Circuit Court for Montgomery County
Case No. C-15-CR-22-001203

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1175

September Term, 2024

SORIE IBRAHIM MANSARAY

v.

STATE OF MARYLAND

Arthur
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: April 17, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Sorie Mansaray was charged with: (1) attempted first-degree murder, (2) attempted second-degree murder, (3) first-degree assault, (4) firearm use in a crime of violence, (5) possession of a firearm by a prohibited person, and (6) possession of a firearm by a minor in the Circuit Court for Montgomery County. Appellant elected to be tried by a jury and following deliberations, a jury convicted him of five of the six counts. Appellant was found not guilty of attempted first-degree murder. The court later sentenced Appellant to an aggregate sentence of twelve years of imprisonment and five years of supervised probation upon his release. Appellant timely appealed, and he presents three questions for our review:

1. Did the trial court err in refusing to give a missing witness instruction?
2. Did the trial court err in admitting evidence of Mr. Mansaray's pre-arrest silence?
3. Must one of Mr. Mansaray's convictions for illegal possession of a firearm be vacated?

For the following reasons, we hold that the court did not err in declining to give a missing witness instruction, nor did the court err in admitting evidence of Appellant's pre-arrest silence. We hold that the court did err in convicting and sentencing Appellant on two counts for the illegal possession of a firearm. We, therefore, affirm in part, and remand the case with instructions that the court vacate one of the firearm convictions.

BACKGROUND

On April 15, 2024, Appellant was tried in the Circuit Court for Montgomery County for the attempted murder of Mr. Ceonte Boddy. The incident occurred on July 12, 2022,

and the State alleged that Appellant fired a single shot at a car. Mr. Boddy was a back seat passenger in that car, and he was struck in the arm by the bullet.

Montgomery County Police Detective Daniel Ford was called by the State, as a witness, and he testified that he arrested Appellant on October 27, 2022, pursuant to an arrest warrant. Appellant was transported to the police station, a search of him was conducted, and a cell phone was recovered. Detective Ford stated that he was involved with the team that arrested Abdul Sani, Appellant's friend, approximately a month prior. Detective Ford confirmed that officers recovered a cell phone from Mr. Sani as well.

Detective Joshua Ledoux, a Digital Forensics Examiner with the Montgomery County Police Department, testified that he examined both Appellant's and Mr. Sani's cell phones as part of the investigation. Detective Ledoux explained that during his examination of Mr. Sani's phone, he discovered a set of iMessages[1] that were sent from Appellant's phone on July 12, 2022, the day the shooting occurred. Detective Ledoux confirmed that the same text messages were found on Appellant's cell phone as well. Exhibits 19 and 20, which showed the text messages, were admitted into evidence.

Appellant elected to testify. He stated that on July 12, 2022, he left a friend's house in Northwest Park, Maryland to purchase marijuana at another location. He used the Metro to get there.

> [DEFENSE COUNSEL]: Okay. And then after you got the marijuana from – off of Castle Boulevard, what did you do next?

[1] iMessages are text messages on iPhones.

> [APPELLANT]: I hopped on the Metro from Castle Boulevard to White Oak, and then from White Oak I was going to hop on the bus to go to Northwest Park back into the house, to go be with my baby mother, but I wanted to grab me a soda from the gas station, so I hopped off the bus.
>
> [DEFENSE COUNSEL]: Okay. And this gas station, what was the name of this gas state?
>
> [APPELLANT]: The Shell – Dash In, but the Shell gas station.
>
> [DEFENSE COUNSEL]: Okay. And let me – so let's get to the gas station. And so when you got off the gas – off the bus and went to the gas station, what happened? Can you tell the jury what happened?

Appellant testified that while he was walking towards the gas station, he noticed a "light-skinned gentleman staring at my direction."

> [S]o I looked at him. I did not know the gentleman from nowhere. I've never seen him. I don't follow him on no social media. So I was confused of why he was looking at me. So I looked back at the gentleman, I didn't approach him, did not say nothing to him. I just looked and kept on moving and went inside the Dash In.

