Circuit Court for Prince George's County
Case No. CT18-0560X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 616

September Term, 2019

JOHN WILLIAMS

v.

STATE OF MARYLAND

Graeff,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by, Eyler, James R., J.

Filed: May 7, 2020

A jury sitting in the Circuit Court for Prince George's County convicted John Robert Williams, III, appellant, of three counts of illegal possession of a firearm and related offenses.[1] At sentencing, the convictions for illegal possession of a firearm were merged into one. On that count, in light of appellant's prior criminal record, the court sentenced appellant under a statutory provision setting forth a mandatory minimum sentence of five years, to be served without the possibility of parole.

In this appeal, appellant presents three questions for our review, which we have reordered:

1. Did the trial court err in denying Mr. Williams's motion to suppress?

2. Did the trial court err in failing to exercise its discretion to order drug treatment in lieu of a prison sentence?

3. Did the trial court err in sentencing Mr. Williams, who was not convicted of a crime of violence, to five years without parole?

Because we conclude that the court did not recognize that it had discretion to commit appellant to a drug treatment program in lieu of the statutory mandatory minimum sentence, we shall vacate appellant's sentences and remand to the trial court for the limited purpose of conducting a resentencing hearing to consider whether an exercise of that discretion in appellant's case is appropriate. We shall otherwise affirm the judgments of the circuit court.

[1] Appellant was also convicted of carrying a handgun in a vehicle and illegal possession of ammunition.

FACTS AND PROCEEDINGS

Motion to Suppress

Prior to trial, appellant moved to suppress physical evidence from trial. The court held a hearing on the motion to suppress, at which the following facts were elicited.

Shortly after 11:00 p.m. on March 18, 2018, Officer Daryn Howard of the Prince George's County Police Department was on patrol, behind the wheel of a police cruiser, with Officer Genesis Ruiz, an officer in training. The officers noticed a vehicle parked in a lot, behind a row of businesses. The vehicle was facing a wooded area and its brake lights were illuminated. Officer Howard thought the vehicle's presence was a "little suspicious" because the businesses were closed.

Officer Howard pulled into the parking lot and saw appellant walking away from the driver's side of the vehicle. Appellant walked through a hole in a fence that was behind the businesses, and toward a building on the other side, where two other individuals were sitting on steps. Officer Howard parked next to the driver's side of the vehicle and both officers exited the patrol cruiser. Officer Howard followed appellant through the hole in the fence, while Officer Ruiz approached the parked vehicle, which contained one passenger.

Officer Howard asked appellant to "come back[,]" but appellant continued to walk away, toward the rear of the building, while putting his hands in his pockets and "making movements in his pockets." Officer Howard gave "multiple" commands for appellant to stop walking and take his hands out of his pockets. Appellant ignored the commands and continued to walk behind the building, out of Officer Howard's sight. Appellant then

reemerged, 20 to 30 seconds later, and walked toward Officer Howard, with his hands raised, outside of his pockets, and complied with Officer Howard's command to sit down. Officer Howard conducted a pat-down of appellant and the two men that were sitting on the steps, and appellant was placed in handcuffs.[2]

Officer Howard asked Corporal Kevin Stevenson, who had then arrived as back-up, to check the area behind the building, where appellant had disappeared from sight. Corporal Stevenson went "directly" to where Officer Howard had pointed and immediately observed a prescription pill bottle on the ground behind the building. The prescription bottle contained cocaine and pills.

Officer Ruiz testified that, as she approached the vehicle, she observed that the windows on both the driver's and passenger's side were down. When she reached the trunk of the vehicle, she detected the smell of marijuana, which she was familiar with based on her training and experience. Officer Ruiz did not specify whether she smelled burnt marijuana or fresh marijuana.

When back-up officers arrived, Officer Ruiz removed the passenger from the vehicle and asked whether he had anything on him. The passenger responded that he had marijuana in his right pocket. Officer Ruiz reached into the passenger's pocket and recovered "an orange pill container with a leafy green substance," which she believed to

[2] No contraband was recovered during the pat-down of appellant.

be marijuana. The vehicle, which was registered to appellant, was then searched, and a black handgun was found in an open "Gucci Satchel" bag on the rear seat.[3]

The court denied the motion to suppress the pill bottle found on the ground on the basis that appellant did not have a reasonable expectation of privacy in the pill bottle because it had been abandoned. Appellant does not challenge that ruling on appeal.[4]

With respect to the suppression of the gun, defense counsel argued that Officer Ruiz's stated basis for the search of the vehicle was not credible. Defense counsel asserted that the officer's testimony that the windows of the vehicle were open was "suspect" because (1) at that time of night, in mid-March, it would have been "pretty chilly[,]" and (2) the photographs of the vehicle did not clearly establish that the windows were open.

