UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0290

September Term, 2015

ALEXANDER BRADLEY IRELAND

v.

STATE OF MARYLAND

Woodward,
Graeff,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 23, 2015

On June 18, 2014, a jury in the Circuit Court for Prince George's County convicted Alexander Bradley Ireland, appellant, of wearing, carrying, and transporting a handgun, in violation of Md. Code (2013 Supp.) § 4-203 of the Criminal Law Article ("CR") ("Count 1"), and possession of a regulated firearm after having been convicted of a crime of violence, in violation of Md. Code (2013 Supp.) § 5-133(c) of the Public Safety Article ("PS") ("Count 3"). On March 26, 2015, the court sentenced appellant on Count 3 to fifteen years of incarceration, all but five suspended, to be served without parole.[1] The court merged Count 1 into Count 3 for sentencing purposes.

[1] The sentence of five years without parole was the mandatory minimum prescribed by Md. Code (2014 Supp.) §§ 5-133(c), 5-101(c) of the Public Safety Article ("PS"). Section 5-133(c) states as follows:

> (c)(1) A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence;
>
> ***
>
> (2)(i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.
>
> (ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.
>
> (iii) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

Pursuant to PS § 5-101(c), a "crime of violence" includes "burglary in the first, second or third degree." Appellant stipulated at trial that he had a prior conviction of breaking and entering a dwelling with the intent to commit a theft, which amounts to burglary in the first degree. *See* Md. Code (2013 Supp.) § 6-202 of the Criminal Law Article.

On appeal, appellant presents three questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in denying appellant's motion to suppress the handgun found on his person?

2. Did the circuit court err in denying appellant the opportunity to present evidence of justification and in refusing to instruct the jury on that defense?

3. Does the sentencing provision of § 5-133(c) of the Public Safety Article, requiring a mandatory minimum sentence of five years without parole, violate the Second Amendment right to bear arms and the Eighth Amendment prohibition against cruel and unusual punishment?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 30, 2013, at approximately 6:00 p.m., Officer Matt Jones, a member of the Washington, D.C., Metropolitan Police Department, heard a dispatch regarding an assault with a dangerous weapon in the 4400 block of Bowen Road SE, Washington, D.C. The dispatch described two suspects as follows: "[A] light skin male with short hair, accompanied with a darker skin male with long hair. And the light skin male was supposed to have . . . a gray hoody. And the darker skin male was supposed to have a black jacket." The suspect with the black jacket had dreads.

Officer Jones and his partner, Officer Stathers, assisted with the canvass, i.e., the search of "the surrounding areas looking for individuals matching the description." The officers crossed the Maryland-D.C. border into Prince George's County and drove approximately two blocks to the back of an apartment complex near the 4800 block of

Marlboro Pike, Capitol Heights, Maryland. Approximately 10 to 15 minutes after the assault was reported, the officers spotted appellant and another male with dreads. Officer Jones believed that they matched the description provided by dispatch. He, Officer Stathers, and a third officer stopped appellant, patted him down, and "immediately recognized something heavy in . . . the front left side of [appellant] in a jacket that was wrapped around his waist." They removed appellant's jacket and discovered a concealed, loaded .22 caliber revolver. The officers placed appellant in handcuffs, notified the Prince George's County Police, and waited for them to arrive.[2]

At some point after the D.C. officers detained appellant, Detective Darryl Wormuth, a member of the Prince George's County Police Department, arrived on the scene. Detective Wormuth took possession of appellant's revolver and arrested appellant.[3]

At the police station, appellant signed an advice of rights form and provided Detective Wormuth with a statement. Appellant told Detective Wormuth that he was carrying the handgun because a person previously shot him, and that person said he was going to kill appellant. Appellant stated that he carried "the handgun for protection, not to hurt or rob anyone, but for [his] own self-protection purposes." He said that he found the

[2] Officer Gregory Lynagh, a member of the Prince George's County Police Department testified at the suppression hearing that the D.C. officers called the Prince George's County Officers to assist before they conducted the pat-down of appellant, but they ultimately conducted the pat-down before he arrived.

[3] After Detective Darryl Wormuth arrived, officers conducted a show-up identification, and the victim of the alleged assault indicated that neither appellant nor his companion was the assailant. Appellant's companion was released.

gun in an alley four months prior to his arrest, and he was aware that he was prohibited from possessing a handgun.

DISCUSSION

I.

