UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1115

September Term, 2014

TAMARA LEE HANLON

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: January 11, 2016

Convicted, after a jury trial in the Circuit Court for Cecil County, of driving while under the influence of alcohol ("DUI"), driving while impaired by alcohol ("DWI"), and driving in violation of an alcohol license restriction, Tamara Lee Hanlon, appellant, noted this appeal, raising two questions:

> I. Whether the circuit court erred or abused its discretion in refusing to accept Hanlon's offer to plead guilty to the charge of driving in violation of an alcohol license restriction; and
>
> II. Whether the circuit court erred in imposing an enhanced sentence for DUI because the State failed to provide adequate notice of its intention to seek an enhanced sentence.

Finding neither error nor abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Early in the morning of July 5, 2007, Maryland State Trooper Robert Nitz was standing on the side of the road, conducting a traffic stop, when he observed a car, driven by Hanlon, approach. As it did, it swerved, at the last moment, to avoid striking him. Abandoning the traffic stop, the trooper climbed into his car and took off in pursuit of Hanlon's vehicle. While, in pursuit, he observed that vehicle cross the center line twice within a quarter mile, whereupon he activated his emergency lights, signaling Hanlon to pull over. About a quarter mile later, Hanlon complied with that signal.

Upon approaching Hanlon's vehicle, on foot, Trooper Nitz noted that she smelled of alcohol, that her eyes were bloodshot, and that her speech was slurred. After failing the field sobriety tests the trooper administered, she declined the trooper's request that she submit to a breathalyzer test.

Trooper Nitz ultimately issued to Hanlon a total of eight citations, numbered consecutively, charging her with: failure to drive to the right of center, in violation of Transportation Article ("TR"), § 21-301(a); displaying an expired registration plate, in violation of TR § 13-411(f); failure to display a registration card on demand, in violation of TR § 13-409(b); driving on a suspended license, in violation of TR § 16-303(c); driving on a revoked license, in violation of TR § 16-303(d); violating an alcohol license restriction, in violation of TR § 16-113(h), (j); DUI, in violation of TR § 21-902(a)(1); and DWI, in violation of TR § 21-902(b)(1).

Before the trial of this matter, in the District Court of Maryland in Cecil County, the State, on August 8, 2007, served Hanlon with a notice of its intent to seek an enhanced penalty, based upon her prior convictions for driving either while impaired or while under the influence of alcohol. Then, on November 16, 2007, the case, upon Hanlon's demand for a jury trial, was transferred to the Circuit Court for Cecil County. Although trial in the circuit court was scheduled for April 17, 2008, it was postponed when Hanlon failed to appear for that proceeding. After a subsequent series of postponements, Hanlon was ultimately tried, before a jury, on May 29, 2014.

Prior to jury selection for that trial, the following colloquy, as to whether evidence of the existence of Hanlon's alcohol license restriction might unfairly prejudice her attempts to defend herself against the pending DUI and DWI charges, took place:

> [DEFENSE COUNSEL]: . . . [Y]our Honor, if the jury is going to hear this violation of an alcohol restriction at the same time

they're hearing an alleged DWI violation, it may be -- may be not something that we can do at the same time.

THE COURT: I don't know how we can do anything but proceed at the same time. We have to decide how we're going to present this information to the jury. We can redact a driving record, if that's what you wish to do, to reflect when an alcohol restriction would have been imposed upon your client; but there is no way to proceed separately with regard to these two matters. We have to try them both at the same time. I don't know if you and [the prosecutor] then want to enter into a stipulation that your client was subject to a restriction which prohibited her from operating a motor vehicle after the consumption of any alcohol as of a certain date; if you wish to enter into some sort of stipulation that we can enter a traffic record that has been properly redacted, such that the jury will not be in anyway influenced by additional material contained within the traffic record.

I don't know if -- Mr. [prosecutor], if you have any other suggestions as to how you would wish to proceed.

[THE STATE]: Your Honor, the stipulation is the one that makes the most sense.

* * *

[THE STATE]: The alcohol restriction was imposed on September the 8th, 2006 for a period of one year.

