Circuit Court for Harford County
Case No.: C-12-CR-22-000376

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1257

September Term, 2023

PHILIP MANNA

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 23, 2025

*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).

A jury in the Circuit Court for Harford County convicted Philip Manna, the appellant, of driving while impaired by alcohol and several related offenses.[1] The court handed down a total sentence of seven years, all but three years and six months suspended, to be followed by three years' supervised probation. The largest portion of the sentence was five years in prison with all but three years suspended for driving while impaired, imposed pursuant to a subsequent offender statute.[2]

In this timely appeal, the appellant poses two questions, which we have rephrased:

> I. Did the circuit court err by denying his motion to suppress certain statements he made to the police without being advised of his *Miranda* rights?
>
> II. Did the circuit court err by sentencing him as a subsequent offender when he was not charged as a subsequent offender and the State did not prove the elements of the subsequent offender offense?

For the reasons that follow, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

The relevant events took place on May 19, 2021, in Harford County. Late that afternoon, the 911 center received at least two calls reporting a vehicle being driven in a dangerous manner and possibly causing property damage. One caller reported that a brown Nissan sedan was being driven erratically, veering into the wrong side of the road and

[1] The appellant also was convicted of driving with a suspended license, driving with a revoked license, driving without a license, and driving in violation of an ignition interlock system restriction. He was found not guilty of driving under the influence of alcohol.

[2] The appellant was given a consecutive sentence of one year, suspend all but six months, for driving with a revoked license, and another consecutive sentence of one year, all suspended, for driving in violation of an ignition interlock system restriction. Other convictions were merged for sentencing.

varying in speed from fifteen to sixty miles per hour. That caller followed the Nissan to the Festival at Bel Air Shopping Center, where he saw the driver alight and enter a liquor store. The caller gave a physical description of the driver and his clothing and reported the license plate number for the Nissan.

A "Be On the Lookout" was issued. Deputy First Class Mark Tabler, of the Harford County Sheriff's Office, responded by driving to the registered address for the Nissan's owner, a townhouse in Bel Air. There, he spotted the Nissan backed into a parking space in front of the townhouse. He saw a man later identified as the appellant sitting in the driver's seat, with the driver's door ajar. The Nissan's motor was running and its headlights were on. As Deputy Tabler slowly drove by the Nissan and brought his cruiser to a stop, the appellant got out and started walking toward the front door to the townhouse. Once the appellant got out of the Nissan, its motor no longer was running and the headlights were off. The appellant matched the physical description and clothing given by the 911 caller.

Deputy Tabler exited his cruiser, approached the appellant, and asked him basic questions, such as his name, where he worked, and for a driver's license. Shortly thereafter, Maryland State Trooper Matthew Dill, also responding to the BOLO, arrived on the scene. The officers determined that the appellant was under the influence of alcohol. Trooper Dill asked the appellant several times whether he would submit to field sobriety tests. When he would not do so, Trooper Dill handcuffed him, told him he was being arrested for driving under the influence, and transported him to the police barracks. The encounter between the police and the appellant in front of the townhouse, which was his residence, lasted just short of twenty-five minutes.

In the District Court in Harford County, the appellant was charged with driving while under the influence of alcohol, driving while impaired by alcohol, and related offenses. When he prayed a jury trial, his case was transferred to the circuit court. There, he filed a motion to suppress statements he made to Trooper Dill about the location of the keys to the Nissan. The details of the encounter are set forth below in our discussion of the hearing on the motion to suppress. The motion was denied. After his convictions and sentencing, the appellant noted this appeal.

DISCUSSION

I.

Motion to Suppress Statements to the Police

(a)

At the hearing on the motion to suppress, the State called Deputy Tabler to testify and introduced into evidence the dash-cam recording from Trooper Dill's patrol car. As the hearing judge acknowledged, much of the audio of the conversation between the officers and the appellant is difficult to understand. In this Court, the record has been supplemented with a written transcript of that recording.[3] The transcript identifies the appellant as "Unidentified Male," Trooper Dill as "Officer 1," and Deputy Tabler as "Officer 2." (There also is an unidentified "Officer 3" who, from the dash-cam, appears to

[3] The appellant filed an unopposed motion to correct the record with a transcript of the pertinent conversations in the dash-cam recording, which was introduced into evidence at trial as State's Exhibit 4. Although our review of the suppression motion is limited to evidence from the suppression hearing, *see generally Washington v. State*, 482 Md. 395, 420 (2022), the transcript is identical to the dash-cam recording moved into evidence at the motion hearing.

be another Deputy Sheriff.) For ease of reference, we will substitute their names when quoting the transcript.

The appellant did not testify or introduce any evidence.

The evidence adduced showed the following. On May 19, 2021, Deputy Tabler was in the vicinity of the Festival at Bel Air Shopping Center when he received a BOLO from dispatch for a brown Nissan sedan with specific Maryland tags that was being driven erratically. Using the license plate number reported to 911, he traced the registered owner of the vehicle to a townhouse in a residential area of Bel Air, about a mile away.[4]

Upon arriving at that location, Deputy Tabler saw a brown Nissan sedan bearing the license plate reported by the 911 caller backed into a parking space in front of the townhouse. The appellant was sitting in the driver's seat and the driver's door was open. The vehicle was running, and the headlights were on. As the deputy slowly drove past the Nissan, bringing his cruiser to a stop, the appellant got out of the Nissan, shut the door, and started walking toward the front door of the townhouse. Deputy Tabler got out of his vehicle and proceeded toward the appellant. He observed that the Nissan's motor no longer was running and the headlights were off. According to the deputy, the appellant was "staggering" and "uneasy on his feet[.]" The deputy noticed an "unopened bottle of liquor" on the sidewalk just behind the rear of the Nissan, where the appellant had walked a moment earlier.

[4] The Nissan was owned by a relative of the appellant.

Deputy Tabler introduced himself and began conversing with the appellant. He asked the appellant for his driver's license. The appellant produced a State Identification Card instead. Deputy Tabler noticed that the appellant's "speech was slurred." The appellant said he was a bartender at the Crazy Tuna and had gotten off work at around 6:30 p.m. About two minutes after Deputy Tabler started talking to the appellant, Trooper Dill arrived on the scene. The dash-cam recording starts then.

