

Circuit Court for Baltimore City
Case No. 123331023

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2351

September Term, 2024

JASON JOHNSON

v.

STATE OF MARYLAND

Berger,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 8, 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).

This case stems from a shootout between Appellant Jason Johnson (“Johnson”) and Jamal Piles (“Piles”) in Baltimore City at the intersection where the unit block of Carey Street meets an alley named Booth Street. During the shootout, Piles’ girlfriend, Kimberly Benjamin (“Ms. Benjamin”), remained in the passenger seat of Piles’ vehicle where she was fatally shot. Johnson was charged in the Circuit Court for Baltimore City with, among other things, the murder of Ms. Benjamin, the attempted murder of Piles, reckless endangerment, and mutual affray. After trial, the jury returned a verdict convicting Johnson of, among other things, voluntary manslaughter, attempted voluntary manslaughter, reckless endangerment, and mutual affray. Johnson was sentenced to a total of 35 years. Thereafter, Johnson filed a timely appeal.

On appeal, Johnson presents three questions for our review, which we have consolidated into two and rephrased as follows:¹

- I. Whether there was sufficient evidence from which a jury could find Johnson guilty of reckless endangerment beyond a reasonable doubt.

¹ Johnson phrased the questions as follows:

1. Was the evidence insufficient to convict Mr. Johnson of reckless endangerment?
2. Did the lower court err in failing to merge the sentence for reckless endangerment into the sentence for voluntary manslaughter or into the sentence for attempted voluntary manslaughter?
3. Did the lower court err in failing to merge the sentence for mutual affray into the sentence for reckless endangerment or into attempted voluntary manslaughter?

II. Whether the circuit court properly sentenced Johnson.

For the following reasons, we affirm.

BACKGROUND²

The shooting

On June 6, 2023 at approximately 5:45 p.m., Deputy Hiram Henderson (“Deputy Henderson”) was conducting undercover surveillance in the vicinity of Carey Street and Booth Street, an alley, in Baltimore City unrelated to the instant case. Deputy Henderson observed a white vehicle pull up to the intersection and saw a man, later identified as Piles, get out of the driver’s seat and walk over to a group of people. Ms. Benjamin, who was in the passenger seat of Piles’ vehicle, remained in the vehicle.

Deputy Henderson’s attention was not drawn to this group of individuals until he heard gunshots. Upon hearing the gunshots, Deputy Henderson called the incident into the police precinct. Deputy Henderson noticed Piles firing a handgun into Booth Street but could not see who or what Piles was firing at. Thereafter, Deputy Henderson began taking photographs.

After the shooting concluded, Deputy Henderson observed Piles get into the driver’s seat of the white vehicle and drive the vehicle past Deputy Henderson and out of the

² In light of the applicable standard of review, we frame the factual background here in the light most favorable to the State. *See Johnson v. State*, 269 Md. App. 208, 241 (2026) (quoting *Smith v. State*, 415 Md. 174, 184 (2010)) (“When appellants challenge the sufficiency of the evidence underlying a criminal conviction, ‘the critical inquiry on review . . . is whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’”).

alleyway down Carey Street. Deputy Henderson initially followed Piles' vehicle but stopped when he saw a marked patrol vehicle pass him and was able to communicate the direction in which Piles' vehicle had gone via the police radio. Deputy Henderson then returned to the scene of the shooting.

After the shooting, Piles drove his vehicle several blocks away to the intersection of McHenry and Mount Street, exited his vehicle and tossed his gun into a storm drain. Thereafter, Piles got the attention of police to provide aid to Ms. Benjamin who had been shot by a bullet that entered to top of her skull and exited through her left cheek. Ms. Benjamin was transported to a hospital where she was later pronounced dead.

Officer Michael Martin ("Officer Martin") responded to the 1200 block of Fayette Street at approximately 5:54 p.m. and found Johnson on the ground suffering from gunshot wounds. There was no firearm in Johnson's proximity. An ambulance arrived to take Johnson to the hospital and Officer Martin followed. When Johnson was released from the hospital later that day, Officer Martin transported him to the police station for an interview.