Defense counsel then focused the court's attention on the fact that Officer Ruiz did not state whether she smelled burnt marijuana or fresh marijuana, and that the only marijuana recovered was "on the person of a passenger that was in a sealed container." Defense counsel argued that, without evidence that what the officer smelled was burnt marijuana, "we are left with the fact [that] this officer is somehow able to smell through a pill bottle this relatively small amount of what she believed to be marijuana."

Defense counsel argued, alternatively, that, even though the smell of marijuana may provide probable cause to search a vehicle, the search here was nonetheless illegal because

[3] Police also recovered a digital scale and approximately 160 "clear sandwich baggies" from underneath the driver's seat.

[4] In addition to the charges that appellant was convicted of, the State charged appellant with two counts of possession of a controlled dangerous substance. Those charges were *nol prossed* by the State.

it occurred after appellant, the owner of the vehicle, had been detained without reasonable suspicion and arrested without probable cause.

In denying the motion to suppress the gun, the court stated as follows:

> [Officer Ruiz] testified that she was at the vehicle, there is no indication to me that there was any contact with what was going on with the [appellant] in this case. She approached the vehicle[,] the windows were rolled down.
>
> I am not going to speculate as to how they got down. Officer [Ruiz] testified the windows were down, the fact that it was March, chilly outside, I could take the position that the windows were rolled down in March to let the smoke out or to let the smell out. I am not going to take either position. I can speculate as to why the windows were rolled down in March.
>
> And I don't also agree that the officer has to indicate whether marijuana was burnt or fresh. I think that goes to weight because I am guess that the argument is going to be how you smell through a pill bottle.
>
> But in any event, she smelled, searched the vehicle, found marijuana, searched incident. The [c]ourt is denying that motion as well.

Trial and Sentencing

A jury trial commenced on January 17, 2019. Officer Howard and Officer Ruiz were called as witnesses for the State and testified consistent with their testimony at the suppression hearing. In addition, Officer Ruiz testified that the handgun found inside the Gucci bag in appellant's car was loaded with ammunition. The parties stipulated that the handgun was a regulated firearm, and that appellant was prohibited from possessing a regulated firearm. The parties also stipulated that the Gucci bag contained mail, bank documents and motor vehicle documents that were addressed exclusively to appellant. Both stipulations were admitted into evidence.

Although appellant was charged with three separate counts of illegal possession of a firearm, for purposes of the verdict sheet, those three counts were encompassed into one question: "Do you find the [appellant] guilty or not guilty of possession of a firearm after being disqualified by law?" The parties agreed that, if the jury answered "guilty" to that question, the verdict would be guilty as to Counts 1, 2, and 3.[5] As previously noted, the jury found appellant guilty of possession of a firearm after being disqualified by law, illegal possession of ammunition, and transporting a handgun in a vehicle.

At sentencing, the court merged the three convictions for illegal possession of a firearm into one, and sentenced appellant to 15 years of incarceration, all but five years suspended and to be served without the possibility of parole. The court imposed consecutive sentences, totaling four years, for the remaining two convictions, and suspended those sentences in their entirety.

Additional facts will be included in the discussion as they become relevant.

[5] Count 1 charged appellant, pursuant to Md. Code (2003, 2011 Repl. Vol., 2016 Supp.), Public Safety Article ("PS"), §5-133(c), with possession of a regulated firearm after having been convicted of a violation of §5-602 of the Criminal Law Article (distribution of or possession with intent to distribute a controlled dangerous substance).

Count 2 charged appellant, pursuant to PS §5-133(b), with possession of a regulated firearm after having been convicted of a "disqualifying crime," specifically, carrying a handgun.

Count 3 charged appellant, pursuant to Md. Code (2002, 2012 Repl. Vol, 2016 Supp.), Criminal Law Article, §5-622, with possession of a handgun after being convicted of a drug felony.