Trooper Dill approached the appellant and asked him how much he had had to drink that day. The appellant replied, "I didn't do anything wrong" and, when the question was repeated, "I don't know." Trooper Dill told the appellant that the police had received calls that he had been driving erratically and possibly had hit a parked car. The appellant denied hitting a parked car. During this exchange, Deputy Tabler informed Trooper Dill that the appellant's license to drive was "revoked and suspended."

Trooper Dill told the appellant, "I smell the odor of an alcoholic beverage emanating off of you." The trooper then asked Deputy Tabler if "[y]ou saw him in the driver's seat[,]" and the deputy replied, "Yeah." The following ensued:

> TROOPER DILL: [Addressing the appellant] Yeah, I'd like to do some tests just to make sure (unintelligible). Okay.
>
> THE APPELLANT: I'm not (unintelligible).
>
> TROOPER DILL: Well, you were in control of the vehicle.
>
> THE APPELLANT: (Unintelligible).
>
> TROOPER DILL: Okay. Would you like to submit to field sobriety tests or no?
>
> THE APPELLANT: What are you guys asking me to do?

TROOPER DILL: I just asked. Do you want to submit to field sobriety tests? If you don't, you'll be placed under arrest. If you do –

THE APPELLANT: Why? Why –

TROOPER DILL: For DUI.

THE APPELLANT: Why? Why? Why?

TROOPER DILL: Because – because you're under the influence.

DEPUTY TABLER: When I saw you, you were in your vehicle. And then right when I passed you –

(Radio traffic.)

The conversation continued:

TROOPER DILL: Do you want to submit to field sobriety tests? Yes or no?

THE APPELLANT: What are my options?

TROOPER DILL: To either submit to the field sobriety tests and we'll do the tests right here, and then –

THE APPELLANT: I just don't – I –

TROOPER DILL: – and then, and then I'll make a determination off of the clues I observe during the field sobriety testing. Or if you refuse those tests, then you'll just be placed under arrest.

THE APPELLANT: Why would I be placed under arrest?

TROOPER DILL: Because that's how this, that's how this works.

THE APPELLANT: **There are no keys in the car.**

TROOPER DILL: You – all right. I'm going to ask one more time.

THE APPELLANT: I –

TROOPER DILL: If you don't want to do it and I don't get a "yes" or "no" answer, you're just going to be placed under arrest. Do you understand? Okay. Do you – are you willing to submit to field sobriety tests? Yes or no? And again, yes, we'll do the answer – the tests right here. No, you'll just be placed under arrest.

THE APPELLANT: Can I talk to my mom?

TROOPER DILL: No, you can't.

THE APPELLANT: Why?

TROOPER DILL: Because we're all adults here.[5] You made poor decisions today. So do you want to submit to field sobriety tests? Yes or no?

THE APPELLANT: Can I call my –

TROOPER DILL: No, you can't.

THE APPELLANT: (Unintelligible).

(Radio traffic.)

TROOPER DILL: Hands behind your back. I gave you a plethora of opportunities to submit to tests.

THE APPELLANT: I'm not trying to – I'm not trying to –

TROOPER DILL: Okay. Open your mouth for me. Stick your tongue to the roof of your mouth.

(Radio traffic.)

TROOPER DILL: Walk up to the front of my car.

(Emphasis added.)

The dash-cam video shows that when Trooper Dill said, "Hands behind your back," he placed the appellant in handcuffs. The conversation continued:

[5] The appellant was forty-one years old at the time.

THE APPELLANT: No. I just don't understand why I'm being arrested.

TROOPER DILL: [As he is searching the appellant] Because you're under the influence. You were behind the wheel of the vehicle and the vehicle was turned on when the deputy pulled up. Okay. So, that you are deemed in control of a vehicle. So then you can be arrested for DUI if you're found under the influence. Do you understand that part? Arms up. But you can pull (unintelligible).

Trooper Dill removed the appellant's wallet and some other items, including a bottle opener, in the search. The following ensued:

THE APPELLANT: I just don't understand why I'm getting fucking arrested. I didn't do anything wrong.

TROOPER DILL: I'm going to put the bottle opener inside your car.

THE APPELLANT: Please, just (unintelligible).

DEPUTY TABLER: (Unintelligible).

TROOPER DILL: I'm going to put your glasses inside the car, too. Yep, that's why I'm putting them inside the car. **Where's your keys at for it? Tell us.**

THE APPELLANT: **I don't know.** You got everything off – you got everything off me.

TROOPER DILL: We'll just lock the car then. In the car somewhere. Key fob. I'm going to put it on you.

THE APPELLANT: **So, you don't have keys to the car**.

TROOPER DILL: That's why I attempted to lock the door. The doors. Soon as I close the doors, all the doors came unlocked again. So, that means the key fob is in there somewhere.

(Emphasis added.)

At that point, Deputy Tabler searched the passenger side interior of the Nissan and found the keys. He gave them to Trooper Dill, saying, "They were inside [the Nissan]."

The time Trooper Dill arrived on the scene until he drove away with the appellant in his vehicle is twenty-one minutes and twenty-four seconds on the dash-cam video. As noted, Deputy Tabler's interaction with the appellant before Trooper Dill arrived lasted about two minutes. The appellant was placed in handcuffs at five minutes and five seconds on the dash-cam video. The entire encounter between the police and the appellant was roughly twenty-four minutes. The dash-cam video does not have a feature showing the time of day.

After the court viewed the dash-cam video, Deputy Tabler concluded his direct examination by acknowledging that he was present during Trooper Dill's questioning of the appellant. Deputy Tabler opined that the appellant was not arrested during that questioning. On cross-examination, Deputy Tabler acknowledged that the appellant was not free to leave and agreed that the dash-cam video did not show any damage to the appellant's vehicle, and he did not recall seeing any such damage.

Defense counsel argued that the appellant was under arrest when he made the statements about the car keys and the court should suppress those statements and find that the appellant was arrested without probable cause.[6] The prosecutor responded that the appellant's statements were admissible under *Miranda v. Arizona*, 384 U.S. 436 (1966),

[6] The appellant does not raise the probable cause argument on appeal.

and that, although the appellant was not free to leave, he was not in custody for purposes of *Miranda.* Therefore, the statements should not be suppressed.