While Johnson and Officer Martin were waiting to get into the station, another officer arrived, escorting Piles. Piles made eye contact with Johnson and Officer Martin observed Piles nodding his head and smiling in an unusual manner. Thereafter, Officer Martin notified a corrections officer in the waiting area that he believed Piles had shot Johnson. After Piles was taken out of the vicinity, Officer Martin heard Johnson singing or rapping "I shot that bitch" multiple times.

Detectives obtained video footage from the security camera of a business that depicted what occurred prior to the shooting.³ The video footage shows Johnson walk down the Booth Street alley, enter a narrow opening in a fence (“cut”), and emerge from the cut with what appeared to be a firearm. Johnson proceeded to walk back up the alley towards Carey Street as Piles pulled his vehicle towards the alley. Piles exited the vehicle and exchanged gunfire with Johnson. Piles then got back into his vehicle and drove off. After collapsing to the ground on Booth Street, Johnson made his way to the 1200 block of Fayette Street where first responders found him.

The trial and sentencing

On November 27, 2023, Johnson was charged with the murder of Ms. Benjamin, the attempted murder of Piles, two counts of use of a handgun in the commission of a crime of violence, possession of a regulated firearm by one with a prior conviction, reckless endangerment, and mutual affray. Thereafter, a six-day jury trial was held in August 2024 in the Circuit Court for Baltimore City.

Although Johnson’s firearm was not recovered, police were able to recover the gun that Piles placed in the storm drain. At trial, the jury heard testimony from the State’s firearms examiner that she had test-fired Piles’ firearm. Specifically, the firearms examiner testified that comparison evidence recovered from the scene of the shooting included fourteen cartridge cases, eight bullet jacket fragments, and two bullets. Of the cartridge casings, nine were consistent with having been fired from Piles’ firearm. The firearms

³ This video footage was shown to the jury at trial.

examiner testified that, based on the analysis conducted, the evidence supported there being “at least two but possibly four” firearms that created the evidence collected from the scene. Further, the firearms examiner testified that three of the five cartridge cases not consistent with having been fired from Piles’ firearm “were consistent with having been fired with the same unknown firearm.”

At the close of the State’s case, Johnson moved for judgment of acquittal, including the charge for reckless endangerment. Specifically, Johnson argued “[a]s far as [reckless endangerment], Your Honor, it’s the same argument as far as what has been presented. If he was firing a gun willingly, knowingly, with everything that was going on, and I don’t think there’s been enough evidence presented for that.” The State countered by drawing the court’s attention to evidence depicting bystanders hiding during the shooting:

Regarding reckless endangerment to the -- and the indictment was for the general public -- the video for Hollins Street showed the people running. Defense Counsel also brought out in his cross-examination that there were several people. Those people were ducking. It was a gunfight in broad daylight with several people around.

And Mr. Johnson had come around the corner in the video . . . from Baltimore and Carey. Showed that people were sitting there on the stoops on either side of the street. So, Mr. Johnson should have known that there were lots of people in that block in that timeframe when he ran and got his gun.

And so, he was aware that serious bodily . . . injury could happen to anyone who he’s firing -- during a gunfight.

The trial court denied Johnson’s motion.

After Johnson elected not to testify and the defense rested, Johnson renewed the motion for judgment of acquittal. In addition to his prior argument, Johnson added that the State was unable to prove he used a firearm:

So, again, the -- then the reckless endangerment count really comes into (unintelligible) with the possession of the firearms. If the firearm w[as] never used or fired, then I don't think that the sufficiency for reckless endangerment could be met if the State has not shown that to where a reasonable Juror could make that determination.

The State responded that Johnson “acted recklessly knowing full well that pulling a trigger on a gun can kill anybody in the way of that bullet[.]” The court denied the motion.

In closing, Johnson argued, among other things, that he acted in self-defense:

So now let's go to the -- these self-defense factors, the four factors that you have to consider. Okay, now, again, you can find in the State's theories in this case and that their evidence is so lacking that they didn't prove he had a gun. And obviously, if he didn't have a gun, then none of this applies. None of it. So you can find that they haven't proven it. They didn't have to prove, well, let's go to the -- let's go to the self-defense. And it applies to both the murder of Ms. Benjamin and the attempted murder of [Piles]. So, [the State] said that Mr. Johnson . . . was the aggressor. . . .