[DEFENSE COUNSEL]: One moment, your Honor.

THE COURT: Mr. [defense counsel], do you need to speak with your client and decide how you wish to proceed in this matter?

[DEFENSE COUNSEL]: I just have to look at it, your Honor.

THE COURT: Okay. I'm sorry.

> [DEFENSE COUNSEL]: I think I would stipulate to that; however, I think I need a jury instruction that they're not to consider that as evidence of whether or not she was driving while impaired or under the influence in this instance.
>
> THE COURT: Okay.
>
> [THE STATE]: That's -- that's something for a later point.
>
> THE COURT: Once the evidence is considered, certainly I'll consider any proposed instructions which you may have with regard to this matter.
>
> [DEFENSE COUNSEL]: Well, that -- we'd have to do that, that's for sure. Otherwise it would just be prejudicial.

Shortly thereafter, the issue arose once again:

> THE COURT: So, Mr. [defense counsel], your client is going to stipulate that as of September 8, 2006, a restriction was imposed upon her license to operate a motor vehicle that prohibited her from consuming any alcoholic beverages prior to the operation of a motor vehicle, and that restriction was in place for a period of one year.
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: Okay. Is that correct, Ms. Hanlon?
>
> THE DEFENDANT: I'm not sure, to be honest with you, your Honor.
>
> THE COURT: Okay. Mr. [defense counsel].
>
> [DEFENSE COUNSEL]: We got -- it's the right way to do it.
>
> THE DEFENDANT: Okay.
>
> [DEFENSE COUNSEL]: The only thing is, your Honor, I am agreeing to the stipulation, but I am also asking the court that

> when the court reads that stipulation to the jury at that time they ought to be given an instruction, because if you don't they may be considering that and bleeding that over into this case even before they get into deliberating. We can get into a subsequent instruction at the final instructions, but if the court doesn't give an instruction at that time I think the damage is very likely to be done.
>
> THE COURT: Any objection, Mr. [prosecutor]?
>
> [THE STATE]: Your Honor, I think the court should simply instruct the jury based upon the standard instructions at the appropriate time. You don't give instructions in the middle of a hearing.
>
> THE COURT: Yes.
>
> [DEFENSE COUNSEL]: Yes, you can, your Honor. Yes, you absolutely have that discretion to do that. Did you ask for jury instructions, your Honor?
>
> THE COURT: I have not. If you have proposed jury instructions you can certainly submit those to me. It would be my intention to consider those after we've heard all of the evidence.
>
> [THE STATE]: Very good. Are we ready?
>
> [DEFENSE COUNSEL]: Yes.

Jury selection then began. But just before that selection concluded, defense counsel apparently had a change of heart regarding his previous agreement to stipulate that, at the time of Hanlon's traffic stop in July 2007, she was subject to an alcohol license restriction, prompting the following colloquy:

[DEFENSE COUNSEL]: No. The other thing -- one other thing, your [H]onor, too. I'm going to have to plead not[1] guilty to driving on the charge of a restricted license. Or is that nolle prossed?

[THE STATE]: Violating the license restriction has not been nolle prossed.

[DEFENSE COUNSEL]: Okay. I'm going to have to ple[a]d her guilty to that charge -- I don't know. Are you going to break for lunch?

THE COURT: Well, what I'd like to do is impanel the jury, and then take a lunch break. They haven't had lunch.

[DEFENSE COUNSEL]: And when we come back I need to plead her guilty to that.

THE COURT: Okay. So you won't have to offer any testimony or evidence related to that charge.

[THE STATE]: I'm not sure if I will take a plea of guilty just to the one.

THE COURT: Mr. [prosecutor] indicates he's not certain he will accept your –

[THE STATE]: No, I'm not going to accept a plea –

[DEFENSE COUNSEL]: It's not a plea bargain.

[THE STATE]: It doesn't matter.

THE COURT: Okay.

[1]From the context of the ensuing discussion, defense counsel apparently intended to say "guilty" instead of "not guilty," as it states in the transcript.