The court ruled that one factor for *Miranda* to apply is custody, and although the appellant was detained, he was not in custody. Specifically, the court found that the appellant "was not arrested prior to the cuffs going on." In deciding whether the detention was lawful, the court made the following factual findings:

> Here we had a call – two calls. Apparently one for a property damage accident, and the second for a DWI driver. There was a description of the car as to its color, et cetera, and also the license number. And we had that vehicle having been located by [Deputy Tabler]. So, I find that there was good and cogent reason for the deputy to engage in a short detention to determine if there was reasonable articulable suspicion that the defendant was involved in a hit and run and/or DWI.
>
> As far as whether there was reasonable articulable suspicion, when the [sic] Deputy Tabler arrived at the scene at the defendant's house, [the appellant] was in the automobile, it was running, the lights were on. He had a stagger, according to the deputy's testimony. I watched the video. If he was staggering, it certainly wasn't exaggerated. I do accept the deputy's testimony that there was a stagger. From my standpoint, if it was a stagger, it was not exaggerated. It was probably slight. There is also testimony from Deputy Tabler that there was slurred speech. I couldn't tell from the video whether or not he was slurring his speech or not. So, I accept that testimony. I did hear that the trooper telling the odor of alcohol. And I accept that as fact; that [the appellant] had an odor of alcohol on his person or breath. And also, finally, that there was a liquor bottle near the defendant and near the defendant's car that was on the sidewalk.
>
> So, you put all that together, there's reasonable articulable suspicion to believe that the defendant was involved in a drinking and driving incident, and it was a right to therefore place him under arrest after he refused to the field tests.

The court found "there was a lawful detention so that Miranda wouldn't apply to whatever comments [the appellant] made to the troopers[.]" On that basis, the court denied the motion to suppress.

(b)

On review of the denial of a motion to suppress, we look solely to the evidence adduced at the suppression hearing and view it in the light most favorable to the prevailing party on the motion. *Gonzalez v. State*, 429 Md. 632, 647 (2012). "The credibility of the witnesses, the weight to be given to the evidence, and the reasonable inferences that may be drawn from the evidence come within the province of the suppression court." *Id.* at 647-48 (citing *Longshore v. State*, 399 Md. 486, 499 (2007) ("Making factual determinations, *i.e.* resolving conflicts in the evidence, and weighing the credibility of witnesses, is properly reserved for the fact finder. In performing this role, the fact finder has the discretion to decide which evidence to credit and which to reject.")).

"The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous." *Thomas v. State*, 429 Md. 246, 259 (2012) (quoting *State v. Tolbert*, 381 Md. 539, 548 (2004)). Our review is *de novo*, however, and we "make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Madrid v. State*, 247 Md. App. 693, 714 (2020) (cleaned up) (quoting *Gonzalez*, 429 Md. at 648).

(c)

In *Miranda*, the United States Supreme Court held that when a person is subjected to custodial interrogation by law enforcement, procedural safeguards are necessary to protect the person's Fifth Amendment right against compelled incrimination. It explained:

> [W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

Miranda, 384 U.S. at 478-79 (footnote omitted). *See also Madrid v. State*, 474 Md. 273, 309-10 (2021).

Although any police interview of a suspect has "coercive aspects to it," *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam), "[o]nly those interrogations that occur while a suspect is in police custody . . . 'heighte[n] the risk' that statements obtained are not the product of the suspect's free choice." *J.D.B. v. North Carolina*, 564 U.S. 261, 268-69 (2011) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). Accordingly, "before a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation." *State v. Thomas*, 202 Md. App.

545, 565 (2011) (citing *Smith v. State*, 186 Md. App. 498, 518 (2009), *aff'd*, 414 Md. 357 (2010)), *aff'd*, 429 Md. 246 (2012). "The burden of showing the applicability of the *Miranda* requirements, *i.e.*, that there was custody and interrogation, is on the defendant." *Id.* (cleaned up).

"[W]hether a suspect is 'in custody' is an objective inquiry." *J.D.B.*, 564 U.S. at 270.

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: *was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest*.

Id. (emphasis added) (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)).

The following factors are relevant to whether a person is in custody for purposes of *Miranda*:

> [W]hen and where [the detention] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Thomas, 429 Md. at 260-61 (quoting *Owens v. State*, 399 Md. 388, 429 (2007)); *see also McAvoy v. State*, 314 Md. 509, 516-17 (1989) (stating that a person is not necessarily in

custody for purposes of *Miranda* when performing field sobriety tests). These inquiries are considered under the totality of the circumstances. *See J.D.B.*, 564 U.S. at 270-71; *accord Thomas*, 429 Md. at 259-60. However, "the 'subjective views harbored by either the interrogating officers or the person being questioned' are irrelevant." *J.D.B.*, 564 U.S. at 271 (citation omitted). Indeed, "[t]he test, in other words, involves no consideration of the 'actual mindset' of the particular suspect subjected to police questioning." *Id.*; *see also Aguilera-Tovar v. State*, 209 Md. App. 97, 109 (2012) ("Because the test is objective, we need be mindful that the subjective views of the officer and suspect are irrelevant.").

In addition to custody, application of *Miranda* safeguards only will be triggered if the person was subjected to police "interrogation." For *Miranda* purposes, interrogation "must reflect a measure of compulsion above and beyond that inherent in custody itself." *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980) (footnote omitted). The *Innis* Court stated:

> We conclude that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Id. at 300-01 (footnotes omitted).

(d)

In the case at bar, the appellant focuses on the three statements he made to the police that were the subject of the motion to suppress, all of which were about the keys to the Nissan: 1) "There are no keys in the car"; 2) "I don't know [where the car keys are]"; and 3) "So, you [the police] don't have keys to the car." These statements came into evidence

at trial through the dash-cam video. The appellant contends the court erred by denying the motion to suppress, arguing that he was in custody for purposes of *Miranda* when the statements were made but was not given *Miranda* warnings. He also asserts that the court's error in denying the motion was not harmless beyond a reasonable doubt because the prosecutor referred to his statements in closing argument. The State counters that the appellant was not in custody for purposes of *Miranda* when any of the statements were made.