So, ladies and gentleman, you've seen that video. . . . Mr. Johnson was not the aggressor. But even if he was, they said, although the Defendant was the initial aggressor, he did not raise the fight to the deadly force level. But that doesn't even apply, ladies and gentleman. He wasn't the aggressor. He was, as [the State] said, he was casually walking up that alley. He got bumped by the car. [Piles] opened that door and stepped to him. He didn't step to [Piles]. He was walking calmly, nothing in his hand, up that alley. So how is he the aggressor?

He wasn't. He wasn't the aggressor. Number two, the Defendant actually believed that he was [in] immediate or imminent danger of death or serious[] bodily harm. What do

we know, ladies and gentlemen, happened in this case? Who was shot? Who was shot at least three times by the gun that was linked to [Piles]? That's in evidence that he tried to conceal. Mr. Johnson, he was shot.

So, ladies and gentlemen, if you're being shot or shot at, then how in the world are you not believing that you're [in] immediate or imminent danger? Well, maybe if you're Superman . . . or somebody like that. Okay, maybe. But in this case, he believed he was in immediate danger. [Piles] was shooting at him, which [] clearly can be seen. But third, that the Defendant's belief was reasonable.

Well, if someone is shooting a gun at you and ultimately hits you, I would say that your belief that you're in immediate or imminent danger or maybe not even that they fired a gun at you, but if they pointed a gun at you, wouldn't you be in fear of immediate harm or danger?

So, there's at least that. How can the State say that that's not present, that he didn't have a reasonable belief? Again, who was shot? He was. Who wasn't shot? [Piles]. Who was charged with shooting him? [Piles]. Ladies and gentleman, it was reasonable. And then the fourth, used no more force than was reasonably necessary to defend himself. Well, if someone is shooting at you and you have a gun, isn't that reasonable, a light force? If someone's shooting at you with a gun, are you going to run [at] him with a baseball bat? That's not going to help you too much.

The jury returned a verdict convicting Johnson of voluntary manslaughter, both counts of using a handgun in the commission of a crime of violence, attempted voluntary manslaughter, possession of a regulate firearm, reckless endangerment, and mutual affray. Johnson was acquitted of the remaining charges. Johnson did not object and the jury was discharged.

On January 14, 2025, the trial court sentenced Johnson as follows:

Mr. Johnson? Your sentence on voluntary manslaughter of Kimberly Benjamin is 10 years incarceration. Your sentence on firearm in the commission of a crime of violence for Kimberly Benjamin is 20 years, consecutive. Your sentence on attempted voluntary manslaughter of Jamal Piles is 10 years. It runs concurrent. That means concurrent to the sentence for Kimberly Benjamin. Your -- and sorry, the firearm in commission of [a] crime of violence is 20 years, consecutive to the 10. Okay? And the firearm in the commission of a crime of violence for Jamal Piles is 15 years, to run concurrent. That's at the same time. Felon in possession of a firearm is 15 years. That's concurrent. Reckless endangerment is five years consecutive, because that is where, you know, the State wants me to give you life, suspend all but 60 for the mutual affray, the five years on the reckless endangerment by shooting just in the general public like a gunfight, that's five years. Okay? The mutual affray is 12 years, concurrent.

So, your total sentence then, Mr. Johnson, is 35 years.

Johnson noted a timely appeal. We shall include additional facts as necessary in our forthcoming analysis.

DISCUSSION

I. There was sufficient evidence to sustain Johnson's conviction of reckless endangerment.

Johnson first contends that there was insufficient evidence to support his conviction of reckless endangerment. According to Johnson, by finding him guilty of voluntary manslaughter and attempted voluntary manslaughter -- rather than murder and attempted murder -- the jury necessarily credited his partial self-defense claim. The jury, therefore, found that Johnson honestly believed the use of force was necessary but that such belief was unreasonable under the circumstances. Johnson argues that, based on the jury's verdicts, it cannot be said that he had the requisite mens rea, that is that he acted with a

“conscious disregard of or wanton indifference to the consequences” his actions because the jury necessarily concluded that he shot the handgun with an honest belief that doing so was necessary to defend himself. *Williams v. State*, 100 Md. App. 468, 474 (1994).