DISCUSSION

I. Motion to Suppress

We recently summarized the standard of review of a ruling on a motion to suppress as follows:

> We review a circuit court's denial of a motion to suppress on only the evidence contained in the record of the suppression hearing. We extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous. In our consideration, we review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party, in this case, the State. However, we review the suppression court's legal conclusions *de novo* by undertaking our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts found by the suppression court.

Payne v. State, 243 Md. App. 465, 476 (2019) (cleaned up).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. *See, e.g.*, *Pacheco v. State*, 465 Md. 311, 320 (2019). A warrantless search or seizure is presumed to be unreasonable for purposes of the Fourth Amendment unless "the circumstances fall within 'a few specifically established and well-delineated exceptions.'" *Id.* at 320-21 (quoting *Katz v. U.S.*, 389 U.S. 347, 357 (1967)). Evidence obtained by government officials in violation of the Fourth Amendment is subject to the "'exclusionary rule – a judicially imposed sanction,' which serves to 'deter lawless and unwarranted searches and seizures by law enforcement officers.'" *Cox v. State*, 194 Md. App. 629, 653 (2010), *aff'd* 421 Md. 630 (2011) (quoting *Myers v. State*, 395 Md. 261, 282 (2006)).

One exception to the warrant requirement is the "automobile exception" which "authorize[s] the warrantless search of a vehicle if, at the time of the search, the police have developed 'probable cause to believe the vehicle contains contraband or the evidence of a crime.'" *Pacheco*, 465 Md. at 321 (quoting *State v. Johnson*, 458 Md. 519, 533 (2018)). As the Court of Appeals has recently affirmed, despite the decriminalization of small amounts of marijuana, "marijuana in any amount remains contraband and its presence in a vehicle justifies the search of the vehicle." *Id*. at 330 (quoting *Robinson v. State*, 451 Md. 94, 124-33 (2017)).

Appellant advances three arguments in support of his claim that the court erred in denying the motion to suppress the handgun, which we shall address in turn. First, appellant asserts that "crediting Officer Ruiz's testimony that she smelled marijuana was clear error[.]" He contends that "it would be clear error to conclude that Officer Ruiz smelled burnt marijuana because there was no evidence of a joint or smoke[,]" and that it "would also be clear error to conclude that Officer Ruiz smelled fresh marijuana because the only trace of fresh marijuana was contained in a plastic pill bottle." Appellant suggests that the court erred in finding that Officer Ruiz smelled marijuana because "both scenarios are incredible." We disagree.

As we have previously noted, "a clearly erroneous holding should be limited to a situation where, with respect to a proposition or a fact as to which the proponent bears the burden of production, the fact-finding judge has found such a proposition or fact without the evidence's having established a *prima facie* basis for such a proposition or fact." *State v. Brooks*, 148 Md. App. 374, 398 (2002). "A finding of fact should never be held to have

been clearly erroneous simply because its evidentiary predicate was weak, shaky, improbable, or a '50-to-1 long shot.'" *Id.* Rather, "[a] holding of 'clearly erroneous' is a determination as a matter of law, that, even granting maximum credibility and maximum weight, there was no evidentiary basis whatsoever for the finding of fact." *Id.* at 399. In reviewing a claim of clear error, "[t]he concern is not with the frailty or improbability of the evidentiary base, but with the bedrock non-existence of an evidentiary base." *Id.*

In ruling on the motion to suppress, the court acknowledged the absence of testimony characterizing the marijuana odor as either burnt or fresh. The court recognized that, if it were to infer from the evidence that Officer Ruiz smelled fresh marijuana, the weight of that evidence could be called into question absent a finding that it was possible to smell the fresh marijuana that was contained inside a pill bottle. The court noted that the evidence before it also supported an inference that the odor detected by Officer Ruiz as she neared the vehicle was burnt marijuana, and that the court could "take the position that the windows were rolled down in March to let the smoke out[.]" The court ultimately found that Officer Ruiz smelled marijuana, but did not find it necessary to make a specific finding as to whether the source of the odor was fresh marijuana or burnt marijuana.

We find no clear error in the court's finding. The testimony of Officer Ruiz, a sworn law enforcement officer who had training and experience in the identification and smell of marijuana, established a *prima facie* basis for the finding. Moreover, we agree with the court that a finding of exact source of the odor, whether from fresh or burnt marijuana, was not critical to its determination of whether the odor of marijuana constituted probable cause to search the vehicle.