When asked if he saw "any people in the vehicle" near the gentleman, Appellant stated that he noticed a driver, a passenger, and two people in the backseat of the car. He did not recognize anyone in the car. Appellant stated that after he left the Dash In, he noticed the car that the gentleman had been near was moving, but once Appellant came out of the store, the car stopped. He then began walking to the bus stop while on the phone with the mother of his child. Appellant stated that he began to "have a weird feeling something is going on" because "this car has just stopped, the gentleman in the car was staring at me before[,]" so he ended his phone call and stood at the "front of the bus stop" in order to "be more vigilant of my surroundings."

> [APPELLANT]: [A]s soon as I get in front of the bus stop, I noticed that the car turned as soon as I get in front of the bus stop. So now I get nervous, and I back up and try to hide behind the glass of the bus stop. So while I try to hide behind the glass, the car makes a turn, a very slow turn, and I'm able to look inside, in the – of the car now. I'd seen the light-skinned gentleman, which is Mr. Boddy, at the, the window side. Then I ended up seeing a silver handgun. When I'd seen a silver handgun, I raised my arm – because my hand was in my pockets, where I had a firearm – I raised my arm and I let off a single shot, and then I ducked behind a trash can because I figured – I thought they was going to return fire or, like, shoot at me because I'd seen a gun. Then the car drove off. When it drove off, it did like a – I'd seen the brake lights had a, like – it came on. So I just got up and ran to The Enclave [apartment building complex].

During cross-examination, Appellant stated that he left in an Uber called by Mr. Sani after the shooting. He stated that he took the Uber to the house he was staying in prior to the shooting. The State then asked:

> [THE STATE]: Okay, now you were aware that Mr. Sani was arrested and charged in this case, right?
>
> [APPELLANT]: Yes. After he got arrested and charged, I, I did find out.
>
> [THE STATE]: Okay. And he was in jail for about a month, right?
>
> [APPELLANT]: Yes. I – I'm not 100 percent sure, but I believe so.
>
> [THE STATE]: And you obviously were aware when he got out and the charges were dropped, right?
>
> [APPELLANT]: I found out, like, a few days later.
>
> [THE STATE]: You talked to him about it, right?
>
> [APPELLANT]: Yeah. He called me.
>
> [. . .]

[THE STATE]: Sure. So during the time that Mr. Sani was charged with this crime, your crime, you never told anyone that you were actually the person that did the shooting, right?

[APPELLANT]: No.

Following cross-examination, Appellant admitted to being questioned by detectives after his arrest in October 2022. He denied that he obtained an Uber ride from Mr. Sani, that he owned a cellphone, and that he was present at the scene of the shooting. Appellant confirmed that his denials were not truthful.

[THE STATE]: Now, during that entire interview with Det. Patrick, when you decide to talk with him, you never once mentioned anyone else having a firearm, correct?

[APPELLANT]: No.

[THE STATE]: You never once mentioned a silver gun, right?

[APPELLANT]: No.

[THE STATE]: You never once mentioned that you were scared for your life there, correct?

[APPELLANT]: No.

[THE STATE]: You never said that you thought you were going to get shot?

[APPELLANT]: No.

[THE STATE]: You never said that you fired in the action?

[APPELLANT]: No.

[THE STATE]: You never ever told anyone that story whatsoever until today?

[APPELLANT]: I never told the officer that story, yes, you're right.

> [. . .]
>
> [THE STATE]: Okay. And you never told law enforcement that this happened the way you said it happened in this courtroom today, correct?
>
> [APPELLANT]: I never told law enforcement anything.

At the end of the second day of trial, one of Appellant's attorneys informed the court that Mr. Boddy, the victim in the shooting, would most likely not be available to testify. At the time of trial, Mr. Boddy was incarcerated in the District of Columbia and the Superior Court, there, had not approved a writ to transport him to Maryland. The State informed the court that Mr. Boddy had been uncooperative with law enforcement.

> [THE STATE]: Can you describe whether or not Mr. Boddy was cooperative with you when you interacted with him?
>
> [OFFICER HORAK]: He, from the start, was very uncooperative. Again, right when I got to the hospital, obviously I'm there to see what happened and to investigate. He immediately, when we walked in, we asked him what happened, and he told me, I can't help you. Basically saying he didn't want to help us with the investigation or give us much info, which was basically the entire interaction. All the questions I asked, he either didn't give me an answer, you know, ignored me, or was not willing to give any details on that instance that occurred at the Dash In.