The State counters that Johnson’s argument is not one concerning the sufficiency of the evidence, but instead is an argument about inconsistent verdicts. The State then presents two alternative arguments. First, if analyzed as a sufficiency of the evidence argument, the State contends that the argument is unpreserved because it was not made -- nor could it be made -- in Johnson’s motion for judgment of acquittal. If preserved, the State contends that the sufficiency of evidence must be analyzed without regard to what the jury ultimately did with the evidence. According to the State, therefore, evidence at trial, namely the video evidence showing Johnson leaving an area populated with people to retrieve a gun, then come back and exchange gunfire with Piles as a group of people dropped to the ground, was sufficient for the jury to reasonably infer that Johnson possessed the requisite mens rea to be convicted of reckless endangerment.

Next, the State contends that, if we construe Johnson’s argument as one challenging inconsistent verdicts, such an argument is unpreserved and otherwise meritless. As to preservation, the State argues that Johnson failed to object before the verdicts were final and the jury was discharged. As a result, we should not reach the merits. Even if preserved, the State contends that the verdicts were not inconsistent. The State reasons that there is nothing inconsistent between partial self-defense and reckless endangerment because both are satisfied by unreasonable conduct. Further, because the convictions alleged to be

inconsistent involve different victims, the State contends that at most, such convictions could only be factually or logically, rather than legally, inconsistent.

A. Sufficiency of the evidence

We first address Johnson’s argument through the lens of a sufficiency of the evidence analysis. “We review sufficiency of evidence by asking whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Howling v. State*, 478 Md. 472, 493 (2022) (quoting *State v. McGagh*, 472 Md. 168, 184 (2021)). In our deferential review, we do not reweigh evidence, resolve conflicting evidence, or endeavor to assess the credibility of witnesses. *Smith v. State*, 415 Md. 174, 184-85 (2010). This “standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone.” *Id.* at 185 (citing *State v. Smith*, 374 Md. 527, 534 (2003)).

As the Supreme Court of Maryland has explained,

appellate review of sufficiency of evidence is available only when the defendant moves for judgment of acquittal at the close of all the evidence and argues precisely the ways in which the evidence is lacking. The issue of sufficiency of the evidence is not preserved when [the defendant]’s motion for judgment of acquittal is on a ground different than that set forth on appeal.

Hobby v. State, 436 Md. 526, 540 (2014) (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997)). Accordingly, “[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal[.]” *Hobby*, 436 Md. at 540 (quoting *Tetso v. State*, 205 Md. App. 334, 384 (2012)).

As an initial matter, we agree with the State’s characterization of Johnson’s argument. That is, because Johnson’s sufficiency of the evidence challenge is premised on the jury’s verdict, it is more akin to an argument alleging inconsistent verdicts. To the extent that Johnson’s argument is one about the sufficiency of the evidence, however, we agree with the State that such an argument was not preserved.

Johnson did not argue at trial that the evidence did not sufficiently establish that he acted recklessly in light of the jury’s verdict, under which Johnson was found guilty of voluntary manslaughter and attempted voluntary manslaughter, rather than murder and attempted murder. Indeed, as the State contends, Johnson could not have made such an argument in his motion for judgment of acquittal because that motion was made before the jury rendered its verdict.

Even if preserved, we conclude that there was sufficient evidence to support Johnson’s conviction of reckless endangerment. To be sure, the State was required to prove: “1) that [Johnson] engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that [Johnson] acted recklessly.” *Perry v. State*, 229 Md. App. 687, 697 (2016) (quoting *Jones v. State*, 357 Md. 408, 427 (2000)).

During trial, the jury was presented with video evidence showing Johnson leaving an area populated with people and getting a gun. The video then showed Johnson walk back to the street where he encountered Piles. Thereafter, Johnson and Piles exchanged gunfire. Although Johnson’s gun was not recovered, the jury was presented with evidence that at least some of the recovered casings did not come from Piles’ gun. From this, the

jury could infer that those casings came from Johnson’s gun. Accordingly, the jury could reasonably infer from evidence showing a group of people dropping to the ground as gunfire rang out along the city block that Johnson had the requisite mens rea for reckless endangerment. Indeed, evidence showed that Johnson was aware there were people in the area and that he armed himself in anticipation of an encounter with Piles in the direct presence of bystanders. There was, therefore, sufficient evidence from which the jury could reasonably find Johnson guilty of reckless endangerment beyond a reasonable doubt.