> [DEFENSE COUNSEL]: It does. It does. Why go to trial on something that the person is willing to ple[a]d guilty to?
>
> THE COURT: Okay. We'll deal with that issue. I want to try to impanel the jury. . . .

After the jury was impaneled and sent off for lunch, a bench conference took place:

> [DEFENSE COUNSEL]: The issue about the charge of violating a license restriction, my client wishes to ple[a]d guilty to that before we get started.
>
> THE COURT: [The prosecutor] had indicated that he is not interested in accepting a guilty plea, that he wishes to proceed to trial in that matter.
>
> Is that correct, sir?
>
> [THE STATE]: That is correct.
>
> [DEFENSE COUNSEL]: I don't see how he can -- he has the right to ask to have my client tried when my client is willing to plead guilty to it.
>
> THE COURT: Well, it's a series of charges, Mr. [defense counsel].
>
> [DEFENSE COUNSEL]: True, but there is no plea bargain here. She's admitting she did it.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: It's not part -- the other thing is, if he's allowed to prove that, the violating the alcohol restriction is going to bleed over into the other charges of driving while under the influence or impaired, and that's, you know, unduly prejudicial.
>
> THE COURT: The only thing that I can indicate to you is that we, I thought, at the beginning of this case indicated that there

would be a stipulation that she was, in fact, subject to a restriction on her license that she was not to operate a motor vehicle after consuming any alcohol on a certain date and time, is that correct?

[DEFENSE COUNSEL]: No. We didn't -- what we talked about is the stipulation with regard to the suspension and the revocation;[2] but [the prosecutor] last we were up at the [bench] said he's not proceeding on the revocation anymore; so basically we have that charge. And the only thing is I don't see -- there's no way that this wouldn't be prejudicial, and there's one way to remove it. I don't think he -- your Honor, I don't think the [S]tate has the right to have a charge tried when the defendant is willing to plead guilty to it.

THE COURT: There are a number of charges to be tried in this matter.

[DEFENSE COUNSEL]: Correct.

THE COURT: And she only wants to ple[a]d guilty to one and not the remaining charges.

[DEFENSE COUNSEL]: She requested a trial on the other ones.

THE COURT: And [the prosecutor] has indicated that he's not willing to accept a guilty plea as to one of the number of charges that are pending at this time. So I do not think that I can compel him to accept a guilty plea as to one count and only proceed to trial on the other counts. He wishes to proceed to trial on all counts. If there is no stipulation with regard to the license restriction I am going to request that the two of you come up with a redacted motor vehicle record that's going to be offered.

[DEFENSE COUNSEL]: Okay. Your Honor –

[2]The parties had, indeed, agreed to enter into a stipulation regarding Hanlon's license suspension. That stipulation is not at issue in this appeal.

> THE COURT: So that -- you have no objection -- I mean, I assume that you do not want the entire motor vehicle record to come in.
>
> [DEFENSE COUNSEL]: Yes. I would say for the record I feel constrained to stipulate that –
>
> THE COURT: I'm not asking you to stipulate. I'm asking you to come up with a record that you will not object to that's going to be offered to the jury.
>
> [DEFENSE COUNSEL]: Or stipulate.
>
> THE COURT: Or stipulate. But certainly the other option is to come up with a motor vehicle record which I can submit to the jury.
>
> [DEFENSE COUNSEL]: Either way it's prejudicial, but I've made my point. So you have ruled against me.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: I will in light of that stipulate that she violated a license restriction in driving that evening.
>
> THE COURT: Okay. The stipulation was that a license restriction was placed on her license to operate a motor vehicle that provided that she was not permitted to consume any alcohol prior to the operation of the motor vehicle.
>
> Is that correct, Mr. [prosecutor]?
>
> [THE STATE]: Yes.