For each statement, we must ascertain whether it was made when the appellant was in custody and was being interrogated. As we shall explain, we conclude that, under the totality of the circumstances, the appellant was not in custody when he made the first statement and that statement was not the product of police interrogation in any event; the appellant was in custody when he made the second and third statements; the second statement was the product of interrogation; and the third statement was not the product of interrogation. Because *Miranda* warnings were not given, the court should have ruled the second statement inadmissible. Nevertheless, we further conclude that that error was harmless beyond a reasonable doubt.

1. ***First Statement***

The appellant made his first statement, "There are no keys in the car[,]" before he was handcuffed and after Trooper Dill had asked him whether he would submit to field sobriety tests. He argues that he was in custody for *Miranda* purposes at that time because Trooper Dill had told him that if he did not submit to field sobriety tests, he would be arrested, thereby creating a coercive environment.

In *Berkemer v. McCarty*, 468 U.S. 420 (1984), the United States Supreme Court addressed whether a motorist in a routine traffic stop is "in custody" for purposes of *Miranda*. A police officer made a traffic stop after he saw the defendant's car weaving on the road. He ordered the defendant out of the vehicle and noticed that he had trouble standing. The officer decided that he would charge the defendant with a traffic offense and that the defendant was not free to leave. The officer did not tell the defendant that but asked him to perform a field sobriety balancing test. The defendant did so but kept falling. The officer asked him whether he had been using intoxicants, to which the defendant answered that he had had two beers and had smoked several marijuana joints. His speech was slurred, and he was difficult to understand. At that point, the officer placed him under arrest and told him to get in the police car.

The Supreme Court stated that the defendant clearly was in custody "at least as of the moment" he was formally arrested and instructed to get inside the cruiser. *Id*. at 434. Statements he made thereafter were the product of custodial interrogation and should have been excluded. The question before the Court was whether statements the defendant made during the traffic stop but before the formal arrest were the product of custodial interrogation. Should "the roadside questioning of a motorist detained pursuant to a routine traffic stop . . . be considered 'custodial interrogation[?]'" *Id*. at 435. The Court emphasized that, because the purpose of the *Miranda* safeguards is to protect a person's Fifth Amendment right against compelled self-incrimination, the question comes down to "whether a traffic stop exerts upon a detained person pressures that sufficiently impair his

free exercise of" that Fifth Amendment privilege, so as "to require that he be warned of his constitutional rights." *Id*. at 437.

The Court observed that two features of a traffic stop "mitigate the danger that a person questioned will be induced 'to speak when he would not otherwise do so freely.'" *Id.* (quoting *Miranda*, 384 U.S. at 467). First, ordinarily traffic stops are temporary and brief, unlike station house interrogations that are "frequently . . . prolonged" and in which the suspect "is aware that questioning will continue until he provides . . . the answers" the police are seeking. *Id.* at 437-38. And second, the surrounding circumstances of the typical traffic stop would not lead a motorist to think he or she is "completely at the mercy of the police." *Id*. at 438. The stops take place in public, limiting the ability of any "unscrupulous" police officer to use abusive tactics and thus diminishing any fear the circumstances might produce, and the atmosphere is "substantially less 'police dominated' than that surrounding" the interrogation in *Miranda* and other cases the Court had addressed, which involved station house and jail interrogations. *Id*. at 438-39. "In both of these respects, the usual traffic stop is more analogous to a so-called '*Terry* stop,' . . . than to a formal arrest." *Id*. at 439 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). The Court held that *Miranda* safeguards apply "as soon as a suspect's freedom of action is curtailed to a 'degree associated with a formal arrest.'" *Id*. at 440 (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)). It concluded that the defendant was not in custody for purposes of *Miranda* before he was placed in handcuffs and instructed to get in the police officer's vehicle. *See also State v. Rucker*, 374 Md. 199, 203 (2003) (holding that, under the totality of the circumstances, the defendant was not in custody for purposes of *Miranda* during a brief

investigatory stop); *Smith*, 186 Md. App. at 533 (agreeing with the proposition that the pertinent custody inquiry is "whether there was a formal arrest or restraint of freedom of movement of the degree associated with a formal arrest" (cleaned up) (quoting *Rucker,* 374 Md. at 212)); *Conboy v. State*, 155 Md. App. 353, 372 (2004) ("When Trooper Grinnan stopped the taxi, he executed a lawful *Terry* stop to investigate appellant's presence and unusual behavior at the accident scene. That investigatory stop had not evolved into a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest before appellant made the statement at issue." (cleaned up)).

In the case at bar, the appellant was detained from the outset of his encounter with Deputy Tabler and Trooper Dill and was not free to leave. That is not equivalent to being in custody for *Miranda* purposes. *See Berkemer*, 468 U.S. at 440 (holding that persons temporarily detained during a *Terry* stop are not in *Miranda* "custody"). Besides the two officers, one other was present, but he did not interact with the appellant. The detention took place outside in the open, in front of the appellant's residence. It began sometime between 6:30 and 7:00 p.m., in May. It was light outside during the entire encounter. Other people were out and about. During the two minute conversation immediately before Trooper Dill arrived, Deputy Tabler posed ordinary questions one would expect during a traffic stop, including asking the appellant to produce his driver's license. The dash-cam video that began two minutes later, when Trooper Dill arrived,[7] shows that the atmosphere of the encounter was casual and matter-of-fact. The officers spoke in normal tones of voice

[7] Deputy Tabler explained that he did not have a body-worn camera because, in 2021, they had not yet been issued to Sheriff's Office deputies.

and did not display their weapons. Trooper Dill asked the appellant how much he had had to drink that day, which the appellant answered by saying he didn't know, and then told the appellant he could smell alcohol on him. Most of the questions Trooper Dill posed after that sought to determine whether the appellant would agree to perform field sobriety tests. Trooper Dill did not threaten to arrest the appellant as a penalty for not submitting to field sobriety tests. Rather, the trooper told him, in answer to the appellant's asking why the officer was asking him to perform the tests, that he had been found in control of the Nissan by Deputy Tabler and was under the influence of alcohol. If he submitted to the tests, the results would be taken into account, and if he did not, he would be arrested for DUI because the circumstances supported that. In other words, the results of the field sobriety tests might work in his favor or might not.

