl was about $10,000.

Next, Brooke Welsh of the Maryland State Police Forensic Science Division testified to the identity of the white powder. She identified the powder as fentanyl.[8] Lastly, Officer Wall of the Maryland Transportation Authority Police testified regarding the firearm found inside Appellant's rental car. Appellant elected not to testify or present a case.

The court found Appellant not guilty of Counts One, Six, Seven, and Eight, but guilty of Counts Two through Five. Appellant then filed a motion for a new trial, which the court denied after arguments before the sentencing hearing. The court then sentenced Appellant as follows: as to Count Two, ten years of imprisonment with all but seven years suspended, the first five of which were to be served without the possibility of parole; as to Count Three, ten years, all suspended, to run concurrently to the sentence imposed on Count Two; as to Count Four, 10 years, all suspended, to run consecutively to the sentences imposed on the previous counts. The court imposed a five-year period of supervised probation after Appellant's release from custody.

Appellant filed a timely appeal to this Court. Additional facts may be included as needed.

STANDARD OF REVIEW

When, as here, an action is tried without a jury, we "will review the case on both the law and the evidence." Md. Rule 8-131(c). We will not set aside the judgment of the

[8] On cross examination, Appellant inquired into the presence of 4ANPP in the tested portion of fentanyl, which Ms. Welsh agreed is used in the synthesis process of fentanyl and related opioids. Ms. Welsh could not say how much of the total mixture was fentanyl versus 4ANPP.

trial court unless "clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.*

When the legal sufficiency of evidence underlying a conviction is challenged, the question before this Court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457, (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 313 (1979)). "A trial court fact-finder, i.e., judge or jury, possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation' and this Court must give deference to all reasonable inferences the factfinder draws, regardless of whether we would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004) (quoting *State v. Smith*, 374 Md. 527, 534 (2003)).

Importantly, on review, we do not measure or weigh the credibility of the evidence, as we are only concerned with "[w]hether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Taylor*, 346 Md. at 465 (citations omitted). Circumstantial evidence can be the sole basis of a valid conviction. *Suddith*, 379 Md. at 430 (citing *Smith*, 374 Md. at 534). Proof of guilt based on circumstantial evidence is no different from proof of guilt based on direct evidence. *Smith*, 374 Md. at 534.

DISCUSSION

I. The Evidence Was Sufficient to Sustain Appellant's Convictions.

A. Parties' Contentions

Appellant argues the State presented no evidence that he possessed the fentanyl found beneath the hood of the rental car, or the gun that was later found. He argues that the convictions rest on circumstantial evidence that required the trier of fact to speculate about his control over the drugs and gun. Appellant contends that because he did not own the vehicle, knowledge of drugs concealed under the hood of the car or the gun that escaped detection after the initial police search of the vehicle cannot be imputed to him.

The State argues the prosecution presented legally sufficient evidence at trial. The State focuses on Appellant being the driver of the vehicle, arguing that knowledge of the contraband can be imputed to him. Combined with the other testimony and evidence produced at trial, the State argues there was sufficient evidence to convict Appellant not only for possession, but also possession with intent to distribute, as well as possession of the handgun.

B. Analysis

To possess something under the criminal law, a person must "exercise actual or constructive dominion or control over a thing." CL § 5-101(v). To show dominion or control, "the evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited . . . drug in the sense contemplated by the statute, *i.e.*, that the accused exercised some restraining or direct influence over it." *State v. Gutierrez*, 446 Md. 221, 233 (2016) (quoting *Moye v. State*, 369 Md. 2, 13 (2002)) (internal quotations omitted). To sustain a conviction for possession of a controlled dangerous substance, the evidence must show that the accused knew of the presence and illicit character of the contraband, or support "a rational inference" of that

knowledge. *Moye*, 369 Md. at 14 (quoting *Dawkins v. State*, 313 Md. 638, 651 (1988)).

To determine if the evidence supports a finding of constructive possession, the Supreme Court of Maryland has looked at circumstances such as:

> [1] the defendant's proximity to the drugs, [2] whether the drugs were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the drugs, and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.

