Circuit Court for Harford County
Case No. C-12-CR-24-000700

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2412

September Term, 2024

WESLEY LARRY LYONS, JR.

v.

STATE OF MARYLAND

Tang,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: June 1, 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).

Following a trial in the Circuit Court for Harford County, a jury found the appellant, Wesley Larry Lyons, Jr., guilty of attempted second-degree murder of Richard Williams, multiple counts of reckless endangerment of various individuals, including Mr. Williams, and several firearm offenses. The court sentenced the appellant to an aggregate of 65 years of executed incarceration. The appellant noted this timely appeal and presents three questions, which we have rephrased and consolidated into two:[1]

1. Did the circuit court improperly instruct the jury on "defense of another"?
2. Did the circuit court err in declining to merge his sentences for various offenses?

For the reasons that follow, we remand the case with instructions to merge the appellant's sentence for reckless endangerment of Mr. Williams into his sentence for attempted second-degree murder. We otherwise affirm the judgments.

[1] The questions presented in the appellant's brief are as follows:

1. Whether [the appellant's] 5th Amendment right to be free from double jeopardy was violated when the trial court declined to merge count 5 (reckless endangerment of Richard Williams[)] with count 2 (attempted second-degree murder of Richard Williams).
2. Whether [the appellant's] 5th and 14th [A]mendment right of due process was violated when the trial court improperly instructed the jury, "*You have seen evidence that the Defendant attempted to kill Richard Williams in defense of another. You must decide whether this is a complete defense, a partial defense, or no defense in this case.*"
3. Whether [the appellant's] 5th Amendment right to be free from double jeopardy was violated when the trial court declined to merge his five reckless endangerment convictions (counts 5, 12, 13, 14, and 15)?

BACKGROUND

On June 2, 2024, the appellant attended a birthday party at the Bounce House, a children's playhouse inside a mall in Harford County. The party was for the one-year-old son of the appellant and Giovante Jarvis, his former partner. Ms. Jarvis attended the party with her boyfriend, Mr. Williams. The appellant's mother also attended. An employee of the Bounce House, Michael Tewodros, whose family owned the business, was working that day, along with his two younger brothers, A.B. and K.B, who were both minors.

While setting up for the party, the appellant's mother and Ms. Jarvis started fighting each other and throwing punches. Mr. Williams tried to stop the fight, but his pleas to stop were unsuccessful. Mr. Williams was not close enough to the women to pull them apart, so he picked up a plastic chair and swung it twice, "hoping everybody [would] get shocked and stop."

The appellant pulled out a handgun and fired it five times. Three bullets struck Mr. Williams. Immediately after the shooting, the appellant fled and evaded law enforcement for almost a month until he was ultimately arrested.

The appellant was charged with attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, and various firearm offenses. He was also charged with five counts of reckless endangerment of Mr. Williams, Ms. Jarvis, and three others, later identified as Mr. Tewodros and his younger brothers, A.B. and K.B.

At trial, the State presented the testimony of Mr. Williams and Mr. Tewodros. The surveillance video from the Bounce House capturing the incident was admitted into

evidence. In addition, two detectives testified about the investigation, and the appellant's videotaped interview was admitted into evidence.

The appellant did not testify in his defense. He argued through counsel that the video showed that he did not intend to kill Mr. Williams. He claimed that he was defending others when he fired the gun.

The jury acquitted the appellant of attempted first-degree murder. It found him guilty of attempted second-degree murder, use of a firearm in the commission of a crime of violence, possessing a regulated firearm after being convicted of a disqualifying crime, illegal possession of a regulated firearm after being convicted of a disqualifying crime, and possession of a loaded handgun on his person. The jury also found the appellant guilty of reckless endangerment of Mr. Williams, reckless endangerment of Ms. Jarvis, reckless endangerment of Mr. Tewodros, reckless endangerment of a minor child (A.B.), and reckless endangerment of another minor child (K.B.).

DISCUSSION

I.