This case is different from *Grant v. State*, 449 Md. 1 (2016), the only case cited by appellant in support of his argument that the trial court erred in finding that Officer Ruiz smelled marijuana. In *Grant*, the Court of Appeals held that the State failed to satisfy its burden of proving that a warrantless search of a vehicle was lawful because it was not clear whether the police officer smelled marijuana before or after inserting his head into the window of a vehicle during a traffic stop. *Id.* at 28-29. The Court explained that, because the latter scenario would constitute an illegal search, the ambiguity was "paramount at the suppression hearing because, where evidence of a lawful warrantless search is 'inconclusive[,]' the defendant must prevail." *Id*. (quoting *Epps v. State*, 193 Md. App. 687, 704 (2010)). Here, however, although the evidence did not establish whether Officer Ruiz smelled burnt marijuana or fresh marijuana, that ambiguity was not "paramount" because neither scenario would compel a conclusion that the search of the vehicle was illegal.

Next, appellant asserts that, assuming Officer Ruiz had probable cause to search the vehicle based on the smell of marijuana, that justification "dissipated" once Officer Ruiz took possession of the passenger's container of marijuana. Appellant claims that, "[w]hen Officer Ruiz began searching the car, she lacked probable cause because she had taken possession of the source of the marijuana odor and because the vehicle's occupant, who handed her the marijuana, was neither the owner nor driver of the vehicle, but a mere passenger." This argument was waived as appellant did not raise this theory in the circuit court in support of his motion to suppress. *See Ray v. State*, 435 Md. 1, 19 (2013) (where a defendant advances one theory of suppression but fails to argue an additional theory that

is later asserted on appeal, the defendant has "waived the right to have that claim litigated on direct appeal.")

Finally, appellant contends that he was seized without reasonable articulable suspicion, and therefore, the gun and ammunition found in the vehicle should have been suppressed as "fruit of the illegal seizure." We disagree.

"Under the 'fruit of the poisonous tree' doctrine, evidence tainted by Fourth Amendment violations may not be used directly or indirectly against the accused." *Miles v. State*, 365 Md. 488, 520 (2001). For evidence to be excluded under this doctrine, "there must be a 'cause-and-effect' relationship or nexus between the 'poisonous tree and its alleged fruit.'" *Id.* (citation omitted). The question is "whether, granting establishment of the primary illegality, the evidence to which the instant objection is made has been come at by exploitation of the illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Cox*, 194 Md. App. at 655 (quoting *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)).

The court did not appear to make a specific finding as to whether there was a nexus between the seizure of appellant and the search of the vehicle. Appellant claims that there was no evidence that his seizure and the search of his vehicle occurred simultaneously, as the State argued at the suppression hearing, and therefore, the State "failed to carry its burden of proving that the warrantless search of the car was independent and separate from the illegal seizure of his person."

Where, as here, a suppression court's fact-finding is ambiguous, incomplete or non-existent, we employ a "supplemental rule of interpretation" to determine whether there was

sufficient evidence, as a matter of law, to support the ruling. *Morris v. State*, 153 Md. App. 480, 489-90 (2003). We accept the version of the evidence that is most favorable to the party who prevailed on the motion to suppress. *Id.* at 490. We "fully credit the prevailing party's witnesses[,]" "give maximum weight to the prevailing party's evidence[,]" and "resolve ambiguities and draw inferences in favor of the prevailing party and against the losing party." *Id.* 490.

Applying those principles to the record of the suppression hearing, we hold that the evidence was sufficient, as a matter of law, to support the conclusion that the search of the vehicle had no nexus to the seizure of appellant but was "sufficiently distinguishable" from it. Therefore, even assuming, without deciding, that appellant was seized without reasonable suspicion, the fruit of the poisonous tree doctrine would not apply to evidence recovered from the vehicle. We explain.

Currently, in Maryland, where any amount of marijuana is still contraband, "a law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle[.]" *Robinson*, 451 Md. at 99. According to Officer Ruiz's testimony, she detected the odor of marijuana at the trunk of the vehicle shortly after she and Officer Howard exited their police cruiser to investigate:

> [PROSECUTOR]: So, when you pulled into [the parking lot] did you make contact with that vehicle?
>
> [OFFICER RUIZ]: I did.
>
> [PROSECUTOR]: And when you pulled in, can you please explain to the Court what, if anything, you did next?