The matter then proceeded to trial, whereupon, at the conclusion of the State's case-in-chief, a stipulation was entered into the record, that, at the time Hanlon had been stopped by Trooper Nitz, she was subject to an alcohol license restriction that prohibited her

from consuming any alcoholic beverage prior to operating a motor vehicle. Then, after the close of all of the evidence, as the parties were discussing jury instructions, the State submitted to the court a copy of the notice of its intent to seek enhanced penalties, which had been served on Hanlon and filed in the District Court in 2007. Defense counsel objected, asserting, "I don't think that counts here." The State responded: "Your Honor, [defense counsel] knew about the enhanced penalties. We talked about it this morning." Ultimately, the parties agreed that they would, in the words of the prosecutor, "deal with [it] if we get a conviction."

Only three charges remained when the jury was sent for deliberations, the others having been either nolle prossed by the State or eliminated by a judgment of acquittal.[3] They were: violating an alcohol license restriction, DUI, and DWI. The jury thereafter found Hanlon guilty of all three offenses.

At the sentencing hearing that ensued, defense counsel renewed his objection to the notice of the State's intent to seek enhanced penalties, but the circuit court held that the 2007 District Court notice complied with Maryland Rule 4-245. The circuit court thereafter imposed a sentence of sixty days' imprisonment for violating an alcohol license restriction

[3]Prior to jury selection, the State nolle prossed three of the charges Hanlon was facing: failure to drive to the right of center, displaying an expired registration plate, and failure to display a registration card on demand. The parties further agreed that the State would proceed on the charge of driving on a suspended license but not the charge of driving on a revoked license. The circuit court ultimately granted motions for judgment of acquittal as to driving on a revoked license as well as to driving on a suspended license.

(a sentence that had already been served), and a concurrent enhanced sentence of two years' imprisonment, all but one year suspended, for DUI, to be followed by five years of supervised probation. Hanlon then noted this appeal.

DISCUSSION

I.

Hanlon contends that the circuit court erred in refusing to permit her to plead guilty to only one count of a multi-count charging document, the count charging her with violating an alcohol license restriction. She insists that the circuit court was required, despite the State's objection, to accept her unconditional guilty plea on that count because, if the State were allowed to proceed to trial on all counts, she would have been unfairly prejudiced, as the State, to prove that she had violated an alcohol license restriction, would have to introduce evidence of other bad acts, specifically, that she was, in fact, subject to a previously imposed alcohol license restriction.[4]

A.

We begin our analysis with Hanlon's contention that the circuit court erred in refusing to accept her guilty plea as to one of the charges, namely, violating an alcohol license

[4]Hanlon further asks that we examine her claim, that the circuit court erred in refusing to accept her guilty plea to the charge of violating an alcohol license restriction, through the lens of joinder and severance, which, she asserts, "would seem to be apropos." Because, however, Hanlon did not raise this argument below, nor did she ask for a severance of charges, the question of whether the charge of violating an alcohol license restriction should have been severed from the DUI and DWI charges is not before us, and we shall not address that question. Md. Rule 8-131(a).

restriction. For one thing, there is no right, either under the United States Constitution or its Maryland counterpart, to enter a guilty plea in a criminal case. *North Carolina v. Alford*, 400 U.S. 25, 38 n.11 (1970) (stating that a "criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court"); *English v. State*, 16 Md. App. 439, 440 (1973) (stating that an "accused in a criminal proceeding has no constitutional right to plead guilty"), *disapproved on other grounds*, *Davis v. State*, 278 Md. 103, 113-14 (1976). Consistent with that decisional law, Maryland Rule 4-242 provides in part:

> **(c) Plea of Guilty.** The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. **Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.**

(Emphasis added.)

Thus, it is well-settled that it lies within a court's discretion to accept or reject a guilty plea. That being so, we review the circuit court's refusal to accept Hanlon's guilty plea to violating an alcohol license restriction for abuse of discretion.

B.

Because there is no Maryland case law precisely on point, we turn to decisions that have addressed how a trial court should manage the presentation of evidence under circumstances analogous to those in the instant case, specifically, where a defendant is tried on multiple charges (arising out of a single transaction), one of which requires proof of his status as a prior offender, and the prior offense is similar to another offense currently being tried. Such a set of factual circumstances, we acknowledge, may create, under certain circumstances, the possibility of unfair prejudice to the defendant through the admission of "other bad acts" evidence.