This encounter was not police dominated. Once Trooper Dill arrived, Deputy Tabler barely interacted with the appellant. The appellant's behavior was not consistent with feeling coerced or compelled to answer questions or to do anything. The primary question Trooper Dill was asking was whether the appellant would submit to field sobriety tests, and the appellant at no point agreed to do so. Indeed, he contested the premise of every statement and question Trooper Dill made to him. The circumstances and atmosphere were not such as to "present a serious danger of coercion." *Howes v. Fields*, 565 U.S. 499, 508-09 (2012). The appellant complains that he was not allowed to call his mother, who was

inside the residence. The appellant was forty-one years old and able to handle himself as an adult.[8]

The encounter between the police and the appellant in this case, up to the point that he was handcuffed, was in the nature of a traffic stop, except that the appellant was sitting in his car with the motor running, and not driving on the road, when the encounter began. The five minute interaction was analogous to a *Terry* stop. We conclude that when, during this period, the appellant said, "There are no keys in the car[,]" he was not in custody.

Moreover, this statement by the appellant was not the product of police interrogation. In *Costley v. State*, 175 Md. App. 90, 106-07 (2007), we explained:

> "[I]nterrogation," as used in *Miranda*, refers not only to express questioning but also to any word or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

(Cleaned up.) The appellant's statement that "There are no keys in the car" was made after Trooper Dill had told him he was being detained for DUI and in the middle of Trooper Dill's asking, for the second time, whether he would submit to field sobriety tests:

> TROOPER DILL: Do you want to submit to field sobriety tests? Yes or no?
>
> THE APPELLANT: What are my options?
>
> TROOPER DILL: To either submit to the field sobriety tests and we'll do the tests right here, and then –
>
> THE APPELLANT: I just don't – I –

[8] Indeed, even after the appellant was handcuffed and placed in Trooper Dill's vehicle, at which time he was in custody, his mother came out of the townhouse, and the officers worked with her to make sure she would arrange for someone to pick him up at the station house after he was booked.

> TROOPER DILL: – and then, and then I'll make a determination off of the clues I observe during the field sobriety testing. Or if you refuse those tests, then you'll just be placed under arrest.
>
> THE APPELLANT: Why would I be placed under arrest?
>
> TROOPER DILL: Because that's how this, that's how this works.
>
> THE APPELLANT: **There are no keys in the car.**
>
> TROOPER DILL: You – all right. I'm going to ask one more time.
>
> THE APPELLANT: I –
>
> TROOPER DILL: If you don't want to do it and I don't get a "yes" or "no" answer, you're just going to be placed under arrest. Do you understand? Okay. Do you – are you willing to submit to field sobriety tests? Yes or no? And again, yes, we'll do the answer – the tests right here. No, you'll just be placed under arrest.

The statement that there were no keys inside the car was not in response to a question by Trooper Dill nor was it in response to words or actions that the trooper should have anticipated would produce that statement. The topic of conversation at the time concerned the appellant's state of inebriation, which the field sobriety tests would assist in determining, not whether the appellant could or could not have been in control of the Nissan when Deputy Tabler arrived, which depended on the location of the keys. Up to the time the statement was made, neither the police nor the appellant had mentioned the keys to the Nissan. Given that the Fifth Amendment guards against compelled self-incrimination, the constitutional privilege does not cover "inadvertent self-incrimination." *Smith*, 186 Md. App. at 516. In the context of the conversation that was taking place, the appellant's first

statement was an inadvertent remark that Trooper Dill would not have had reason to think his questions about field sobriety testing would elicit.

Accordingly, the appellant's first statement was not the product of custodial interrogation and therefore the court properly ruled not to suppress it from evidence.

2. ***Second Statement***

After the appellant was placed in handcuffs and searched, Trooper Dill asked him where the keys to the Nissan were. The appellant responded, "**I don't know**. You got everything off – you got everything off me." (Emphasis added.) Although "[e]very form of detention at the hands of the police, even if accompanied by handcuffing, is not *ipso facto* custody within the contemplation of *Miranda*[,]" *Smith*, 186 Md. App. at 535, under the totality of the circumstances, the appellant was "in custody" when Trooper Dill placed him in handcuffs and directed him to "Walk up to the front of my car." The trooper had forecast that the appellant would be arrested, the appellant knew the arrest was for DUI, and his movements were restrained and directed by the police. He was formally arrested and therefore in custody for purposes of *Miranda*. In addition, his "I don't know" answer was in response to a question posed by Trooper Dill about the whereabouts of the keys to the Nissan. Accordingly, the statement was the product of custodial interrogation. It was made without the appellant's being given *Miranda* warnings as the law required and therefore should have been suppressed from evidence.

3. ***Third Statement***

The appellant's third statement was made when he was in custody, for the same reasons explained above, but was not made in response to a question or under

circumstances in which Trooper Dill would expect such a statement by the appellant. It also was not incriminating.

After Trooper Dill asked the appellant where the keys to the car were and he answered that he didn't know, the trooper said they would just lock the car to see if the key fob was inside. Addressing Trooper Dill, the appellant said, "So, you don't have keys to the car." Trooper Dill responded, "That's why I attempted to lock the door. The doors. Soon as I close the doors, all the doors came unlocked again. So, that means the key fob is in there somewhere."

The statement, "So, you don't have keys to the car[,]" was the appellant's verbalization of the rational inference anyone would draw from Trooper Dill's saying the police were going to lock the car to determine whether the keys were inside it. If the police had possession of the keys, they would not be trying to figure out whether the keys were inside the car. Trooper Dill would not expect what he said to elicit what anyone would know from the appellant, nor was what the appellant said incriminating. The appellant was remarking that the police did not have the keys, not that he had them or that they were inside the car.

4. ***Harmless Error***

The appellant contends he is entitled to a new trial because any error by the suppression court was not harmless beyond a reasonable doubt. Specifically, he argues that any error was not harmless because in closing argument the prosecutor repeatedly referred to the keys to the Nissan. We disagree.