Motion to Suppress the Handgun

Appellant contends that the circuit court erred in denying his motion to suppress the gun found on his person for two reasons. First, he asserts that the court erred in finding that the D.C. officers were not state actors subject to the Fourth Amendment and Article 26 of Maryland Declaration of Rights.[4] Second, appellant contends that the court erred in determining that the police had reasonable suspicion to justify the stop and frisk.

The State contends that the suppression court properly denied appellant's motion to suppress. It asserts that the court "correctly determined that the Fourth Amendment does not apply to [appellant's] case because no state action was involved in the stop and frisk."

[4] The Fourth Amendment to the United States Constitution states as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 26 of Maryland Declaration of Rights states as follows:

> That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

In any event, the State argues, even if the Fourth Amendment applies, the stop and frisk was lawful because the description of appellant provided in the dispatch "was sufficiently particular to justify the stop."

A.

Proceedings Below

At the suppression hearing, the following colloquy occurred:

> [DEFENSE COUNSEL:] [M]y client was in Prince George's County [when] the District of Columbia Police stopped my client as well as another person. Ostensively, [sic] the Statement of Probable Cause indicates that they were matching the lookout information given for the assault, for an assault that happened in the District of Columbia.
>
> Prince George's County Police arrived, and they -- after my client had been stopped. At some point, my client was searched. They recovered a -- allegedly recovered a black and white re[v]olver handgun from a jacket that they say he was wearing at the time.
>
> My argument, I anticipate, will be that the stop was not lawful. I will say --
>
> THE COURT: The stop what, by the District of Columbia Police Department?
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: So where does the State action come into play?
>
> [DEFENSE COUNSEL]: Well, they're the State, the District of Columbia Police. And they -- what they did was, they detained my client until the Prince George's County Police arrived. And so he was being detained during that period of time. So it's an unlawful stop, detention, and seizure.

The State then called Officer Jones to testify about the events that led to appellant's arrest. Officer Jones testified that "the description of the suspects was one black male with

long dreads past his shoulder, and he was going to be wearing a black jacket. They said there was another black male. He had short hair. He was going to be wearing a gray hoody -- hooded-style sweatshirt." The dispatch indicated that "one of the males was lighter in complexion than the other male."

Officer Jones testified that, approximately 15-20 minutes after the assault occurred, approximately "four or five blocks" from the location of the assault, he spotted two individuals, appellant and another man, who he believed matched the description. He explained why he believed that they were the perpetrators described by dispatch:

> The individual the defendant was walking with had long dreads, shoulder length dreads, and he was wearing a black jacket. And he was a darker complexion than the defendant.
>
> And on that date, the defendant had a black jacket wrapped around his waist, but underneath that was a gray hooded sweatshirt. And he had the short hair.
>
> * * *
>
> [The individual appellant/defendant was with was wearing] [a] black jacket. He was darker complected than the defendant, and he had dreads past his shoulders.

Concluding that appellant and his companion "matched the description," Officer Jones "exited [his] vehicle and . . . personally stopped [appellant]." He conducted a pat-down on appellant and discovered a handgun concealed in appellant's jacket. Officer Jones placed appellant in handcuffs and contacted the Prince George's Police Department.

On cross-examination, defense counsel questioned Officer Jones about an incident report that was created in connection with the D.C. assault. The report indicated that the suspected perpetrator of the assault was a light-brown-complected black male, 30-40 years

of age, approximately six feet tall, weighing 245-255 pounds, with black hair and brown eyes. Officer Jones testified that appellant weighed approximately 150 pounds at the time of the suppression hearing.

The defense also questioned Officer Jones about a "CAD report" that was generated at the time of the incident by the dispatcher and displayed on the officers' computer during the initial call,[5] which stated in pertinent part:

> B/M TALL LIGHT COMPLX DREADS . . . . .
> GUN . . .
> SILV AUTO WEAPON
> POSS GRY SWEAT TOP
> SUBJ WALKED OFF
>
> * * *
>
> LOF = B/M 20's DREADS GRAY & BLACK STRIPED SWEATER
> PULLED OUT A GUN . . .
> LEFT ON FOOT TOWRDS SOUTHERN

Defense counsel asked Officer Jones whether appellant was wearing a gray and black-striped sweater that day, as the report suggested, and Officer Jones stated that appellant was wearing a gray sweater.

Officer Lynagh testified regarding the Statement of Probable Cause that he prepared in "reference to the stop, arrest, and search and seizure" of appellant. On cross-examination, defense counsel questioned whether, during a show-up, the victim failed to identify appellant or the person he was with as being involved in the assault. A discussion ensued regarding the relevancy of this line of questioning, and the following then occurred:

[5] Officer Jones explained that the CAD report "comes from the initial call," but the officers also were "relayed information from the first responding officer on the scene."