Two decisions that address this issue, *Old Chief v. United States*, 519 U.S. 172 (1997), and *Carter v. State*, 374 Md. 693 (2003), provide a helpful framework for our analysis. Although the accused did not offer, in either case, to plead guilty to a single count of a multi-count charging document, the accused did offer, in both of those cases, to stipulate to a prior conviction as a means of mitigating any danger that its admission might unfairly prejudice the jury.

Johnny Old Chief was charged with assault with a dangerous weapon, use of a firearm in relation to a crime of violence, and a violation of a federal gun control statute, that is, of 18 U.S.C. § 922(g)(1), which makes it unlawful for anyone "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" to "possess in or affecting commerce, any firearm[.]" 519 U.S. at 174 (quoting 18 U.S.C. § 922(g)(1)).

Old Chief's predicate conviction, for purposes of § 922(g)(1), was for assault causing serious bodily injury.

Prior to trial in the United States District Court for the District of Montana, Old Chief moved in limine to prohibit the Government from introducing evidence of that prior crime, except to state that he "has been convicted of a crime punishable by imprisonment exceeding one (1) year," on the grounds "that revealing the name and nature of his prior assault conviction would unfairly tax the jury's capacity to hold the Government to its burden of proof beyond a reasonable doubt on current charges of assault, possession, and violence with a firearm." *Id.* at 175. He further offered to stipulate to the prior conviction in the hope that, by doing so, the name and nature of his prior offense would be rendered inadmissible under Federal Rule of Evidence 403, which, like its Maryland counterpart (Maryland Rule 5-403), permits a trial court to exclude relevant evidence if its probative value is "substantially outweighed" by unfair prejudice. *Id.*

After the district court denied Old Chief's motion and rejected his offer to stipulate, the Government, over objection, "introduced the order of judgment and commitment for Old Chief's prior conviction" and thereby informed the jury that Old Chief had "knowingly and unlawfully" assaulted a man, "resulting in serious bodily injury," for which he had been sentenced to five years' imprisonment. *Id.* at 177. Old Chief was convicted of all charges, and the United States Court of Appeals for the Ninth Circuit thereafter affirmed, holding that the district court had not abused its discretion in permitting the Government to introduce

evidence of Old Chief's prior conviction to prove that element of the unlawful possession charge. *Id.*

The Supreme Court disagreed, holding that the district court had, indeed, abused its discretion in refusing to permit Old Chief to stipulate to his prior conviction, reasoning that, although the "accepted rule" is that, given the prosecution's heavy burden of persuasion, it "needs evidentiary depth to tell a continuous story" and that it therefore "is entitled to prove its case free from any defendant's option to stipulate the evidence away," that rule has "virtually no application when the point at issue is a defendant's legal status, dependent on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him." *Id.* at 189-90. Because "[p]roving status without telling exactly why that status was imposed leaves no gap in the story of a defendant's subsequent criminality," the Court declared that "there is no cognizable difference between the evidentiary significance of an admission and of the legitimately probative component of the official record the prosecution would prefer to place in evidence." *Id.* at 191. But, as only the latter evidence carries an "inherent" risk of unfair prejudice, the Court concluded that, for "purposes of the Rule 403 weighing of the probative against the prejudicial," "the only reasonable conclusion was that the risk of unfair prejudice did substantially outweigh the discounted probative value of the record of conviction, and it was an abuse of discretion to admit the record when an admission was available." *Id.*

We turn next to *Carter v. State*, *supra*, 374 Md. 693. There, the Court of Appeals considered an issue similar to the one in *Old Chief* and largely adopted that case's rationale. Carter, who had previously been convicted of robbery with a deadly weapon, was charged with three offenses: (1) possession of a regulated firearm by one previously convicted of a crime of violence; (2) possession of a regulated firearm by a person under 21 years of age; and (3) unlawful discharge of a firearm within the City of Baltimore. *Id.* at 697. Although his prior conviction was an element of the first possession charge, Carter sought to prevent at trial the presentation of the precise nature of his prior conviction by the State, maintaining that that information would unfairly prejudice the jury. He therefore, among other things, offered to stipulate to the existence of the prior conviction on the condition that the jury be told it was a felony or a crime of violence and not robbery with a deadly weapon. *Id.* at 715. The trial court, however, rejected that offer and allowed the State to tell the jury the specific name of the disqualifying crime for which he had been convicted: "robbery with a deadly weapon." *Id.*