B. Inconsistent verdicts

Construing Johnson’s arguments liberally, we now consider the challenge as one alleging inconsistent verdicts. “An appellate court reviews without deference a trial court’s ruling on a motion to strike a guilty verdict that is allegedly inconsistent with a not-guilty verdict.” *Givens v. State*, 449 Md. 433, 447-48 (2016) (citation omitted).

“[T]o preserve for review any issue as to allegedly inconsistent verdicts, a defendant in a criminal trial by jury must object to the allegedly inconsistent verdicts or otherwise make known his or her position before the verdicts become final and the trial court discharges the jury.” *Id.* at 472-73. Here, Johnson did not object to the allegedly inconsistent verdicts before the verdicts became final and the jury was discharged. Rather, Johnson challenges the verdicts for the first time on appeal. Accordingly, to the extent that Johnson challenges allegedly inconsistent verdicts, such an argument is not preserved, and we decline to address it further.

II. The circuit court properly sentenced Johnson.

Johnson next contends that the circuit court erred in not merging certain convictions for sentencing. We review the legality of a sentence *de novo*. *State v. Crawley*, 455 Md. 52, 66 (2017) (citation omitted). Maryland law recognizes “three grounds for merging a defendant’s convictions for sentencing purposes: ‘(1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness.’” *Hamrick v. State*, 263 Md. App. 270, 284 (2024) (quoting *Koushall v. State*, 479 Md. 124, 156 (2022)).

A. Preservation

We first address whether Johnson’s argument that certain sentences should have been merged is properly before us. “It is axiomatic that, when a court imposes a sentence, and the sentence itself is not authorized by law, the sentence is illegal” and a challenge to that sentence “is not subject to waiver.” *Walker v. State*, 431 Md. 1, 7 (2013) (citation omitted). “[W]hen the trial court is required to merge convictions for sentencing purposes but, instead, imposes a separate sentence for each unmerged conviction, . . . the result is the imposition of a sentence ‘not permitted by law.’” *Britton v. State*, 201 Md. App. 589, 598-99 (2011) (quoting *Campbell v. State*, 65 Md. App. 498, 510 (1985)).

When merger is required under the required evidence test or the rule of lenity, the issue of merger is properly before us, even when there is no objection below. *See Pair v. State*, 202 Md. App. 617, 625 (2011). A trial court’s “failure to merge a sentence based on fundamental fairness[, however,] does not render the sentence illegal.” *Koushall*, 479 Md. at 163-64 (citing *State v. Wilkins*, 393 Md. 269, 273-74 (2006)). Because merger pursuant to fundamental fairness is a “‘fact-driven’ inquiry that considers whether a defendant

should not receive separate, but otherwise legal, criminal punishments under the circumstances,” it cannot be raised for the first time on appeal. *Koushall*, 479 Md. at 164 (quoting *Carroll v. State*, 428 Md. 679, 695 (2012)).

Here, Johnson did not raise the issue of merger at sentencing. Even so, as discussed *supra*, Johnson’s argument that merger was required based on the required evidence test and the rule of lenity is properly before us. We agree, however, with the State that Johnson did not preserve his claim that merger was required based on fundamental fairness. Accordingly, we do not address such arguments here.

B. The required evidence test

As we explained in *Hamrick*, “[t]he required evidence test is a ‘long-standing rule of law to determine whether one offense is included within another when both are based on the same act or acts.’” *Hamrick*, 263 Md. App. at 284 (quoting *State v. Johnson*, 442 Md. 211, 218 (2015)). “Sentences for two convictions must be merged when” both: “(1) the convictions are based on the same act or acts, and (2) under the required evidence test, the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other.” *Johnson*, 442 Md. at 217 (quoting *Brooks v. State*, 439 Md. 698, 737 (2014)). As the Supreme Court of Maryland has explained:

The required evidence test focuses upon the elements of each offense; if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter. Stated another way, the required evidence is that which is minimally necessary to secure a conviction for each offense. If each offense requires proof of a fact which the other does not, or in other words, if each offense contains an element which the other does not, there is no merger under the required

evidence test even though both offenses are based upon the same act or acts. But, where only one offense requires proof of an additional fact, so that all elements of one offense are present in the other, and where both offenses are based on the same act or acts[,] merger follows.