[DEFENSE COUNSEL]: I would submit that it is relevant because it goes to my issue of identity. There was no basis to stop him because he didn't match the description of the person –

THE COURT: How are you going to get around the State action problem?

[DEFENSE COUNSEL]: Your Honor, this is State action. They stopped --

THE COURT: No, it's not. They're D.C. cops. They have the same status as private citizens. They could be sued.

[DEFENSE COUNSEL]: Your Honor, they're State agents. They're acting as State agencies. They stopped my client and [processed] him, allegedly, which I maintain is not the case, but they believed he was involved. They believed that probably the person he was with was involved in the incident in the District of Columbia.

I would submit to Your Honor that it is. It should be treated as State action because they were acting in their capacity as Metropolitan police officers when they did their search.

THE COURT: Metropolitan police officers. Agree.

[DEFENSE COUNSEL]: Well, I would say that they would be -- in that sense, then, that they were --

THE COURT: Are you conceding that, State?

[PROSECUTOR]: No.

THE COURT: Okay.

[DEFENSE COUNSEL]: Well, I would submit it is State action because they're acting as police officers.

THE COURT: I understand.

Defense counsel argued that the D.C. police were "acting in their capacity as State agents," and there "was no valid basis to stop" appellant because "there was not a sufficient or articulable basis to believe that he was involved in that crime in the District of Columbia."

The circuit court denied appellant's motion to suppress, stating as follows:

> All right. First, the Court does not find that there was any State action in this case. The D.C. police officers in the position that they stopped the accused were in the same position as private citizens taking all the risks that private citizens would incur in stopping a person.
>
> Just in case, the wise people that reside east of here do not see it the way I do. The Court finds that the D.C. police officers were responding to a dispatch from an incident which had occurred on the opposite side of the D.C. southern half -- on the D.C. side of the Southern Avenue border.
>
> That based on the descriptions, that the suspects were last seen heading toward the Prince George's County side of the Southern Avenue border. That the D.C. police officers in their zeal to respond to a possible assault . . . . entered into Prince George's County, made a stop of two people which, based on their belief, matched the descriptions.
>
> Because of the descriptions of the behavior that was engaged in by the person in the D.C. incident, they believed that those subjects would be armed. So it would have been reasonable for them to have conducted a pat-down for officer's safety in case somebody sees them as State agents.
>
> And therefore, the search, if they were State agents, was reasonable under those circumstances, too. So the motion to suppress the search and seizure is denied.

B.

Standard of Review

In reviewing the circuit court's decision on a motion to suppress, we are limited to the facts developed at the hearing, *Hill v. State*, 418 Md. 62, 67 n.1 (2011), viewing the evidence in the light most favorable to the prevailing party on the motion. *Robinson v. State*, 419 Md. 602, 611-12 (2011). We review the motion court's factual findings for clear error, but we make our own independent constitutional appraisal, "reviewing the relevant

law and applying it to the facts and circumstances of this case." *State v. Luckett*, 413 Md. 360, 375 n.3 (2010). *Accord Moore v. State*, 422 Md. 516, 528 (2011).

C.

Merits

Appellant contends that the stop violated the Fourth Amendment because the D.C. police officers, who were acting as state agents, did not have reasonable suspicion to believe that he was the person who committed the assault in Washington, D.C. As explained below, we need not address the issue whether the D.C. police were State agents pursuant to the Fourth Amendment because, even if they were, we agree with the State that the circuit court properly denied the motion to suppress on the ground that the police had reasonable suspicion to justify the stop.

The Fourth Amendment to the United States Constitution protects against unreasonable seizures. U.S. Const. amend. IV.[6] A warrantless seizure generally is unreasonable unless supported by probable cause or reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Lee v. State*, 311 Md. 642, 652 (1988).

Here, there is no dispute that appellant was seized when he was stopped. Appellant asserts, however, that the seizure was unreasonable because the police did not have reasonable articulable suspicion to stop him. As this Court has explained:

[6] The Court of Appeals has interpreted Article 26 "*in pari materia* with the Fourth Amendment of the U.S. Constitution," and has uniformly rejected any assertion that it provides greater protection against state searches than its federal kin." *King v. State*, 434 Md. 472, 482 (2013).