Subsequently, the Court of Appeals, declaring that there was "no meaningful difference between" *Old Chief* and the *Carter* case, reversed, holding that the trial court had abused its discretion because admitting the "name and nature" of a prior conviction (where it is an element of a crime presently charged), instead of a stipulation or admission of that element, had unfairly prejudiced the defendant. *Id.* at 720. In so holding, the Court articulated the rule that, "when requested by the defendant in a criminal-in-possession case

under [Public Safety Article, § 5-133], the trial court must accept a stipulation or admission that the defendant was convicted of a crime that qualifies under the criminal-in-possession statute" and that, "in such situations, the name or nature of the previous conviction should not be disclosed to the jury." *Id.* at 720-21.

In the instant case, in contrast with *Old Chief* and *Carter*, the circuit court, from the outset, scrupulously endeavored to prevent the possibility that the jury might be exposed to "other bad acts" evidence. Indeed, from the very beginning of the trial, the court sought an agreement from the parties to enter into an appropriate stipulation and, if that could not be accomplished, to create an appropriately redacted version of Hanlon's driving record. Moreover, the stipulation that was ultimately presented to the jury was not unfairly prejudicial to Hanlon—it merely informed the jury that, at the time when the alleged offenses in this case took place, she was subject to an alcohol license restriction, and it did not contain any unfairly prejudicial details surrounding the imposition of that license restriction. Moreover, the jury was not told of any of Hanlon's four previous convictions for DWI or her previous conviction for DUI or that the most recent of those convictions, in 2004, arose from the same conduct which resulted in the imposition of the 2006 alcohol license restriction.[5]

[5]Effective September 30, 2001, the General Assembly enacted a substantial overhaul of Maryland vehicular laws applicable to drunk driving. 2001 Md. Laws, ch. 4, 5. Among the 2001 amendments was a change in terminology in TR § 21-902: the offense previously designated as "driving while intoxicated" was re-designated as "driving while under the influence of alcohol," while the lesser included offense previously designated as "driving while under the influence of alcohol" was re-designated as "driving while impaired by (continued...)

In other words, the circuit court followed the recommendation of *Old Chief* and ensured that the State would be limited to "[p]roving [Hanlon's] status without telling exactly why that status was imposed." 519 U.S. at 191.

We acknowledge that there is one notable distinction between *Old Chief* and *Carter*, on the one hand, and the instant case—Hanlon actually offered to plead guilty to the single charge, whereas Old Chief and Carter did not.[6] We nonetheless think that the similarities shared by all three cases substantially outweigh this distinction. Specifically, given the *Carter* Court's view, that the defendant in that case was not unfairly prejudiced by the disclosure, to the jury, of a prior conviction of a disqualifying crime, while being tried for unlawful possession of a regulated firearm, then surely Hanlon was not unfairly prejudiced here by the disclosure, to the jury, of the mere fact of an alcohol license restriction (which, for prejudicial purposes, is a far cry from a prior disqualifying conviction), while being tried for DUI.

[5](...continued)
alcohol." Thus, Hanlon's three pre-2001 DUI convictions would now be deemed DWI convictions, as that term is presently defined, whereas her pre-2001 conviction for driving while intoxicated would now be deemed a DUI conviction.

[6]That is hardly surprising. The maximum penalty Hanlon faced for violating the license restriction was a two-month sentence and a $500 fine. TR § 27-101(c)(10). In contrast, a person convicted of violating Public Safety Article, § 5-133(c) faces a mandatory minimum sentence of five years' imprisonment and can be sentenced to as much as fifteen years' imprisonment. *Id.* § (c)(2). Similarly, a person convicted of knowingly violating 18 U.S.C. § 922(g) is subject to ten years' imprisonment. *Id.* § 924(a)(2).