Gutierrez, 446 Md. at 234 (quoting *Smith*, 415 Md. 198). None of these factors are conclusive. *Gutierrez*, 446 Md. at 234 (quoting *Smith*, 415 Md. at 198). Further, a circumstantial inference of control may be rebutted by any competent evidence to the contrary. But determining control is reserved for the finder of fact. *See Neal v. State*, 191 Md. App. 297, 317 (2010) ("The possibility of raising conflicting inferences from the evidence does not preclude allowing the fact finder to determine where the truth lies.").

In this case, there is no question Appellant was driving the Nissan. Because he was the car's driver and therefore in possession of it, there is a strong inference that he knew what was in the vehicle. The Supreme Court of Maryland has held being the driver of a vehicle permits the trier of fact to infer that the driver knows the vehicle's contents, "whether that person actually owns, is merely driving[,] or is the lessee of the vehicle." *State v. Smith*, 374 Md. 527, 550 (2003).

In *Smith*, the defendant was driving with two passengers when a Maryland State Trooper stopped the vehicle. *Id.* at 531. The trooper smelled marijuana and Smith admitted to smoking it before the stop, resulting in his and the passengers' arrests. *Id.* at 532. While conducting a search, another trooper opened the vehicle's trunk and found a handgun

beneath a jacket. *Id.* The trunk could be accessed from the passenger compartment through the rear seat. *Id.* Smith had rented the car for a week and was on his way to return it. *Id.* at 533. Smith challenged the sufficiency of the evidence for his conviction of transporting a handgun. *Id.* at 533, 544.

The Supreme Court of Maryland held that Smith driving the car when the trooper stopped him supported the inference that he knew about the firearm in the car. In short, the Court held that the fact of someone being the driver of a vehicle, "whether that person actually owns [the car or] is merely driving . . . permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle. In other words, the knowledge of the contents of the vehicle can be imputed to the driver of the vehicle." *Id.* at 550.

Here, the evidence taken in the light most favorable to the State supports a rational inference that Appellant exercised dominion and control over the fentanyl and gun recovered. *First*, Appellant was driving the vehicle, supporting a possessory interest. *Second*, the drugs were concealed in a clean bag, and was concealed near the car's battery and air filter, indicating it had been recently placed there. And *third*, Appellant's nervousness and shaking after the stop supported the inference that he knew the illicit nature of the contraband concealed in the vehicle.

Further, there was additional evidence adduced at trial to show Appellant intended to distribute the fentanyl. The quantity of drugs possessed can be used as circumstantial evidence of an intent to distribute. *Purnell v. State*, 171 Md. App. 582, 612 (2006) (quoting *Collins v. State*, 89 Md. App. 273, 279 (1991)). The "[i]ntent to distribute controlled

dangerous substances is seldom proved directly but is more often found by drawing inferences from facts proved which reasonably indicate under all the circumstances the existence of the required intent." *Purnell*, 171 Md. App. at 612 (quoting *Salzman v. State*, 49 Md. App. 25, 55 (1981)) (internal quotations omitted). "And the very quantity of narcotics in possession may indicate intent to distribute." *Purnell*, 171 Md. App. at 612 (quoting *Salzman*, 49 Md. App. at 55). Circumstances beyond the quantity possessed—such as the presence of a large sum of cash—can support an intent to distribute, as well. *See Herbert v. State*, 136 Md. App. 458, 463 (2001) (finding the evidence was sufficient for the intent to distribute when the defendant was also found with $12,500 in cash and electronic scales).

In *Purnell*, the defendant was found with 2.3 grams of cocaine and 8.3 grams of marijuana on his person with an aggregate value of $240. 171 Md. App. at 617. These drugs were found in small individual bags in one of the defendant's pockets. *Id.* at 586. Relying on the testimony of a detective, the trial court found that these drugs were "packaged in a manner that is consistent with distribution." *Id.* at 589. We affirmed Purnell's conviction for possession with intent to distribute cocaine.