> It is not a violation of the Fourth Amendment for an officer to "stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). This is known as an "investigatory stop" and is underlaid by "strong concerns for public safety and for effective crime prevention and detection[.]" *Quince v. State*, 319 Md. 430, 434 (1990) (citing *United States v. Hensley*, 469 U.S. 221, 228-29 (1985)).
>
> But what constitutes a reasonable suspicion? To answer that question, we first observe that the "level of [reasonable] suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence" and "obviously less demanding than that for probable cause." *Sokolow*, 490 U.S. at 7.

Williams v. State, 212 Md. App. 396, 405, *cert. denied*, 435 Md. 270 (2013) (parallel citations omitted).

Reasonable articulable suspicion is a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411 (1981). A police officer's unparticularized suspicion or hunch is not sufficient to support reasonable articulable suspicion. *Cartnail v. State*, 359 Md. 272, 287 (2000). In evaluating the constitutionality of a seizure, the Court must look at the totality of the circumstances. *Stokes v. State*, 362 Md. 407, 415 (1998).

In evaluating whether an officer had reasonable suspicion, Maryland courts consider the following factors:

> "(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped;

> and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation."

In re Lorenzo C., 187 Md. App. 411, 430-31 (2009) (quoting 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.)). *Accord Lewis v. State*, 398 Md. 349, 362 (2007) ("In assessing whether the articulable reasonable suspicion standard is satisfied, [the] Court [of Appeals] has adopted the 'LaFave factors.'"); *Cartnail*, 359 Md. at 289 (same).

Appellant relies on *Cartnail*, *Stokes*, and *Madison-Sheppard v. State*, 177 Md. App. 165 (2007), in support of his contention that the officers here lacked reasonable suspicion to support the stop. Those cases, however, are distinguishable from the present case.

In *Cartnail*, 359 Md. at 290, 295, the Court of Appeals held that the police lacked reasonable suspicion to stop a gold Nissan, occupied by a black man, one hour and fifteen minutes after the robbery, in a different section of the city, where the report indicated that a gold or tan Mazda occupied by three black men fled in "no known direction." In *Stokes*, 362 Md. at 424-25, the Court held that the police lacked reasonable suspicion to stop a black man in a car around the corner from where a robbery had occurred, where "[t]he description of the robber broadcast in the lookout was sparse at best," and the petitioner was stopped within a short distance from the crime, approximately 30 minutes after the robbery. As the Court noted:

> Thirty minutes is a considerable amount of time for a robber to only have proceeded around the corner. Indeed, as the petitioner suggests and, in fact,

> argues "[e]ven a robber proceeding at a snail's pace would have been long gone and [the petitioner] was in a hurry."

Id. at 425.

In *Madison-Sheppard*, 177 Md. App. at 168, the description of the suspect was "a black male, approximately six feet tall, 180 pounds, with cornrow-style hair." The police detained Madison-Sheppard, an African-American male with cornrow-styled hair who was approximately the same height as the suspect. *Id.* at 169. In concluding that the police did not have reasonable suspicion to stop Madison-Sheppard under those circumstances, this Court stated that there was no evidence that the presence of a black male in the area was unusual, that Madison-Sheppard was seized in an area that was not "anywhere close" to the crime scene, that the dispatch stated that the crime occurred sometime "that week," and the "area of possible flight after a week's time could be enormous." *Id.* at 176-80.

Here, in contrast to the cases relied upon by appellant, the temporal and spatial proximity between the crime and the officers' observation of appellant, as well as the description of the two defendants together, gave the police reasonable suspicion to believe that appellant was involved in the assault in D.C. Officer Jones was looking for two black males, one with long dreads and the other with short hair, and one with a lighter complexion than the other. The report indicated that the suspects were wearing a gray hooded sweatshirt and a black jacket. Officer Jones observed all of these descriptors when he encountered appellant and his companion, who were traveling on foot, in accordance with the report, several blocks from the crime scene, 15-20 minutes after the crime was reported. Moreover, the "CAD report" transmitted to Officer Jones' computer indicated that the

suspects were moving toward Southern Avenue when they left the scene of the assault, which is the area in which appellant was found. Considering the totality of the circumstances, it was reasonable for Officer Jones to believe that appellant and his companion were the suspects for whom they were searching. Accordingly, the circuit court properly denied the motion to suppress.

II.