An abuse of discretion occurs when the ruling at issue is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King v. State*, 407 Md. 682, 711 (2009) (citation and quotation omitted). Specifically, a "ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Id.* Applying this standard of review, we conclude that the circuit court did not abuse its discretion here.

II.

Hanlon claims that the trial court unlawfully imposed, under TR § 27-101(k),[7] an enhanced two-year sentence for DUI, for two reasons: first, because the only notice given, by the State, to her was in the District Court, prior to her prayer for jury trial and subsequent transfer to the circuit court; and, second, because the notice failed to expressly refer to the DUI and DWI charges as the subject of enhancement. The State counters that the notice given by the State, in the District Court, satisfied the State's obligation to provide such notice under Maryland Rule 4-245(b); and that, as to Hanlon's claim that the notice given was substantively deficient, she failed to preserve this claim for our review.

[7]For a first-time offender, a violation of TR § 21-902(a) ("DUI") carries a maximum sentence of one year's imprisonment, a fine of $1,000, or both. TR § 27-101(k)(1)(i). For a second-time offender, the maximum sentence for such a violation is two years' imprisonment, a fine of $2,000, or both. TR § 27-101(k)(1)(ii).

Hanlon's case was scheduled for trial in the District Court on November 8, 2007. On August 8, 2007, three months before trial, notice of the State's intention to seek enhanced penalties was served on Hanlon in the District Court. Then, on November 16, 2007, upon Hanlon's demand for a jury trial, the case was transferred to the circuit court.

Maryland Rule 4-245(b), which applies where, as in the instant case, the State seeks an enhanced penalty that is permitted but not mandated by statute, *see* TR § 27-101(k)(1)(i)-(iii), provides:

> (b) **Required Notice of Additional Penalties.** When the law permits but does not mandate additional penalties because of a specified previous conviction, the court **shall not sentence the defendant as a subsequent offender unless** the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel before the acceptance of a plea of guilty or nolo contendere or **at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier.**

(Emphasis added.)

As for the timeliness of the notice given, it is clear that, as it was served on Hanlon more than 15 days before the scheduled 2007 District Court trial date, it complied with Rule 4-245(b) and that, as that rule contemplates notice either in the District Court or in the circuit court, no further notice was required in the circuit court. And, as for Hanlon's contention that the notice was substantively deficient, we note that because she failed to raise this contention at her sentencing hearing, it is waived. *See Bryant v. State*, 436 Md. 653, 660 (2014) (observing that "challenges to sentencing determinations are generally waived if not

raised during the sentencing proceeding"); *id.* at 665-66 (noting that where challenge "is to an alleged procedural flaw," it is "subject to the normal preservation rules").

In any event, even if we were to reach the merits of Hanlon's claim, we would conclude that it is without merit. Though the notice referred to the wrong citation number, EN27254 (the citation number corresponding to driving on a suspended license), instead of EN27258 (the citation number corresponding to DUI), and it did not state which offense was the subject of the sought-after enhanced penalties, we do not think these deficiencies rendered the notice non-compliant with Rule 4-245(b).

For one thing, all of the citation numbers are listed on a single document, entitled "DEFENDANT TRIAL SUMMARY," which was presented to Hanlon when her case was scheduled for trial in the District Court, on November 8, 2007. The summary states, "This case includes the following citation numbers:", followed by an enumeration of all of the citation numbers issued to Hanlon on the night of July 5, 2007. Arguably, the deficiency in the notice was cured when Hanlon was later given the trial summary.

Moreover, as the transcript of both the trial and sentencing hearing make clear, Hanlon was aware of the State's intention to seek enhanced penalties and, accordingly, cannot claim either unfair surprise or prejudice. Finally, even if we were to assume that the trial summary did not cure a possible deficiency in the notice, we would conclude that any error was harmless. *See King v. State*, 300 Md. 218, 232 (1984) (holding that, where substantively defective notice was given, but "defendant was aware of the precise prior

conviction to be relied upon at the time he received the notice," defendant could prove neither surprise nor prejudice, and error was harmless).

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.