Here, the quantity of fentanyl recovered was almost 100 grams with an estimated value of $10,000. Officer McLhinney testified that such quantity was far greater than that which would typically be purchased for personal use, which was about a tenth of a gram. In other words, Appellant possessed almost 1,000 times more than what would be used by one person. As the State argues, and we agree, the likelihood that some unknown person would have carelessly left $10,000 worth of fentanyl under the hood of a rental car simply

beggars belief.

Second, Officer McLhinney testified that Appellant had $3,800 in cash on his person. At trial, Officer McLhinney opined that this large cash amount was in various denominations, and not sequential, as if withdrawn from a bank, which would have bolstered Appellant's claim that he intended to use the money to pay his rent.

Third, Appellant was in a rental car coming from New York. Office McLhinney testified that drug dealers use rental cars either because they have no vehicle of their own or they do not wish to use their own vehicles while conducting illegal activity. Interstate 95 is a known drug corridor throughout the eastern coast of the United States.

Fourth, the handgun was found by a rental car employee on the floorboard of the car on the driver's side. One could reasonably infer that the gun could have been used for protection or other reasons in the illegal drug trade. Again, because Appellant was the driver of the vehicle, he had a possessory interest in its contents, which included the handgun later recovered. Taken in the totality, these facts are sufficient evidence to sustain Appellant's convictions for possession with intent to distribute fentanyl and possession of a handgun.

II. Merger of the Drug Convictions Was Not Required.

A. Parties' Contentions

Appellant also contends the court should have merged Count Three with Count Two at sentencing. He argues that the lesser sentence imposed for possession with intent to distribute (Count Three) should merge into the sentence for possession of more than 5 grams of fentanyl (Count Two) because both convictions were predicated on the same

conduct. He claims because there is an ambiguity in the interpretation of how to apply the statutes in this case, the rule of lenity requires merger. The State argues the sentence was legal and argues the rule of lenity does not apply. As a result, the State contends the court properly imposed separate sentences for separate offenses.

B. Standard of Review

Whether two sentences should have merged is a question of law we review *de novo*. *Clark v. State*, 473 Md. 607, 616 (2021). When the trial court imposes a sentence that is not authorized by law, that sentence is illegal. *Waker v. State*, 431 Md. 1, 7 (2013). A claim that a sentence is illegal "is not subject to waiver." *Id.* (quoting *Johnson v. State*, 427 Md. 356, 371 (2012)). When a trial court was required to merge convictions but instead imposes two separate sentences, then it has committed reversible error. *Britton v. State*, 201 Md. App. 589, 598 (2011).

C. Discussion

The rule of lenity is a "principle of statutory construction . . . applied to resolve ambiguity as to whether the Legislature intended multiple punishments for the same act or transaction." *Kyler v. State*, 218 Md. App. 196, 228 (2014) (quoting *Marlin v. State*, 192 Md. App. 134, 167 (2010)). We have previously explained the application of the rule of lenity as follows:

> Two crimes created by legislative enactment may not be punished separately if the legislature intended the offenses to be punished by one sentence. It is when we are uncertain whether the legislature intended one or more than one sentence that we make use of an aid to statutory interpretation known as the 'rule of lenity.' Under that rule, if we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in

> effect, give the defendant the benefit of the doubt and hold that the crimes do merge.

Kyler, 218 Md. App. at 228 (quoting *Moore v. State*, 198 Md. App. 655, 686 (2011)).

Appellant asks us to apply the rule of lenity to his convictions under Counts Two and Three. Count Two charged him with possession of 5 grams or more of fentanyl in violation of CL § 5-612. Count Three charged him with possession with intent to distribute fentanyl in violation of CL § 5-602. Criminal Law § 5-602 stated, at the time of Appellant's arrest:

> Except as otherwise provided in this title, a person may not:
>
> (1) distribute or dispense a controlled dangerous substance; or
>
> (2) possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

Md. Code, Crim. Law § 5-602 (effective until December 31, 2022).[9]

Criminal Law § 5-612 stated, in relevant parts:

> (a) A person may not manufacture, distribute, dispense, or possess:
>
> (7) 5 grams or more of fentanyl or any structural variation of fentanyl that is scheduled by the United States Drug Enforcement Administration;
>
> (8) 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of fentanyl or any structural variation of fentanyl that is scheduled by the United States Drug Enforcement Administration;

[9] The statute subsequently added language about the distribution and sharing of personal use of cannabis that is not relevant to these proceedings.