Ultimately, Mr. Boddy did not appear as the Superior Court judge in the District of Columbia did not sign an order allowing a transport to Maryland.

On April 18, 2024, the jury found Appellant guilty of attempted second-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, illegal possession of a regulated firearm, and possession of a regulated firearm being under 21. He was found not guilty of attempted first-degree murder. The court sentenced him to

an aggregate sentence of twelve years of imprisonment and five years of supervised probation upon his release.

STANDARD OF REVIEW

At the request of either party, the trial court shall "instruct the jury as to the applicable law and the extent to which the instructions are binding[,]" but the trial court need not "grant a requested instruction if the matter is fairly covered by [other] instructions[.]" Md. Rule 4-325(c). In other words, a requested jury instruction is required when (1) it "is a correct statement of the law;" (2) it "is applicable under the facts of the case;" and (3) its contents were "not fairly covered elsewhere in the jury instruction[s] actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)). To assign error to a trial court's refusal to give a particular jury instruction, the aggrieved party must lodge an on-the-record objection "promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 4-325(f). On appeal, we review the overall decision of the trial court for an abuse of discretion, but the second requirement (whether the instruction is applicable in that case) is akin to assessing the sufficiency of the evidence, which requires a *de novo* review. *Rainey*, 480 Md. at 255.

"[A] defendant's pre-arrest silence in police presence is inadmissible under Maryland evidence law as direct evidence of guilt." *Weitzel v. State*, 384 Md. 451, 452 (2004). "The Fifth Amendment, as applied to the states by the Fourteenth Amendment, guarantees an accused the right to invoke his privilege against self-incrimination."

Coleman v. State, 434 Md. 320, 333 (2013); U.S. CONST. amend. V, XIV. The right against self-incrimination is also protected under Article 22 of the Maryland Declaration of Rights. Md. Const. Decl. of Rts. Art. 22. This court reviews a trial court's determination as to the relevance of evidence *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011).

DISCUSSION

Missing Witness Jury Instruction

Appellant argues that the court erred in declining to give a Missing Witness Pattern Jury Instruction because the court applied an incorrect legal standard. The State argues that Appellant's claim is without merit. Both parties and the court attempted to secure the missing witness, who was detained in Washington, D.C., and the court, there, did not honor the writ. The witness, according to the State, was not peculiarly available to the State and thus, the court properly declined to give the instruction.

The "concept" known as the "missing witness rule" refers to:

> the permissible inference that a factfinder may draw from the absence of a potential witness who might have knowledge of facts at issue in the case. If the factfinder determines that the witness is "peculiarly available" to one party, the absence of the witness is ascribed to that party. The factfinder is then permitted to infer that the party did not call the witness because whatever testimony that individual would have given would be unfavorable to that party.

Harris v. State, 458 Md. 370, 388 (2018). The "missing witness rule" as set out by the Maryland Supreme Court in *Christensen v. State*, 274 Md. 133 (1975) provides:

> The failure to call a material witness raises a presumption of inference that the testimony of such person would be unfavorable to the party failing to call him, but there is no such presumption or inference where the witness is not available, or where his testimony is unimportant or cumulative, or where he

> is equally available to both sides. The presumption or inference that the testimony of a missing witness would be unfavorable is applied most frequently when there is a relation between the party and the witness, such as a family relationship, an employer-employee relationship, and, sometimes, a *professional* relationship.

Id. at 134-35 (emphasis added). The rule applies where "(1) there is a witness, (2) who is peculiarly available to one side and not the other, (3) whose testimony is important and non-cumulative and will elucidate the transaction, and (4) who is not called to testify." *Woodland v. State*, 62 Md. App. 503, 510 (1985). In order to establish whether a witness is peculiarly available to one side, the witness must be physically available only to the opponent or there is a special relationship that renders him or her unavailable to the proponent. *Dansbury v. State*, 193 Md. App 718, 746 (2010) (internal citations omitted).

A trial court has discretion to give a missing witness instruction upon request by a party. *Lowry v. State*, 363 Md. 357, 375 (2001) (quoting *Davis v. State*, 333 Md. 27, 52 (1993)). However, the party must establish the necessary predicate, and even if the party does so, the court has the discretion not to give it. A missing witness instruction typically includes an inference that can be drawn from the evidence or lack thereof. Where the facts do not support an inference, the court has no discretion to give the instruction. *Harris*, 458 Md. at 406 (2018).