Johnson, 442 Md. at 218 (quoting *Nicolas v. State*, 426 Md. 385, 401-02 (2012)).

1. *Reckless endangerment and voluntary manslaughter or attempted voluntary manslaughter*

Johnson argues that his sentence for reckless endangerment must merge into his sentence for either voluntary manslaughter or attempted voluntary manslaughter under the required evidence test. According to Johnson, reckless endangerment is a lesser included offense to either voluntary manslaughter or attempted voluntary manslaughter. Johnson reasons that, because the convictions are based on the same conduct, they must be merged.

The State counters that, although the challenged convictions stem from the same physical act, each punishes separately the harms or risks of harm created by Johnson. Specifically, the State asserts that the voluntary manslaughter conviction related to the killing of Ms. Benjamin, the attempted voluntary manslaughter conviction related to the attempted killing of Piles, and the reckless endangerment conviction was based on the risk of harm to bystanders when Johnson fired his gun in the middle of the street. Although the three convictions stem from the same act, they addressed harms to different victims, therefore, the State contends the convictions do not merge. We agree with the State.

As mentioned *supra*, to sustain a conviction of reckless endangerment, the State was required to prove: “1) that [Johnson] engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have

engaged in that conduct; and 3) that [Johnson] acted recklessly.” *Perry*, 229 Md. App. at 697 (quoting *Jones*, 357 Md. at 427). “[T]he purpose of the reckless endangerment statute is to *deter* reckless behavior *before* a criminal act results[.]” *Perry*, 229 Md. App. at 698 (citing *Williams*, 100 Md. App. at 480-81).

Voluntary manslaughter, on the other hand, “is an intentional killing, which would be murder, but is not murder because the defendant acted in hot blooded response to legally adequate provocation.” Maryland State Bar Ass’n, *Maryland Criminal Pattern Jury Instructions* 4:17.4(C) (3d ed. 2025) (“MPJI-Cr”). *See also Johnson v. State*, 266 Md. App. 518, 524 (2025) (citing *Girouard v. State*, 321 Md. 532, 538 (1991)) (“The offense of murder can be reduced to voluntary manslaughter if the defendant acted in the heat of passion, in response to adequate provocation, before there has been a reasonable opportunity for the passion to cool.”).

Voluntary manslaughter and attempted voluntary manslaughter, therefore, both require the intent to murder a specific person. *See, e.g., Martin v. State*, 218 Md. App. 1, 40-41 (2014). Reckless endangerment, on the other hand, “does not depend upon whether the accused intended that [their] reckless conduct create a substantial risk of death or serious injury to another.” *Jones*, 357 Md. at 427 (quoting *Minor v. State*, 326 Md. 436, 443 (1992)). Rather, “[t]he test is whether the [accused’s] misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the [reckless endangerment] statute was designed to punish.” *Id.* (quoting *Minor*, 326 Md. at 443).

Here, the charging document makes clear that the reckless endangerment, voluntary manslaughter, and attempted voluntary manslaughter charges -- and, therefore, the subsequent convictions -- each related to Johnson's conduct with respect to different victims. To be sure, the voluntary manslaughter conviction related to the killing of Ms. Benjamin and the attempted voluntary manslaughter conviction related to the attempted killing of Piles. The reckless endangerment charge and subsequent conviction, however, was based on the risk of harm to bystanders created by Johnson's firing of a gun in the middle of a crowded street in Baltimore City.⁴

In its closing argument, the State emphasized this distinction:

So, the next crime that you are gonna be looking at is reckless endangerment. Jason Johnson engaged in conduct that created a substantial risk of death or serious physical injury to another. So, firing a gun in the middle of the street, crowded street, is going to create a substantial risk of death.