> [OFFICER RUIZ]: When we pulled in, I approached the vehicle, Officer Howard, he went towards the [appellant who] was leaving the vehicle. . . Officer Howard followed the [appellant]. . . . I saw there was another individual in the car, I went towards the vehicle.
>
> [PROSECUTOR]: . . . [W]here was that person seated?
>
> [OFFICER RUIZ]: In the front passenger's seat.
>
> [PROSECUTOR]: Okay. And, so, as you approached the vehicle, what, if anything, occurred next?
>
> [OFFICER RUIZ]: I approached the vehicle, I observed the driver and the passenger's window down. When I got to the trunk of the car, I smelled marijuana. And that's when I approached the passenger's side and spoke to the passenger.

By contrast, according to Officer Howard's testimony, appellant was not seized right away. He did not comply when Officer Howard first asked him to "come back," but kept walking. Officer Howard gave "multiple" commands to stop, which appellant continued to ignore. Appellant eventually disappeared from the officer's sight for a period of time, then walked back to the area before he finally complied with the order to have a seat.[6]

Viewing the evidence and the inferences to be drawn therefrom in favor of the State, and resolving any ambiguities in the same way, we conclude that the evidence was sufficient as a matter of law to support the conclusion that probable cause to search the

[6] Appellant concedes that he was not seized until he returned from behind the building and obeyed the officer's order to sit down. *See, e.g., Williams v. State*, 212 Md. App. 396, 408 (2013) (a person is not seized for purposes of the Fourth Amendment "until he is restrained by physical force or by a 'show of authority' to which he has yielded.") (citing *California v. Hodari D.*, 499 U.S. 621, 626 (1991)).

vehicle arose prior to the seizure of appellant by Officer Howard.[7] Accordingly, the evidence recovered from the vehicle was not subject to exclusion as fruit of the allegedly unlawful seizure.

In sum, we conclude that the court did not err in concluding that the search of the vehicle was lawful. Accordingly, we shall affirm the court's denial of the motion to suppress the gun from evidence.

II. Failure to Order Drug Treatment

Prior to sentencing, appellant filed a motion seeking a substance abuse evaluation pursuant to Maryland Code (1982, 2015 Repl. Vol., 2017 Supp.), Health General Article ("HG"), §8-507, which, in pertinent part, provides that:

> a court that finds in a criminal case or during a term of probation that a defendant has an alcohol or drug dependency may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment, to the Department [of Health] for treatment that the Department recommends[.]

At a sentencing hearing on March 29, 2019, the parties agreed that appellant's three convictions for illegal possession of a firearm merged for sentencing purposes. Count 1, into which the other two counts were merged, had charged appellant with illegal possession of a firearm under Maryland Code (2003, 2011 Repl. Vol., 2016 Supp.), Public Safety

[7] Appellant argues, for the first time on appeal, that his vehicle was illegally seized for Fourth Amendment purposes, when the police "positioned their car 'diagonally'" behind his car, and that "[t]he search of the car that followed its illegal seizure was unconstitutional[.]" Because appellant did not raise this theory in the circuit court, in support of his motion to suppress, he has waived it, and we shall not address it. *See Ray, supra.*

Article ("PS"), §5-133(c), which prohibits a person from possessing a regulated firearm if the person had previously been convicted of certain enumerated crimes. A defendant who is convicted of a violation of PS §5-133(c) is subject to a mandatory minimum sentence of five years in prison without the possibility of parole, no part of which may be suspended. PS §5-133(c)(2)-(3).

The State opposed appellant's request for a substance abuse evaluation, asserting that the court had no discretion to commit appellant to the Department of Health for substance abuse treatment in lieu of the mandatory minimum sentence. The court postponed sentencing because appellant had not yet been evaluated by the Department of Health. Appellant was subsequently evaluated, and sentencing resumed on May 17, 2019.

At that time, the State recommended a sentence of ten years, the first five years to be served without parole, for the conviction for illegal possession of a firearm. Defense counsel asked the court to impose a suspended sentence and commit appellant to a long-term drug treatment program, pursuant to HG §8-507.

The court asked defense counsel to point to statutory authority for circumventing the mandatory minimum sentence in PS §5-133(c)(2). Defense counsel responded, without pointing to a specific provision in the statute, that appellant could be sentenced "under the Health General Article." The court concluded that it did not have any discretion, and imposed a sentence, pursuant to PS §5-133(c)(2), of fifteen years, all but five years suspended, to be served without the possibility of parole.