Md. Code, Crim. Law § 5-612(a).[10]

In *Kyler v. State*, we addressed whether the sentences under these two statutes should merge. 218 Md. App. at 225–30. *First*, we applied the required evidence test to the two statutes. *Id.* at 225–27. For CL § 5-602, we concluded that "the elements of possession with intent to distribute [fentanyl] include: (1) possession of CDS; and (2) circumstances indicating an intent to distribute the CDS." *Id.* at 226. For CL § 5-612, the elements were "(1) manufacturing, distributing, dispensing or possessing CDS; and (2) in the requisite quantity." *Id.* at 227. Based on this, we concluded each offense had an element the other did not as CL § 5-602 required showing an intent to distribute and CL § 5-612 required showing a specific quantity of the CDS. *Id.* As a result, the two offenses did not merge under the required evidence test. *Id.*

We next looked at the rule of lenity. *Id.* at 228–30. *First*, we looked at the legislative history of CL § 5-612. Under the prior statutory scheme, the statute made it unlawful to possess a CDS in sufficient quantity to reasonably indicate an intent to distribute that substance. *Id.* at 223 (quoting Md. Code (1991 Supp.) Art. 27 § 286(a)(1)). *Then*, if a person violated that section of the statute, there would be enhanced penalties if the amount of CDS was above a listed quantity. *Id.* at 223 (quoting Md. Code (1991 Supp.) Art. 27 § 286(f)(1)).

[10] Additionally, the penalty portion of this statute reads:
(c)(1) A person who is convicted of a violation of subsection (a) of this section shall be sentenced to imprisonment for not less than 5 years and is subject to a fine not exceeding $100,000.
(2) The court may not suspend any part of the mandatory minimum sentence of 5 years.
(3) Except as provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

Section 286 was a single offense "with an enhanced penalty" if the violation involved a sufficient quantity of CDS. *Id.* at 224 (citing *Wadlow v. State*, 335 Md. 122, 125 (1994).

This framework changed after the Supreme Court of the United States issued its decision in *Blakely v. Washington*. 542 U.S. 296 (2004). There, the statute at issue authorized a sentence above the statutory maximum if the judge determined there were "substantial and compelling reasons" to justify the longer sentence. *Id.* at 299. The judge in *Blakely* imposed a sentence above the statutory maximum on the ground that the defendant had acted with "deliberate cruelty." *Id.* at 300. The Court held that the facts supporting this finding were neither admitted by the defendant nor found by the jury. *Id.* at 303. Therefore, the trial judge exceeded his proper authority and violated the defendant's right to a trial by jury. *Id.* at 304–05.

In response to *Blakely*, the Maryland General Assembly passed legislation to revise the factors that courts use to apply enhanced penalties. *See* 2005 Md. Laws, ch. 489, § 1 (S.B. 429). The legislature recognized that "Maryland does have a handful of statutory crimes that provide for enhanced penalties based on the existence of certain facts beyond the elements of the underlying crime." S.B. 429, Fiscal and Policy Note, at 3 (Feb. 15, 2005). To fix this problem, they recommended "repealing the factual penalty enhancement in the penalty provisions and to place the factual circumstance that leads to the increased penalty into the factual elements of the underlying offense to be charged as its own, separate, new offense." *Id.* The legislation that was passed said it was "to establish new offenses in place of factual determinations that enhance penalties." 2005 Md. Laws, ch.