You have in the video, you have in Deputy Henderson's photographs, these people ducking. They're at risk. You have in the [] video, these people on their bellies, one, two, three, four -- those are only the few that are caught in that still shot. A reasonable person would not have engaged in that conduct. Firing a gun in broad daylight in the middle of a public street is not something that a reasonable person would do. He acted recklessly. Now he was aware that his conduct created a risk

⁴ As the State correctly notes, the General Assembly has expressly recognized that, in charging reckless endangerment, the State may either: (1) "include a count for each individual endangered by the conduct of the defendant;" or (2) "contain a single count based on the conduct of the defendant, regardless of the number of individuals endangered by the conduct of the defendant." Maryland Code (2002, 2021 Repl. Vol.), § 3-206(d)(4) of the Criminal Law Article ("CR"). Here, the State chose the latter course, charging Johnson for a single count of reckless endangerment stemming from his conduct which "created a substantial risk of death and serious physical injury to the general public[.]"

of death or serious physical injury to another. Now, he consciously disregarded them. He did it anyway.

Although reckless endangerment and voluntary manslaughter or attempted voluntary manslaughter may merge in some cases, under the facts of this case, they do not.

2. *Mutual affray and reckless endangerment*

Johnson next argues that his sentences for mutual affray and reckless endangerment must merge under the required evidence test. Johnson reasons that, because it was the mutual combat with Piles that created a risk of death or serious physical injury and resulted in Johnson’s conviction of reckless endangerment, mutual affray is a lesser included offense of reckless endangerment, and the resulting sentences must merge. The State counters that mutual affray does not merge with reckless endangerment under the required evidence test because each offense requires an element not required by the other.

For mutual affray, the State had to prove that Johnson was fighting with Piles “either by mutual consent or otherwise, in some public place, to the terror of the people.” *Nottingham v. State*, 227 Md. App. 592, 602 (2016) (quoting *Dashiell v. State*, 214 Md. App. 684, 689 (2013)). As discussed previously, for reckless endangerment, the State had to prove: “1) that [Johnson] engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that [Johnson] acted recklessly.” *Perry*, 229 Md. App. at 697 (quoting *Jones*, 357 Md. at 427).

Notably, mutual affray and reckless endangerment each require an element that the other does not. Mutual affray, but not reckless endangerment, requires a public setting.

Reckless endangerment, but not mutual affray, requires recklessness or any risk of serious harm. Mutual affray and reckless endangerment, therefore, do not require merger under the required evidence test.

3. *Mutual affray and attempted voluntary manslaughter*

Next, Johnson argues that his sentences for mutual affray and attempted voluntary manslaughter must merge under the required evidence test. According to Johnson, because mutual affray constitutes adequate provocation to reduce murder to voluntary manslaughter, the convictions of mutual affray and attempted voluntary manslaughter stem from the same conduct and resulting sentences must merge. The State counters that, like mutual affray and reckless endangerment, mutual affray and voluntary manslaughter each require evidence that the other does not and, therefore, merger is not required.

As discussed *supra*, for mutual affray, the State had to prove that Johnson was fighting with Mr. Piles “either by mutual consent or otherwise, in some public place, to the terror of the people.” *Nottingham*, 227 Md. App. at 602 (quoting *Dashiell*, 214 Md. App. at 689). A conviction of attempted voluntary manslaughter, on the other hand, required proof that Johnson took a “substantial step . . . toward the intentional taking of a life,” along with a finding that Johnson acted in partial self-defense. MPJI-CR 4:17.14(C). For the latter finding, there had to be evidence from which a jury could conclude that Johnson actually believed that (1) he “was in immediate or imminent danger of death or serious bodily harm,” and (2) that the amount of force he used was necessary, but that one or both of those beliefs was unreasonable. *Id.*

Again, each offense requires proof that the other does not. To be sure, mutual affray requires proof that the defendant engaged in a fight with another, in a public place, and that the fight disturbed the public. *Nottingham*, 227 Md. App. at 602 (quoting *Dashiell*, 214 Md. App. at 689). Attempted voluntary manslaughter does not. Attempted voluntary manslaughter requires proof of an intent to kill and a substantial step toward homicide, along with the use or attempted use of deadly force and a belief, either reasonable or unreasonable, about imminent death or serious bodily harm. Mutual affray does not.