In *Woodland v. State*, 62 Md. App. 503 (1985), this Court examined whether the trial court properly declined to give a missing witness pattern jury instruction. The appellant argued that the trial court erred in failing to give the instruction, and in declining to instruct the jury that the appellant did not have the burden to prove his innocence, after

the prosecution brought up that the defense did not call certain witnesses that were mentioned to the jury during voir dire. This Court held that the trial court did not err in failing to initially give a missing witness instruction as the testimony sought was not material and would have been cumulative. We did hold, however, that the court erred in allowing the prosecutor to argue the missing witness rule to the jury. We found that the argument commented on facts that were not in evidence and had the effect of shifting the burden of proof to the appellant. The trial court's failure to give a curative instruction resulted in error, which was not harmless.

The Supreme Court of Maryland, in *Harris v. State*, 458 Md. 370 (2018), examined whether a trial court erred in giving a missing witness instruction referencing the failure of the petitioner's mother to testify. The Court reiterated the prerequisites for the missing witness rule and found that the instruction invited the jury to disbelieve the petitioner and could have led the jury to believe that he bore the burden of proof in producing an alibi defense. The Court noted that the trial court relied only on the fact that the witness was the petitioner's mother, and ultimately, held that the trial court's error was not harmless.

In examining whether the witness was peculiarly available, the Court stated, the "mere fact that a witness may personally favor one side over the other does not make that witness peculiarly unavailable to the other side." *Harris*, 458 Md. at 408 (quoting *Bereano v. State Ethics Com'n*, 403 Md. 716, 744 (2008)). Further, "[a] witness who will assert the privilege against self-incrimination is not 'available' and cannot be the subject of a missing witness instruction." *Harris*, 458 Md. at 404. The Court also outlined the procedure that a

court should follow when asked to give such an instruction, stating, "When a party intends to ask the trial court to give a missing witness instruction, the party should give advance notice to the opposing party and raise the issue at a time when the opposing party has an opportunity to call the allegedly missing witness or provide proof that the witness is not peculiarly available to that party." *Id.* at 405.

Appellant argues, here, that the trial court applied an incorrect legal standard in determining that the missing witness instruction was not warranted. Appellant asserts that while the court properly determined that there was a witness, the witness was peculiarly available to the State, and since the witness had not been called to testify, the court failed to analyze whether the witness' testimony was material and non-cumulative. The State argues that the Court did not find that the witness was peculiarly available to the State and that Appellant misconstrues the court's remarks.

We note that, pre-trial, Appellant sought a trial subpoena for Mr. Boddy to testify as a defense witness. At a motions hearing, approximately two weeks prior to trial, Appellant asked the court to issue a writ. The court, in granting the request, stated, "Well, given it's the victim in the case, it's hard for me to conclude that this person is not a material witness under any definition … In fact, the State would like to have the person here … It may be that all I can do is issue this and then see what they do … The record reflects that the State joined in the defense's request."

On the third day of trial, when it appeared that the victim would not be transported from the District of Columbia, Appellant requested that the court give the jury a missing

witness instruction. Appellant asserted one factor, i.e., that "the State does have the ability to procure the witness." Appellant did not specify to the court that the testimony was important or noncumulative. Appellant, also, did not proffer the substance of Mr. Boddy's testimony to the court.

As we see it, it was clear that the testimony of Mr. Boddy, as the victim, and potentially as an eyewitness, was important. We note the prior determination by the motions judge, that Mr. Boddy was a "material witness". From the record, we glean that all parties, including the judge, were focused on procuring the "material" witness. We note also that neither party knew whether Mr. Boddy would, in fact, testify. He had failed to cooperate with the State during its investigation, the State placed the witness' lack of cooperation on the record, as well as the possibility that the witness might assert his Fifth Amendment privilege against self-incrimination. We conclude that the court did not err nor apply an incorrect standard. While the judge did not articulate that the witness was important, it is clear from the record, that he was. The State's case consisted entirely of the testimony of the investigators, and there was no eyewitness testimony.