489, *citing the FOR section*. As a result, references to CL § 5-602 in CL § 5-612 were removed so that it could be a standalone offense.[11]

After this Court looked at this history, we determined that under the rule of lenity, merger was required. *Kyler*, 218 Md. App. at 229. *First*, we stated that "when Article 27 § 286(f) was enacted, possession of a certain quantity of drugs was not intended to result in a sentence additional to that for possession with the intent to distribute." *Id.* Instead, it was meant to establish a mandatory minimum when a threshold amount of particular drugs was found to "distinguish the volume drug dealer from the street corner dealer." *Id.* (quoting *State v. Wheeler*, 118 Md. App. 142, 148 (1997)). We found that while CL § 5-612 was made a separate offense, the legislature "did so to avoid a constitutional issue." *Id.* This conclusion was further supported by CL § 5-612 "continu[ing] to refer to the penalty as an '[e]nhanced penalty.'" *Id.* Lastly, we contrasted the statute with CL § 5-613, the drug

[11] The revisions of CL § 5-612, were as follows:

(a) A person ~~who violates § 5-602 of this subtitle with respect to any of the following controlled dangerous substances in the amounts indicated is subject on conviction to a fine not exceeding $100,000 and the enhanced penalty provided in subsection (c) of this section~~ may not manufacture, distribute, dispense, or possess:

. . .

(b) For the purpose of determining the quantity of a controlled dangerous substance involved in individual acts of manufacturing, distributing, dispensing, or possessing ~~with intent to manufacture, distribute, or dispense~~ under subsection (a) of this section, the acts may be aggregated if each of the acts occurred within a 90-day period.

(c) (1) A person who is convicted ~~under § 5-602 of this subtitle with respect to a controlled dangerous substance in an amount indicated in~~ OF A VIOLATION OF subsection (a) of this section shall be sentenced to imprisonment for not less than 5 years AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000.

kingpin statute, which specifically stated that convictions under the statute do not merge with the crime that is the object of the conspiracy. *Id.* (citing Md. Code, Crim. Law § 5-613(d)). Given this context, we found that at a minimum, the intent of the legislature to have volume dealing be punished separately from possession with intent to distribute was ambiguous, and the ambiguity was resolved in favor of the defendant. *Id.*

In *Carter v. State*, we discussed the analysis performed in *Kyler.* 236 Md. App. 456, 480–82 (2018). The case dealt with whether CL §5-612 involved an intent to distribute element. *Id.* at 476–77. We relied on *Kyler*'s reasoning to conclude again that CL § 5-612 did not require proving an intent to distribute. *Id.* at 479. However, we came to a different conclusion on the legislative history of CL § 5-612. We did not find the statute to be ambiguous and held the General Assembly's intent was "to establish a new crime." *Id.* "[T]he General Assembly could hardly have been clearer in removing any hint of an intent requirement from the statute." *Id. Carter* relied on the introduction to the statute cited above that said the purpose was "to establish new offenses" and for "establishing the offense and clarifying the penalties for manufacturing, distributing, dispensing, or possessing certain quantities of certain controlled dangerous substances." *Id.* at 479 (quoting 2005 Md. Laws ch. 482).

In a footnote, *Carter* criticized some of *Kyler*'s reasoning related to the words "enhanced penalty," as that phrase did not exist in the statute as codified. 236 Md. App. at 480 n.13. Instead, that phrase existed because of annotations made by publishers. *Id.* at 481. We stated that to determine the meaning of a statute, "we look to the words of the statute itself, not a caption." *Id.* (quoting *State v. Holton*, 193 Md. App. 322, 365 (2010)).

These headings "added by publishers . . . cannot render an otherwise unambiguous statute ambiguous." *Id.* at 481–82. Thus, the phrase "enhanced penalty" was inapplicable to finding the statute ambiguous, where the penalty section in CL § 5-612(c) is instead just the penalty that applies to a violation of this independent crime.

From *Carter*'s reasoning, coupled with the legislative history of CL § 5-612, we conclude there is no ambiguity that the General Assembly was attempting to establish a separate offense. As a result, we decline to apply the rule of lenity and Appellant's sentences for the offenses under discussion will not merge.

THE JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.