Self-Defense

Appellant next argues that the circuit court erred in: (1) denying him the opportunity "to present evidence that he had a justification for carrying the gun – specifically, that he was carrying the gun only for self-protection"; and (2) refusing to give his requested jury instruction on justification. In support, appellant cites *State v. Crawford*, 308 Md. 683, 698-99 (1987), in which the Court of Appeals permitted the defense of necessity to the crime of unlawful possession of a handgun, and he argues that this Court similarly should hold that self-defense is available to a charge of unlawful possession of a firearm by someone previously convicted of a crime of violence.

The State argues that appellant "was not entitled to present evidence and argue self-defense because self-defense only applies to assaultive crimes." It asserts that "[p]ossession of a firearm after being convicted of a crime of violence is not an assaultive crime," and therefore, the circuit court did not err by not allowing appellant to produce evidence and have the jury instructed on self-defense. In any event, it asserts that, even "[i]f justification is a defense to possession of a firearm after being convicted of a crime of

violence, the trial court properly determined that [appellant] failed to establish the threshold prerequisites for this defense in his case."

We agree with the State that, even if justification was a defense to possession of a firearm after a crime of violence, appellant did not elicit sufficient evidence to support such a defense pursuant to the test set forth in *Crawford*. The Court of Appeals in *Crawford* made clear that, although "necessity may be a defense to the charge of unlawful possession of a handgun," the defense was limited to extraordinary circumstances. 308 Md. at 696.

In that case, Crawford testified that he was in his apartment when an assailant suddenly opened fire in this direction. *Id.* Crawford first hid in a bathroom shower before moving across his living room to the phone. *Id.* Realizing that his phone service was cut off because he was behind on paying the bill, Crawford began beating on the floor with a piece of wood and turned up his stereo in an attempt to attract his neighbors' attention. *Id.* After waiting behind his home bar for a period of time, he decided to crawl to his bedroom, intending to lock himself inside. *Id.* As he was entering his bedroom, the assailant fired again and a second assailant appeared. *Id.* at 686-87. Crawford struck one of the assailants with his stick, grabbed the gun, and during the ensuing struggle, Crawford fell out a window onto the ground below. *Id.* at 687. Crawford then heard footsteps coming toward him. *Id.* He "realized the gun was there," picked it up to defend himself, and tried to crawl away. *Id.* He encountered the assailants in the parking lot, and he was shot several times in the legs. *Id.* at 688. He subsequently was apprehended by the police and charged with unlawful possession of a handgun. *Id.* at 685.

In holding that the trial court erred in refusing to instruct the jury on the defense of necessity, the Court explained that the necessity defense "arises when an individual is faced with a choice of two evils, and one is the commission of an illegal act." *Id.* at 691. In that situation, "'the greater good for society will be accomplished by violating the literal language of the criminal law.'" *Id.* (quoting WAYNE R. LAFAVE, CRIMINAL LAW § 50 (1972)). The Court stated that when a person

> finds himself in sudden, imminent danger of loss of life or serious bodily harm, or reasonably believes himself or others to be in such danger, and without preconceived design on his part a handgun comes into his possession, he may temporarily possess the weapon for a period no longer than the necessity or apparent necessity requires him to use it in self-defense.

Id. at 696.

In limiting the defense of necessary to only extraordinary circumstances, the Court set forth a five-prong test that must be met before the necessary defense is available:

> (1) the defendant must be in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe himself or others to be in such danger; (2) the defendant must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct; (3) the defendant must not have any reasonable, legal alternative to possessing the handgun; (4) the handgun must be made available to the defendant without preconceived design, and (5) the defendant must give up possession of the handgun as soon as the necessity or apparent necessity ends.

Id. at 699.

Here, appellant did not satisfy the *Crawford* test. Initially, there was no evidence to satisfy the first factor, reasonable belief of "present, imminent, and impending peril of death or serious bodily injury" to himself or others. There was no evidence there of the

requisite immediacy present in *Crawford* and other cases that have found the defense applicable. *See, e.g.*, *United States v. Paolello*, 951 F.2d 537, 538-39 (3d Cir. 1991) (defense of necessity generated where defendant seized gun to neutralize attacker); *People v. King*, 582 P.2d 1000, 1003 & n.3 (Cal. 1978) (defense of necessity generated where defendant was handed gun to defend himself, his habitation, and others during a home invasion). Rather, as the State notes, appellant's fear was "an attenuated and generic belief that some unspecified harm of an unclear nature may befall him at some uncertain time in the future."