As to Appellant's assertion that the court expressly found that the witness was peculiarly available to the State, we disagree. The court made no such determination. Following defense counsel's statement that "the State does have the ability to procure the witness," the court stated "[t]hey do, but they decide what their case is going to be." We view that statement by the court as merely an acknowledgement that the State controlled its case presentation, including the witnesses. The court's statement did not infer that the

witness was only available to the State, and we hold that the witness was not peculiarly available to the State.

Appellant cites *Cost v. State*, 417 Md. 360 (2010), in support of his argument that an instruction was required. There, the Supreme Court held that Cost was entitled to a missing evidence jury instruction "because the State had destroyed highly relevant evidence in its custody that it normally would have retained and submitted to forensic examination." *Id*. at 382. The Court found that while the trial court had discretion, because the defendant's rights were not adequately protected, reversal was required. The facts in the present case are quite different. Here, the State did not destroy or otherwise, make unavailable, evidence. Rather, the State joined in the defense request to have Mr. Boddy transported to the court for his testimony. Based on the record in this case, we hold that the court did not err in declining to give a missing witness instruction.

Pre-Arrest Silence

Appellant alleges that the trial court erred in permitting the State to elicit evidence of Appellant's pre-arrest silence during the State's cross-examination. Appellant argues that the evidence violated his Fifth Amendment right against self-incrimination, and it was not relevant or probative. The State argues, first, that Appellant's argument is not fully preserved for appellate review, as he objected at trial, solely, on Fifth Amendment grounds. No evidentiary issues were raised and thus, that argument is not preserved for appellate review. The State contends, nevertheless, that the State's reference to Appellant's pre-

arrest silence was not used as substantive evidence of guilt, but rather for impeachment purposes, which is permitted.

Maryland Rule 8-131(a), provides that, generally, "an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a).

Here, the following exchange occurred during the cross examination of Appellant:

> [THE STATE]: Okay. Now, you were aware that Mr. Sani was arrested and charged in this case, right?
>
> [APPELLANT]: Yes. After he got arrested and charged, I, I did find out.
>
> [THE STATE]: Okay. And he was in jail for about a month, right?
>
> [APPELLANT]: Yes. I – I'm not 100 percent sure, but I believe so.
>
> [THE STATE]: And you obviously were aware when he got out and the charges were dropped, right?
>
> [APPELLANT]: I found out, like, a few days later.
>
> [THE STATE]: You talked to him about it, right?
>
> [APPELLANT]: Yeah. He called me.
>
> [THE STATE]: Okay. During that whole time, when he was charged with this crime, you never told anyone, any police or anything, that you were actually the person that shot Mr. Boddy, correct?
>
> [DEFENSE COUNSEL]: Object, Your Honor.
>
> [THE COURT]: What's your objection?

> [DEFENSE COUNSEL]: He has a Fifth Amendment privilege not to speak to the police.
>
> [THE COURT]: That what?
>
> [DEFENSE COUNSEL]: Fifth Amendment privilege not to speak to --
>
> [THE COURT]: Overruled.

On this record, it is clear that Appellant's counsel's objection was based solely on Appellant's Fifth Amendment right against self-incrimination. Appellant's counsel did not assert that the testimony concerned an evidentiary issue or was contrary to Md. Rule 5-401 or Md. Rule 5-403. As such, those arguments are not properly preserved for appellate review. Md. Rule 8-131(a).

"The Fifth Amendment as applied to the states by the Fourteenth Amendment, guarantees an accused the right to invoke his privilege against self-incrimination." *Coleman v, State*, 434 Md. 320, 333 (2013); U.S. CONST. amend. V, XIV. The right against self-incrimination is also protected under Article 22 of the Maryland Declaration of Rights. Md. Const. Decl. of R.Art. 22.

In Maryland, while it is impermissible to "comment on a defendant's *post-arrest* silence, the same is not true for *pre-arrest* silence." *Daniel v. State*, 132 Md. App. 576, 596-97 (2000) (emphasis added). The U.S. Supreme Court, in *Jenkins v. Anderson*, 447 U.S. 231, 238-40 (1980), held that the Fifth Amendment is not violated by the use of pre-arrest silence to impeach a criminal defendant's credibility. Jenkins was charged with stabbing and killing an individual, and "was not apprehended until he turned himself in to

governmental authorities about two weeks later." *Jenkins*, 447 U.S. at 232. At trial, he asserted that the killing was in self-defense. *Id*. at 232-33. During cross-examination, the State questioned Jenkins about his actions after the stabbing:

> Q. And I suppose you waited for the Police to tell them what happened?
>
> A. No, I didn't.
>
> Q. You didn't?
>
> A. No.
>
> Q. I see. And how long was it after this day that you were arrested, or that you were taken into custody?