Maryland appellate courts have recognized that a court's failure to suppress a statement obtained in violation of *Miranda* can constitute harmless error. *See Paige v. State*, 226 Md. App. 93, 115 (2015) (concluding, in the alternative, that even if there was a *Miranda* violation, harmless error applied); *Bartram v. State*, 33 Md. App. 115, 153 (1976) ("It is, of course, settled law that a *Miranda* error can, indeed, be harmless error."), *aff'd*, 280 Md. 616 (1977); *Cummings v. State*, 27 Md. App. 361, 385 n.5 ("That a *Miranda* violation can be harmless error is not to be doubted."), *cert. denied*, 276 Md. 740 (1975).

Our Supreme Court has explained harmless error as follows:

> [W]e reaffirm that the standard for harmless error analysis in Maryland is whether the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the jury's verdict. We also reaffirm this Court's longstanding approach of considering the cumulative nature of an erroneously admitted piece of evidence when conducting harmless error analysis.

Gross v. State, 481 Md. 233, 237 (2022); *see also Dorsey v. State*, 276 Md. 638, 659 (1976).

In deciding the issue of harmless error, we conduct our "own independent review of the record." *Belton v. State*, 483 Md. 523, 541 (2023) (cleaned up). Further, "[t]he harmless error standard is highly favorable to the defendant, and the burden is on the State to show that the error was harmless beyond a reasonable doubt and did not influence the outcome of the case." *Perez v. State*, 420 Md. 57, 66 (2011) (cleaned up); *accord Gonzalez v. State*, 487 Md. 136, 184 (2024). Also, an error may be harmless when it merely was cumulative of other evidence properly admitted. *See Dove v. State*, 415 Md. 727, 743-44 (2010). "Evidence is cumulative when, beyond a reasonable doubt, we are convinced that there

was sufficient evidence, independent of the evidence complained of, to support the appellant's conviction." *Id*. (cleaned up).

The evidence about the location of the car keys was central to the State's proving the flagship charges of driving while under the influence, which the appellant was acquitted of, and driving while impaired, which the appellant was convicted of. Both charges required proof that the appellant was "driving." *See* Md. Code, Transportation Article ("TA") § 21-902(a)(1)(i) ("A person my not drive or attempt to drive any vehicle while under the influence of alcohol.") and TA § 21-902(b)(1)(i) ("A person may not drive or attempt to drive any vehicle while impaired by alcohol."). "Drive" has several meanings, including to "be in actual physical control of a vehicle[.]" TA § 11-114.

In *Atkinson v. State*, 331 Md. 199, 216 (1993), the Court distinguished those who are in actual physical control of their vehicles while intoxicated, and therefore pose a threat to the public, from those who pose no threat because "they are only using their vehicles as shelters until they are sober enough to drive[.]" *See also Motor Vehicle Admin. v. Atterbeary*, 368 Md. 480, 503 (2002) ("[B]ecause [the defendant] was sitting in the driver's seat, awake, and with the engine running, he was capable of attempting to drive his vehicle at the time the officers arrived[.]"). The *Atkinson* Court stated:

> What constitutes "actual physical control" will inevitably depend on the facts of the individual case. The inquiry must always take into account a number of factors, however, including the following:
>
> 1) whether or not the vehicle's engine is running, or the ignition on;
>
> 2) where and in what position the person is found in the vehicle;

3) whether the person is awake or asleep;

4) where the vehicle's ignition key is located;

5) whether the vehicle's headlights are on;

6) whether the vehicle is located in the roadway or is legally parked.

331 Md. at 216.

For purposes of proving the driving while under the influence and driving while impaired charges, the location of the Nissan's car keys not only was one of the *Atkinson* factors relevant to whether the appellant had actual physical control over the Nissan when Deputy Tabler arrived on the scene, it was essential to two others – whether the engine was running or the ignition was on and whether the headlights were on. So, it is not surprising that the prosecutor focused on the location of the car keys in closing argument. The prosecutor referenced Deputy Tabler's testimony that when he arrived, the appellant was sitting in the driver's seat of the Nissan, the motor was running, and the lights were on. The prosecutor theorized that upon seeing Deputy Tabler's cruiser pull up in front of him, the appellant removed the keys from the ignition, threw them inside the car, got out, and started walking away, knowing that he had been caught.[9] The prosecutor pointed out that later in the encounter, as shown on the dash-cam, Deputy Tabler found the keys inside the Nissan and handed them to Trooper Dill.

[9] At one point, the prosecutor said that the dash-cam video showed the appellant sitting in the Nissan and then throwing the keys somewhere in the interior of the car. The dash-cam video does not show that and indeed does not start until after the appellant had gotten out of the Nissan. There was no objection.

Although the prosecutor made numerous references to the location of the keys inside the Nissan, as that was highly relevant to the issue of actual physical control, he made but a single reference to a statement by the appellant about the keys. The prosecutor commented that while the police were looking for the keys, "What does Mr. Manna say the whole time? I don't know where the keys are."[10] This paraphrase of the appellant's second statement was the sole mention by the prosecutor of any statement by the appellant. Indeed, the prosecutor made no reference at all to the appellant's first and third statements. In rebuttal closing, the prosecutor said nothing about any of the appellant's statements, concluding by emphasizing that the keys were found inside the Nissan and, when Deputy Tabler arrived, "the car is running. [The appellant] was sitting in the car. He turned the car off and throws the keys to the side. Those are the facts."

There were many facts in evidence to support a jury finding that the appellant was in actual physical control of the Nissan when Deputy Tabler arrived on the scene. The prosecutor's reference to those facts in closing argument was not equivalent to a reference to any statement by the appellant about the location of the car keys, including his second statement that he did not know where the car keys were. The lone reference to that statement in closing argument was in no way prejudicial to the appellant, given the state of the evidence, and we are confident that had that reference not been made, the outcome of

[10] The prosecutor also said he thought the appellant said the keys were in the basement, but then the appellant repeated that "he doesn't know" where the keys are. We see nothing in our review of the transcript of the dash-cam video to indicate that the appellant ever said the keys were in the basement.

the trial would not have changed. Accordingly, the court's error in denying the appellant's motion to suppress his second statement was harmless beyond a reasonable doubt.[11]

II.