Jury Instruction

The appellant argues that the circuit court gave an erroneous attempted manslaughter instruction when it informed the jury: "You have seen evidence *that the Defendant attempted to kill Richard Williams* in defense of another. You must decide whether this is a complete defense, a partial defense, or no defense in this case." (emphasis added.) He argues that the instruction was "simply not true" because he never argued or

conceded that he was attempting to kill Mr. Williams. He also argues that the instruction may have suggested to the jury that it should find him guilty of one of the attempted "intentional homicide offenses" (attempted first-degree murder, attempted second-degree murder, or manslaughter) as opposed to one of the lesser charges of first- or second-degree assault. He concedes that he did not object to this instruction, but nevertheless asks this Court to review for plain error.

The State responds that plain error review is not available because the appellant waived his claim under the invited error doctrine, and in any event, the other conditions of plain error review have not been satisfied.

A.

Additional Background

At the conclusion of the second day of trial on December 9, 2024, the court held preliminary discussions about proposed jury instructions. Defense counsel mentioned that the pattern jury instructions for various offenses referred to "self-defense" and that those should be adjusted to reflect the appellant's theory of "defense of another." The court directed counsel to file proposed jury instructions.

As directed, defense counsel filed the appellant's requested jury instructions. One of the pattern jury instructions that appellant requested was "MPJI-Cr 4:17.14 HOMICIDE--ATTEMPTED FIRST DEGREE MURDER, AND ATTEMPTED SECOND DEGREE MURDER, AND ATTEMPTED VOLUNTARY MANSLAUGHTER (IMPERFECT SELF-DEFENSE)," except that defense counsel made changes throughout

the instructions to reflect that the appellant was invoking the theory of "defense of another" rather than "self-defense." As pertinent here, under the section titled, "ATTEMPTED VOLUNTARY MANSLAUGHTER (IMPERFECT DEFENSE OF ANOTHER)," the appellant expressly requested the following language: "You have heard evidence that the defendant attempted to kill Richard Williams in defense of another. You must decide whether this is a complete defense, a partial defense, or no defense in this case."

The following day, the court held a brief meeting with the attorneys in chambers to review the proposed instructions. The court asked the State whether it had any objections to the instructions, to which it responded that it did not. The court turned to defense counsel: "All right, [defense counsel]?" Defense counsel raised only one "nitpicky" issue unrelated to the instruction at issue on appeal. Once the issue was resolved, the court asked if the State and defense were ready for the jury to come in for jury instructions, to which they responded in the affirmative.

B.

Analysis

Maryland Rule 4-325(f) provides:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

The first part of this rule means that "the failure to object to a jury instruction at trial results in a waiver of any defects in the instruction, and normally precludes further review of any claim of error relating to the instruction." *Lindsey v. State*, 235 Md. App. 299, 329 (2018) (citation omitted). The rule allows for the possibility of plain error. *See* Md. Rule 4-325(f) ("An appellate court . . . may however take cognizance of any plain error in the instructions . . . despite a failure to object.")

"Plain error is error that is so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Steward v. State*, 218 Md. App. 550, 565 (2014) (citation modified). Our discretion to recognize plain error is plenary. *Austin v. State*, 90 Md. App. 254, 262–64 (1992). Furthermore, plain error review is "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Hallowell v. State*, 235 Md. App. 484, 505 (2018) (citation omitted). "In order to be 'extraordinary,' and thus cognizable on review, an error must be more than prejudicial, indeed, more than merely reversible, had the error been properly preserved." *Steward*, 218 Md. App. at 568 (citation omitted). Notably, when an issue is raised as to an alleged defective jury instruction, Maryland appellate courts "have been rigorous in adhering steadfastly to the preservation requirement." *Peterson v. State*, 196 Md. App. 563, 589 (2010) (citation modified); *see also Taylor v. State*, 236 Md. App. 397, 447 (2018) ("[I]n the context of erroneous jury instructions, the plain error doctrine has been used sparingly." (citation omitted)), *rev'd on other grounds*, 473 Md. 205 (2021).

In order to conclude that an error amounts to plain error, the Supreme Court of Maryland has articulated the following four conditions, all of which must be met:

1. the appellant did not intentionally relinquish or abandon the legal error;
2. the legal error is clear or obvious, and not subject to reasonable dispute;
3. the error affected the appellant's substantial rights, which means that it affected the outcome of the proceedings; and
4. the error seriously affects the fairness, integrity, or reputation of judicial proceedings.