Moreover, the evidence did not satisfy the fourth prong of the *Crawford* test. In *Crawford*, the Court of Appeals explained that the circumstances of Crawford's possession satisfied the requirement that the handgun be made available to the defendant without preconceived design. Crawford's "possession of the handgun was merely fortuitous. The handgun was originally possessed by Crawford's assailant and only became available to him after he disarmed the assailant. Thus, Crawford had no preconceived design to gain possession of the handgun before being attacked." *Id.* at 700. Here, by contrast, appellant admitted to police that he had found the gun four months prior, knew he was prohibited from possessing it (much less carrying it concealed), and carried it anyway because he was afraid of being attacked by someone who previously had shot him. Therefore, even if we were to extend *Crawford* to the circumstances here, appellant's claim would fail.

We agree with the reasoning set forth in *United States v. Alston*, 526 F.3d 91 (3d Cir. 2008), a case where the United States Court of Appeals for the Third Circuit held that Alston was not entitled to a justification defense. The court stated:

> "We must take care not to transform the narrow, non-statutory justification exception to the federal anti-felon law into something permitting a felon to possess a weapon for extended periods of time in reliance on some vague 'fear' of street violence." The defendants who have been granted the defense faced split-second decisions where their lives, or the lives of others, were clearly at risk. Alston did not face such a situation.

Id. at 96-97 (citation omitted).

Because appellant failed to satisfy two, if not more, of the *Crawford* factors, the circuit court did not err in refusing to receive evidence or instruct the jury regarding a justification defense to the charge of possession of a firearm after being convicted of a crime of violence. Appellant states no claim for relief in this regard.

III.

Constitutionality of the Sentencing Provision of PS § 5-133(c)

Appellant next argues that, even if this Court upholds his conviction, it "must nonetheless strike down" his sentence because "the sentencing provision of [PS] § 5-133(c)," which mandates a minimum sentence of five years without the possibility of parole, "is unconstitutional on its face and as applied to [appellant], because it violates the Second Amendment right to bear arms and the Eighth Amendment prohibition against cruel and unusual punishments." In support, he asserts that the statute is facially unconstitutional because the "Second Amendment protects 'the right to keep and bear arms for the purpose of self-defense,' *McDonald v. City of Chicago*, 561 U.S. 742, 749-50

(2010), but the statute does not allow courts discretion to consider whether a felon who possessed a firearm did so only for that purpose." Alternatively, he contends that the statute is unconstitutional as applied to him, asserting that the mandatory five-year sentence he received is cruel and unusual punishment in violation of the Eighth Amendment "when the undisputed evidence is that [appellant] carried the gun solely for self protection." He asserts that, "[b]ecause the lower court did not exercise discretion in determining whether five years was a constitutionally proportionate sentence for [appellant], the punishment is unlawful."

The State contends that appellant's argument fails for several reasons. First, it argues that, "[e]ven assuming self-defense is a defense to being in possession of a firearm after being convicted of a crime of violence," appellant "failed to establish the prerequisite factors for this defense or any other justification defense. Thus, his constitutional challenges fail on their own premise." Second, it asserts that appellant has not cited any legal authority that supports a finding of a constitutional violation. We agree.

With respect to the Second Amendment right to keep and bear arms for the purpose of self-defense, we have already explained that appellant failed to offer evidence that a defense of justification was available under the circumstances here. Moreover, the Supreme Court has made clear that its holding regarding the right of "law-abiding" citizens to possess firearms should not be read "to cast doubt on" laws prohibiting felons from possessing firearms. *District of Columbia v. Heller*, 554 U.S. 570, 626-27, 635 (2008).

Appellant has cited no legal authority supporting his claim that PS § 5-133(c) violates the Second Amendment.

With respect to appellant's argument that the circuit court's sentence violated the Eighth Amendment, appellant has provided no explanation or legal justification as to why this particular sentence is unconstitutional, other than to cite generic Eighth Amendment principles. In *Oglesby v. State*, 441 Md. 673 (2015), the Court of Appeals rejected a constitutional challenge to PS § 5-133(c) based on the rule of lenity argument, stating as follows:

> One may legitimately question whether a mandatory minimum sentence is ever a good idea, as it strips the sentencing judge of the discretion to fit the sentence to the particular case and may transfer power over the disposition from the court to the prosecution. But that is a decision for the Legislature, as the courts have generally rejected constitutional challenges to such sentencing provisions.

Id. at 702-03[7] (footnote omitted). Similarly, here, we perceive no constitutional violation in appellant's sentence.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] The Court cited various cases in support, including *United States v. Hughes*, 632 F.3d 956, 962 (6th Cir.2011) (rejecting due process, Eighth Amendment, and separation of powers challenges to the imposition of a mandatory minimum).