Sentencing

As noted, the appellant was convicted of driving while impaired, in violation of TA § 21-902(b)(1)(i). Subsection (b)(1)(ii) addresses the sentence for a first or second such conviction as follows:

> A person convicted of a violation of this paragraph is subject to:
>
> 1. For a first offense, imprisonment not exceeding 2 months or a fine not exceeding $500 or both; and
> 2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding $500 or both.

Because this was the appellant's fourth conviction, however, the State sought to have him sentenced as a subsequent offender, under TA § 21-902(h).[12] As relevant, that section provides:

> (h)(1) A person may not violate subsection (a), (b), (c), or (d) of this section if the person previously has been convicted of two violations of any provision of subsection (a), (b), (c), or (d) of this section or § 8-738 of the Natural Resources Article.
>
> * * *

[11] Indeed, if the court had erred in failing to suppress the appellant's first and third statements, that error also would have been harmless beyond a reasonable doubt.

[12] The State proffered that the appellant had a 2017 conviction from Las Vegas, Nevada, and two predicate convictions in Baltimore County in 2018. Because of inadequate proof, the court disregarded the prior conviction in Nevada and sentenced him as a third time offender.

> (3) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both.

The appellant contends the trial court erred by sentencing him as a subsequent offender under TA § 21-902(h) because that section is a separate crime for which he had to have been separately charged, but was not. He does not contest that he had two qualifying prior convictions or that TA § 21-902(h) otherwise applied. The State responds that TA § 21-902(h) is a sentence enhancement provision, not a separate crime, and was a non-substantive revision to former TA § 27-101, which we have held was a sentencing enhancement statute. *See Fielding v. State*, 238 Md. App. 262, 277 (2018).

Generally, where the General Assembly has required or permitted enhanced punishment for subsequent offenders, the burden is on the State to prove, by competent evidence and beyond a reasonable doubt, the existence of all the statutory conditions precedent for the imposition of enhanced punishment. *Jones v. State*, 324 Md. 32, 37 (1991); *see also Sullivan v. State*, 29 Md. App. 622, 631 (1976) (determining that mandatory statutory predicates have to be proven by the State beyond a reasonable doubt before a recidivist punishment may be imposed). An enhanced penalty imposed improperly is an illegal sentence. *See Nelson v. State*, 187 Md. App. 1, 11 (2009); *Veney v. State*, 130 Md. App. 135, 145 (2000).

Before trial, the State provided notice, in conformity with Maryland Rule 4-245, that it would seek an enhanced sentence under TA § 21-902(h) based on the appellant's prior convictions. At sentencing, defense counsel argued that for that statutory provision

to apply, the State had to have charged the appellant separately with its violation. The court rejected that argument, ruling as follows:

> Mr. Manna's counsel made an argument about the charging under 21-902. The argument was he should be charged, if this is a subsequent offender case, that he should be charged under the subsection H of 21-902 or subsection I, depending on which one is applicable in the case. I don't find that that is the proper reading of the statute. Seems to me that the proper charges are the charges that were lodged in this case, namely 21-902 A, B, C, or D. 21-902 H and I make reference to violations of those sections. And it doesn't really read the same way that [defense counsel] was suggesting. A, B, C, and D talk about a person shall not drive or attempt to drive a vehicle when doing the following acts. Under H and I, it says a person may not violate A, B, C, or D if the person has previously been convicted of those two violations.
>
> It's not really the proper reading of the statute that a police officer at the time, regardless of whatever thorough job the police officers did in this case, pulls over an individual and is required to pull their convictions when they're writing their charging documents, and make a determination on the spot whether this person is a subsequent offender. I think that flies in the face of the subsequent offender rule which says once the charges come in, and the State's attorney makes an assessment about whether or not the individual is supposedly a subsequent offender, then they are required to submit the notice under 4-245. So, I don't find any defect in the charges here.

The Maryland Supreme Court has stated:

> "Our goal in statutory construction is to determine legislative intent[,]" starting "with the plain meaning of the statutory language in question." *State v. Krikstan*, 483 Md. 43, 65 (2023) (citations omitted). We begin with the normal meaning of the text "because we presume that the General Assembly meant what it said and said what it meant." *Id*. at 65 (cleaned up). "If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written." *Id*. at 65 (cleaned up). This typically ends our analysis without resort to other rules of construction or sources outside of the statute itself, although the plain language of a statute "must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Comptroller of Md. v. FC-GEN Operations Invs. LLC*, 482 Md. 343, [380] (2022) (citation omitted).

In re M.P., 487 Md. 53, 67-38 (2024).

The language of TA § 21-902(h)(1) is plain and unambiguous. A person may not violate subsections (a), (b), (c) or (d) of TA § 21-902 if that person previously has been convicted of two violations of those subsections or of a similar crime in the Natural Resources Article.[13] And TA § 21-902(h)(3) makes clear the penalty for such a violation. Nothing in subsection (h) creates a new criminal offense. As the State observes, the penalty in the statute is triggered only when there is a violation of the drunk and drugged driving laws by a defendant with two prior convictions. Further, the State continues, subsection (h) includes no separate actus reus or mens rea and has no "intrinsic 'elements' characteristic of a standalone crime that can be solitarily violated" requiring the filing of an independent charge. We agree. Under plain language review, the appellant's claim is without merit. Because the appellant had two qualifying prior convictions, the court properly imposed an enhanced sentence, under TA § 21-902(h), for the driving while impaired conviction.

Although our analysis could end here, we note that the legislative history supports our conclusion. Both parties direct our attention to *Fielding*, 238 Md. App. 262. There, based on events occurring in August and November 2015, the defendant was charged in the District Court with violations of TA § 21-902(a), as it then existed. Subsequently, the State filed the exact same charges in the circuit court, with a statement of intent to seek enhanced penalties under then-existing TA § 27-101(k)(1)(i), (iii). We explained:

At the time of the alleged offenses, [former TA] § 27-101(k) provided:

[13] That crime prohibits boating while under the influence of alcohol or drugs.