Newton v. State, 455 Md. 341, 364 (2017) (citing *State v. Rich*, 415 Md. 567, 578 (2010)); *accord Givens v. State*, 449 Md. 433, 469 (2016) (observing that "[m]eeting all four prongs is difficult, as it should be"). A plain error analysis "need not proceed sequentially through the four conditions; instead, the court may begin with any one of the four and may end its analysis if it concludes that that condition has not been met." *Winston v. State*, 235 Md. App. 540, 568 (2018).

As to the waiver prong, *State v. Rich*, 415 Md. 567 (2010), is instructive. There, defense counsel requested a voluntary manslaughter instruction concerning the hot-blooded response to legally adequate provocation. *Id.* at 572–73. The jury convicted Rich of voluntary manslaughter. *Id.* at 573. He appealed, arguing that there was insufficient evidence to generate the issue of voluntary manslaughter and, therefore, the trial court erred by giving the instruction he had requested. *Id.* This Court found plain error and reversed the conviction, concluding that the evidence was insufficient to generate the issue of whether Rich acted in hot-blooded response to legally adequate provocation. *Id.* The Supreme Court of Maryland granted certiorari and reversed. *Id.* at 573–74.

The Supreme Court noted that defense counsel had expressly argued that, assuming Rich had killed the victim, he was provoked. *See id.* at 571–72. Additionally, counsel had "specifically requested" the voluntary manslaughter instruction at issue. *Id.* at 575. Accordingly, the Court determined that the "doctrine of invited error [was] applicable to [Rich's] argument that 'the instructional error materially affected his right to a fair and impartial trial.'" *Id.* (citation omitted). "Invited error," the court explained, is a "shorthand term for the concept that a defendant who himself invites or creates error cannot obtain a benefit—mistrial or reversal—from that error." *Id.* (citation omitted). The Court made clear that the doctrine of invited error is "applicable to appellate review of jury instructions specifically requested by the criminal defendant's counsel." *Id.* The Court concluded that when defense counsel "(1) argued that the issue of voluntary manslaughter was generated by the evidence, and (2) made a specific request for a voluntary manslaughter instruction, that action constituted an intentional waiver of the right to argue on appeal that the evidence was insufficient to support the voluntary manslaughter conviction." *Id.* at 581.

In this case, there was no dispute that the evidence raised the issue of defense of others, and the appellant requested the instruction. Furthermore, when the court inquired about the final version of the proposed jury instruction it planned to give, the defense effectively indicated it had no objection to the instruction. We conclude that the appellant affirmatively waived the right to challenge the instruction. *Cf. Yates v. State*, 202 Md. App. 700, 722 (2011) (holding that petitioner did not affirmatively waive plain error review

where he failed to object when the court read the instruction but, unlike defense counsel in *Rich*, "did not request specifically the instruction that the court gave").

Even if the appellant did not affirmatively waive his right to plain error review, he has failed to establish "an error, let alone plain error," that would justify the exercise of our discretion to undertake such review. *Wiredu v. State*, 222 Md. App. 212, 225 (2015). The complained-of instructional error in this case came directly from the Maryland Pattern Jury Instructions, MPJI—CR 4:17.14(C) "ATTEMPTED VOLUNTARY MANSLAUGHTER (IMPERFECT SELF-DEFENSE)," which reads in pertinent part as follows: "You have heard evidence that the defendant attempted to kill (name) in self-defense. You must decide whether this is a complete defense, a partial defense, or no defense in this case." The court's oral instruction and the jurors' printed copy of the instruction reflected the language of the pattern instruction nearly verbatim, except that the phrase "self-defense" was replaced throughout with "defense of another" (with which the appellant takes no issue).[2]

As explained in *Sydnor v. State*, 133 Md. App. 173, 184 (2000), we encourage the use of pattern jury instructions. This Court has held that the use of a pattern jury instruction weighs heavily against plain error review. *Wiredu*, 222 Md. App. at 224–25 (declining to exercise discretion to undertake plain error review of jury instruction because the instruction came directly from the Maryland Pattern Jury Instructions); *Yates*, 202 Md.