On appeal, appellant asserts that the court had discretion to commit a defendant to drug treatment pursuant to PS §5-133(c)(5), which provides that "[a] person convicted

under this subsection is not prohibited from participating in a drug treatment program under §8-507 of the Health-General Article because of the length of the sentence."[8] The State agrees, as do we, that PS §5-133(c)(5) vested the court with discretion to consider appellant's request for drug treatment pursuant to HG §8-507 and that, because the court did not exercise that discretion, the sentences must be vacated and remand for resentencing is required.

In *Collins v. State*, 89 Md. App. 273, 293 (1991), we held that similar statutory language permitted the court to order that a defendant be committed for drug treatment in lieu of a mandatory prison sentence. There, the defendant was convicted of possession of cocaine with intent to distribute. *Id.* at 276. Under a sentencing provision then in effect, the defendant, who had a prior conviction for a drug offense, was subject to a mandatory sentence of 10 years. *Id.* at 283. The applicable sentencing provisions further provided that "[t]his subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health-General Article, because of the length of the sentence[.]" *Id.* at 290.

We held that such language conferred upon the trial court discretion to commit the defendant for drug treatment prior to the imposition of the mandatory sentence, *id*. at 293, and that the trial court erred in concluding that it had no such discretion. *Id.* at 288.

[8] We agree with the parties that, because PS §5-133(c)(5) became effective after the alleged offense but before appellant's trial and sentencing, it is applicable to his case. *See Waker v. State*, 431 Md. 1, 11 (2013) (more lenient penalty provisions that are in effect at the time of sentencing are controlling.)

Accordingly, we vacated the sentence and remanded to the trial court to determine if the defendant was a proper candidate for drug treatment. *Id.* at 294.

Here, we hold that PS §5-133(c)(5), the language of which is virtually identical to the sentencing statute at issue in *Collins*, allows the trial court to consider appellant's request for drug treatment in lieu of the mandatory minimum sentence. Because the court did not recognize that it had such discretion, and therefore did not consider whether commitment for drug treatment was appropriate in appellant's case, we will vacate appellant's sentences and remand for a resentencing hearing. *See Maus v. State*, 311 Md. 85, 108 (1987) (trial court's failure to exercise discretion to consider factors in sentencing is error which ordinarily requires reversal).

III. Mandatory Minimum Sentence

Appellant's final contention is that the court erred in sentencing him, on Count 1, to a mandatory minimum sentence because the State failed to prove that he had a prior conviction for a crime of violence. Although we shall vacate appellant's sentences and remand to the circuit court for a resentencing hearing, we shall address this contention as the issue may arise on remand.

As we have already discussed, for a defendant to be convicted of a violation of PS §5-133(c) and therefore be subject to the mandatory minimum sentence of five years without parole, the State must prove that the defendant possessed a regulated firearm after being convicted of certain enumerated crimes which are listed in the statute as follows:

> (i) a crime of violence;
>
> (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or
>
> (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

Appellant does not dispute that, as the State alleged in Count 1 and proffered at sentencing, he was previously convicted of a violation of one of the enumerated crimes in subsection (ii) of the statute. Appellant contends, however, that to be subject to the mandatory minimum sentence, the State was also required to prove that he was previously convicted of a crime of violence. Alternatively, appellant claims that the statute is ambiguous. Both contentions lack merit.

We find the statute in question to be clear and unambiguous. And, "[a]bsent ambiguity in the text of the statute, 'it is our duty to interpret the law as written and apply its plain meaning to the facts before us.'" *Johnson v. State*, 467 Md. 362, 373 (2020) (citation omitted). We do not "add words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used[.]" *Lewis v. State*, 452 Md. 663, 697 (2017) (citation and ellipsis omitted). Accordingly, we must reject

appellant's interpretation of the statute as it would require us to insert the word "and" after the phrase "crime of violence;" thereby changing the meaning of the statute as written.[9]

SENTENCES VACATED, CASE REMANDED FOR RESENTENCING. JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY OTHERWISE AFFIRMED. TWO-THIRDS OF COSTS TO BE PAID BY APPELLANT, ONE -THIRD OF COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

[9] Appellant's reliance on *Stanley v. State*, 390 Md. 175 (2005) is misplaced as that case involved interpretation of a statutory provision that was later repealed by the General Assembly and recodified as PS §5-133(c). *See id.* at 178 n.4. The language of the current statute differs from the language of the statute at issue in *Stanley* such that the holding in that case does not apply here.