Jenkins, 447 U.S. at 233 (internal citations omitted). The State referenced the petitioner's pre-arrest silence in its closing argument to the jury, stating that the petitioner "had 'waited two weeks, according to the testimony to do anything about surrendering himself or reporting [the stabbing]…" *Id.* at 234 (internal citations omitted). Jenkins was convicted of manslaughter. The Supreme Court of the United States later granted a writ of certiorari and affirmed the state trial court's decision. The Supreme Court held that "impeachment by use of prearrest silence does not violate the Fourteenth Amendment." *Id.* at 240. The Court noted that "no governmental action induced petitioner to remain silent before arrest." The Court stated:

> Our decision today does not force any state court to allow impeachment through the use of prearrest silence. Each jurisdiction remains free to formulate evidentiary rules defining the situations in which silence is viewed as more probative then prejudicial. We merely conclude that the use of prearrest silence to impeach a defendant's credibility does not violate the Constitution.

Id. at 240-41.

This Court considered the use of pre-arrest silence in *Robeson v. State*, 39 Md. App. 365 (1978). There, during cross-examination, the State, over the appellant's objection, asked him whether he had advised the police of his version of the events that led to the shooting of two victims. The appellant argued that his right under the Fifth Amendment had been violated because the State elicited from him, "the fact that he had failed to contact the police and advise them of his knowledge of the events surrounding the murder." *Id*. at 368. We held that the State's reference to Robeson's pre-arrest silence during cross-examination and closing arguments "were not impermissible comments on an inference of guilt but rather a permissible inquiry as to credibility and circumstances of flight." *Id*. at 380.

Here, similar to *Jenkins*, the crux of Appellant's testimony and arguments at trial was that he acted in self-defense. The State's questions focused on the fact that Appellant failed to tell anyone, including the police, that he was the person who shot Mr. Boddy in self-defense. The State, further, focused on the fact that Appellant knew that Mr. Sani, his friend, was in jail for the crime. As we see it, the court did not err in permitting the State's questions. We note further, that, even if, Appellant's evidentiary issues were properly preserved, they would, nevertheless, fail as the pre-arrest silence was not used as substantive evidence of guilt.

Firearm Convictions

Finally, Appellant argues that the trial court erred in convicting and sentencing him on two separate counts related to a firearm, and the State agrees. We also agree.

In *Melton v. State*, 379 Md. 471 (2004), the Supreme Court of Maryland, held that a person disqualified from possessing a firearm may only be convicted of a single offense of unlawful possession of a single firearm, even if the person is disqualified from possessing the firearm on multiple bases. *Melton*, 379 Md. at 474. In *Wimbish v. State*, we applied the holding from *Melton* and concluded that "when [the defendant] possessed a single regulated firearm, which was illegal under § 5–133 for two reasons (his age and his prior conviction for a crime of violence), he committed only one violation of that section." *Wimbish v. State*, 201 Md. App. 239, 272 (2011). In *Clark v. State*, 218 Md. App. 230 (2014), we considered whether the defendant's three convictions for violating Public Safety Article § 5-133 "in three different ways" should merge. *Clark*, Md. App. at 252. Our Court applied the holdings from *Melton* and *Wimbish* and held that "only one of the appellant's convictions under [Pub. Safety § 5-133] can stand." We affirmed "the conviction with the greater penalty" and vacated the remaining two, lesser convictions. *Id*. at 253.

Here, Appellant was convicted of possession of a firearm by a prohibited person under Pub. Safety § 5-133(b) and possession of a firearm by a person under the age of 21 under Pub. Safety § 5-133(d). Since the two convictions are under the same statutory provision, one of the convictions must be vacated. We, therefore, remand to the trial court for the vacatur of one of Appellant's firearm convictions.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART, AND REMANDED IN PART; COSTS TO BE DIVIDED EQUALLY BETWEEN MONTGOMERY COUNTY AND APPELLANT.