[2] The challenged portion of the oral and written instructions to the jury were adjusted in one immaterial way that is not challenged—instead of "heard," as in the pattern instruction, the court used the word "seen." The appellant also does not take issue with this adjustment.

App. at 723–24 (stating "that the circuit court's use of a pattern jury instruction, without objection, weigh[ed] heavily against plain error review of the instructions given"). Accordingly, we decline to exercise our discretion to conduct plain error review.

II.

Sentencing

The court sentenced the appellant to a total sentence of 65 years of incarceration as follows:

> Attempted second-degree murder of Mr. Williams (count 2): 30 years;
>
> Use of a firearm in the commission of a crime of violence (count 6): 20 years, consecutive to the sentence imposed for count 2;
>
> Illegal possession of a regulated firearm after being convicted of a disqualifying crime (count 7): 15 years, consecutive to the sentence imposed for count 6;
>
> Possession of a loaded handgun on person (count 11): 3 years, suspended;
>
> Possessing a regulated firearm after being convicted of a disqualifying crime (count 8): merged into count 7;
>
> Reckless endangerment of Mr. Williams (count 5): five years, suspended;
>
> Reckless endangerment of Ms. Jarvis (count 12): five years, suspended;
>
> Reckless endangerment of Mr. Tewodros (count 13): five years, suspended;
>
> Reckless endangerment of A.B. (count 14): five years, suspended;
>
> Reckless endangerment of K.B. (count 15): five years, suspended.

First, the appellant argues that his sentences for reckless endangerment and attempted second-degree murder of Mr. Williams must merge. Second, the appellant argues that he is entitled to merger of the reckless endangerment sentences with respect to the different individuals.

A.

Overview of Relevant Law

"The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law." *Brooks v. State*, 439 Md. 698, 737 (2014). "Merger protects a convicted defendant from multiple punishments for the same offense." *Id.*

For two or more convictions to be merged for sentencing purposes, the convictions must be based on the same act or acts. *State v. Frazier*, 469 Md. 627, 641 (2020). If so, we then look at whether the offenses meet one of the three principles of merger recognized in Maryland: "(1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness." *Koushall v. State*, 479 Md. 124, 156 (2022) (citation omitted).

Under the required evidence test, we look at the elements of each offense and determine if each offense contains an element that the other does not. *Potts v. State*, 231 Md. App. 398, 413 (2016). "If each offense requires proof of a fact which the other does not, the offenses are not the same and do not merge." *Koushall*, 479 Md. at 157 (citation omitted). If, however, "only one offense requires proof of a fact which the other does not, the offenses are deemed the same, and separate sentences for each offense are prohibited." *Id.* (citation omitted).

"The rule of lenity, applicable only where a defendant is convicted of at least one statutory offense, requires merger when there is no indication that the legislature intended multiple punishments for the same act." *Potts*, 231 Md. App. at 413. "The rule of lenity is

a common law doctrine that directs courts to construe ambiguous criminal statutes in favor of criminal defendants." *Alexis v. State*, 437 Md. 457, 484–85 (2014). "[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." *Koushall*, 479 Md. at 161 (citation omitted). "The relevant inquiry is whether the two offenses are 'of necessity closely intertwined' or whether one offense is '*necessarily* the overt act' of the other." *Pineta v. State*, 98 Md. App. 614, 620–21 (1993) (citation omitted).

The crime of reckless endangerment is codified in § 3-204 of the Criminal Law Article of the Maryland Code, which states, in pertinent part, that "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another." Crim. Law § 3-204(a). As we have explained, "the crime of reckless endangerment is quintessentially a crime against persons," and "the unit of prosecution for the crime of reckless endangerment is each person who is recklessly exposed to the substantial risk of death or serious physical injury." *Albrecht v. State*, 105 Md. App. 45, 58, 65 (1995) (citation modified). Reckless endangerment "is an inchoate crime and is intended to deal with the situation in which a victim is put at substantial risk of death or serious bodily harm but may, through a stroke of good fortune, be spared the consummated harm itself." *Id.* at 58.