> (1) Except as provided in subsection (q) of this section [relating to violations of § 21-902(a) while transporting a minor], any person who is convicted of a violation of any of the provisions of § 21-902(a) of this article ("Driving while under the influence of alcohol or under the influence of alcohol per se") or § 21-902(d) of this article ("Driving while impaired by controlled dangerous substance"):
>
> (i) For a first offense, shall be subject to a fine of not more than $1,000, or imprisonment for not more than 1 year, or both;
>
> (ii) For a second offense, shall be subject to a fine of not more than $2,000, or imprisonment for not more than 2 years, or both; and
>
> (iii) For a third or subsequent offense, shall be subject to a fine of not more than $3,000, or imprisonment for not more than 3 years, or both.

The same penalties are in effect currently but are codified at T[A] § 21-902.

Fielding, 238 Md. App. at 269 n.9. We went on to note:

> [T]he penalty provisions for violations of T[A] § 21-902 were codified at T[A] § 27-101, subsections (k) and (q). Effective October 1, 2017, T[A] §§ 21-902 and 27-101 were amended, with the effect that the penalty provisions for violations of § 21-902 were transferred to § 21-902. 2017 Md. Laws, ch. 55.

Id. at 266 n.2. We held that filing the same charges in the circuit court, together with the notice to seek enhanced penalties, did not divest the District Court of jurisdiction and therefore the charges in the circuit court were "nullities" for lack of fundamental jurisdiction. *Id*. at 279-80. In so concluding, we explained that then-existing TA § 27-101(k) was an *enhanced* penalty and that that section "*does not create 'another offense' but merely creates a different punishment for the same offense*." *Id*. at 278 (emphasis added).

The question in the case at bar is whether our conclusion in *Fielding,* that the enhanced penalty provision that once appeared in TA § 27-101(k) does not create a separate offense, still holds true following statutory amendments in 2017 and 2019.

In 2017, many of the penalty provisions in TA § 27-101, including subsection (k), were transferred to TA § 21-902. *See* 2017 Md. Laws, ch. 55 (S.B. 165). The transferred penalty provision for driving while impaired, in TA § 21-902 (b), provided:

> (b) *Driving while impaired by alcohol*. – (1)(i) A person may not drive or attempt to drive any vehicle while impaired by alcohol.
>
> (ii) A person convicted of a violation of this paragraph is subject to:
>
> 1. For a first offense, imprisonment not exceeding 2 months or a fine not exceeding $500 or both;
>
> 2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding $500 or both; and
>
> 3. For a third or subsequent offense, imprisonment not exceeding 3 years or a fine not exceeding $3,000 or both.

TA § 21-902(b) (2017 - superseded). The Revisor's Note stated: "Subsection (b)(1)(ii) and (iii) of this section is new language derived *without substantive change* from former § 27-101(c)(19) and (f)(1)(ii)1, (2) and (3) of this article." (Emphasis added.) Further, the preamble to the Senate Bill provided:

> FOR the purpose of *revising, restating, and recodifying* the laws of this State relating to penalties for violations of the Maryland Vehicle Law; repealing certain redundant provisions; clarifying language; making certain technical and stylistic changes; providing for the construction of this Act; providing for the effect and construction of certain provisions of this Act; authorizing the publisher of the Annotated Code to make certain corrections in a certain manner; and generally relating to the Maryland Vehicle Law.

2017 Md. Laws, ch. 55 (S.B. 165), pmbl. (emphasis added). The Analysis from the Fiscal and Policy Note further explained:

> **Bill Summary/Current Law**: Most penalties for violations of the Maryland Vehicle Law are located in Title 27 of the Transportation Article and not in the section that contains the actual violation. *The bill places the penalty provisions in § 27-101 into corresponding sections in the Transportation Article* and retains the catch-all provision in § 27-101, which states that unless otherwise specified a violation of the vehicle law is a misdemeanor subject to a $500 fine. The bill adds the new subtitle "Penalties for Certain Weight Violations" in Title 24 as Subtitle 4 and adds sections to titles 15, 16, 21, and 24, as shown in Exhibit 1. The penalty provisions in § 27-101 and the sections to which they have been relocated are listed in Appendix 1.

Fiscal and Policy Note, 2017 Md. Laws, ch. 55 (S.B. 165) (emphasis added).

We are persuaded that the 2017 amendments moving the statutory penalties from TA § 27-101 to TA § 21-902 were not a substantive change. Our holding in *Fielding* that these were sentencing enhancements and not new crimes was unaffected by the 2017 amendments.

Turning to the 2019 amendments, House Bill 707 of that session deleted the penalty subsection for a third driving while impaired violation in TA § 21-902(b)(1)(ii)(3) and recodified it as new TA § 21-902(h), which we have quoted in relevant part above. *See* 2019 Md. Laws, ch. 20 (H.B. 707). The preamble to the bill provided:

> FOR the purpose of prohibiting an individual from committing certain drunk or drugged driving offenses if the individual has been convicted previously for certain other crimes under certain circumstances; establishing certain penalties; increasing certain penalties for certain convictions of driving while impaired by alcohol while transporting a minor; and generally relating to establishing drunk and drugged driving offenses and altering penalties for drunk and drugged driving offenses.

2019 Md. Laws, ch. 20 (H.B. 707), pmbl. (cleaned up). And the Bill Analysis for the Fiscal and Policy Note provided, in pertinent part:

> **Bill Summary**: The bill increases the maximum penalties for a person convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance (CDS) when that person has certain prior convictions. A person who has *two* prior convictions for any of the above-mentioned offenses is guilty of a misdemeanor and subject to five years imprisonment and/or a $5,000 fine. The penalties are more stringent when that person (1) has *three or more* prior convictions for any of those offenses or (2) was previously convicted of *a single* specified homicide or life-threatening injury by motor vehicle or vessel offense. Such a violator is guilty of a misdemeanor and subject to 10 years imprisonment and/or a $10,000 fine.

Fiscal and Policy Note, 2019 Md. Laws, ch. 20 (H.B. 707) (emphasis in original).

From our review of the plain language of TA § 21-902(h) and its legislative history, we are persuaded that our statutory interpretation in *Fielding* remains unchanged. There was no substantive change by the 2017 amendments to the penalty, and the 2019 amendment merely increased the maximum penalties for the offenses already criminalized. In sum, TA § 21-902(h) is an enhanced penalty provision that "does not create 'another offense' but merely creates a different punishment for the same offense." *Fielding*, 238 Md. App. at 278.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.