Further, as the State explains, each crime involves different victims. For mutual affray, the victim is the public; for attempted voluntary manslaughter, the victim is the individual that the defendant intended to kill. Attempted voluntary manslaughter and mutual affray, therefore, do not require merger under the required evidence test.⁵

C. The rule of lenity

Having concluded that the required evidence test is not fulfilled for any of the challenged sentences, we move to the separate question of whether the rule of lenity requires merger. The rule of lenity is a “principle of statutory construction” that “applies where both offenses are statutory in nature or when one offense is statutory and the other

⁵ We are not persuaded by Johnson’s argument that, because mutual affray constitutes adequate provocation to reduce murder to voluntary manslaughter, the resulting sentences must merge. Although Johnson is correct that mutual affray can, in some cases, serve as adequate provocation to mitigate murder to manslaughter, the jury here was not so instructed. Indeed, the only basis provided in the jury instructions upon which the jury could find Johnson guilty of attempted manslaughter instead of attempted murder was complete or partial self-defense. Accordingly, the doctrine of mutual affray as adequate provocation could not have been the basis of the jury’s decision to convict Johnson of attempted voluntary manslaughter.

is a derivative of common law.” *Khalifa v. State*, 382 Md. 400, 434 (2004) (citation omitted). As the Supreme Court of Maryland explained:

Even though two offenses do not merge under the required evidence test, there are nevertheless times when the offenses will not be punished separately. Two crimes created by legislative enactment may not be punished separately if the legislature intended the offenses to be punished by one sentence. . . . [I]f 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.

Id. (quoting *Monoker v. State*, 321 Md. 214, 222 (1990)). The rule of lenity, however, “cannot be used to create an ambiguity where none exists. If there is no ambiguity, the rule of lenity simply has no application.” *Clark v. State*, 246 Md. App. 123, 137 (2020), *aff’d*, 473 Md. 607 (2021) (citation and internal quotation marks omitted).

Johnson contends that the challenged sentences should merge under the rule of lenity because the conviction of mutual affray is based on the same course of conduct underlying the convictions of reckless endangerment and attempted voluntary manslaughter. The State counters that the rule of lenity does not apply because there is no ambiguity about whether the legislature intended multiple punishments for the same conduct. As to mutual affray and reckless endangerment, the State contends that the former is concerned with public order, rather than threats to any specific person, and the latter is focused on harm to other persons caused by a defendant’s life-threatening conduct. Because the crimes are distinct offenses serving different purposes, there is no ambiguity concerning whether multiple punishments were intended. Similarly, the State argues that

mutual affray and attempted voluntary manslaughter address different societal interests and punish different harms.

1. *Mutual affray and reckless endangerment*

As explained *supra*, mutual affray and reckless endangerment punish different conduct and protect distinct societal interests. Indeed, mutual affray is “not a crime against the person;” rather, it is “a crime against the public and its aim is to protect the peace.” *Nottingham*, 227 Md. App. at 602 (quoting *Hickman v. State*, 193 Md. App. 238, 252 (2010)). Mutual affray, therefore, punishes public fighting that disturbs the peace. Reckless endangerment, on the other hand, criminalizes risk-creating behavior that endangers the life or safety of individuals. As such, mutual affray and reckless endangerment are unambiguously intended to be two distinct offenses, punished separately. Accordingly, the rule of lenity does not apply and the sentences for mutual affray and reckless endangerment do not merge.

2. *Mutual affray and attempted voluntary manslaughter*

Likewise, mutual affray and attempted voluntary manslaughter protect different societal interests and punish distinct harms. As previously discussed, unlike mutual affray which is a crime against the public and is intended to protect the peace, attempted voluntary manslaughter protects human life by punishing unreasonable intentional attempts to kill. Accordingly, mutual affray and attempted voluntary manslaughter are clearly intended to be punished separately. The rule of lenity, therefore, does not apply and the resulting sentences for mutual affray and attempted voluntary manslaughter need not be merged.

CONCLUSION

We hold that there was sufficient evidence to sustain Johnson's conviction of reckless endangerment. Further, we hold that the circuit court was not required to merge: (1) Johnson's sentence for reckless endangerment into his sentence for voluntary manslaughter; (2) Johnson's sentence for reckless endangerment into his sentence for attempted voluntary manslaughter; (3) Johnson's sentence for mutual affray into his sentence for reckless endangerment; or (4) Johnson's sentence for mutual affray into his sentence for attempted voluntary manslaughter. We, therefore, affirm Johnson's judgments of conviction.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**