B.

Reckless Endangerment and Attempted Second-Degree Murder of Mr. Williams

The State agrees that the appellant's sentences for attempted second-degree murder and reckless endangerment of Mr. Williams must merge. So do we.

The relevant elements of each of those crimes, per the court's instructions to the jury, were as follows. To prove reckless endangerment, the State needed to show that the appellant "engaged in conduct that created a substantial risk of death or serious physical injury to another." To prove attempted second-degree murder of Mr. Williams, the State needed to show that the appellant intended to kill Mr. Williams. These offenses were both based on the same act by the appellant: firing a gun at or around Mr. Williams.

By committing that act, the appellant was guilty of "recklessly endangering" Mr. Williams. By committing that act with the intent to kill, the appellant was also guilty of attempted second-degree murder. Both crimes, reckless endangerment and attempted second-degree murder of Mr. Williams, were based on the same act, except that attempted second-degree murder required the additional *mens rea* of the intent to kill. *See Williams v. State*, 100 Md. App. 468, 490 (1994) ("To move from reckless endangerment, where one is simply indifferent to the threat to the victim, to one of the more malicious crimes where death or serious bodily harm is affirmatively desired or specifically intended . . . primarily involves ra[t]cheting the *mens rea* up to the next level of blameworthiness."). As such, the attempted second-degree murder and the reckless endangerment of Mr. Williams were the "same offense." *See id.* at 510–11 (holding that the defendant's conviction of reckless

endangerment merged into his conviction of assault with intent to maim under the required evidence test); *see also McClurkin v. State*, 222 Md. App. 461, 489 (2015) (holding that where reckless endangerment is based on the same conduct as an attempted murder charge, and the latter is based on the same act but a more specific *mens rea*, reckless endangerment merges into the greater inclusive offense of attempted murder). Accordingly, the sentence for reckless endangerment of Mr. Williams (count 5) merges into the sentence for attempted second-degree murder of Mr. Williams (count 2).

C.

Reckless Endangerment of Different Individuals

The appellant contends that he is entitled to merger of the five reckless endangerment sentences with respect to five different individuals. Since we agree that the sentence for reckless endangerment of Mr. Williams (count 5) merges into the sentence for the attempted second-degree murder of Mr. Williams (count 2), the issue at hand involves the convictions for reckless endangerment of the four other individuals (counts 12 through 15). The appellant does not argue why the sentences should merge, nor does he cite any authority to support his contention. Consequently, we need not consider that issue on appeal. *See Diallo v. State*, 413 Md. 678, 692 (2010) ("Arguments not presented in a brief or not presented with particularity will not be considered on appeal." (citation modified) (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999))).

In any event, each charge and subsequent conviction for reckless endangerment related to a different individual. "[W]here the same general transaction affects different

victims, the offenses would not merge." *Price v. State*, 261 Md. 573, 580 (1971); *see also Smith v. State*, 23 Md. App. 177, 185 (1974) (concluding that "no question of merger of offenses [was] involved" where "[e]ach of the crimes of which the [defendants] were found guilty was committed against a different victim"), *disapproved on other grounds*, *Butcher v. State*, 196 Md. App. 477 (2010); *cf. Melville v. State*, 10 Md. App. 118, 126 (1970) (holding that the assault and battery on one victim did not merge with the assault and battery of a different victim). Accordingly, the appellant's convictions for reckless endangerment as to counts 12 through 15 do not merge for sentencing purposes.

SENTENCE FOR RECKLESS ENDANGERMENT OF RICHARD WILLIAMS VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR HARFORD COUNTY WITH INSTRUCTIONS TO MERGE THE SENTENCE FOR RECKLESS ENDANGERMENT OF RICHARD WILLIAMS INTO THE SENTENCE FOR ATTEMPTED SECOND-DEGREE MURDER OF RICHARD WILLIAMS.

ALL OTHER JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE PAID 75% BY THE APPELLANT AND 25% BY HARFORD COUNTY.