Circuit Court for Wicomico County
Case No. C-22-CR-21-000529

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 587

September Term, 2023

PRENTICE LEE HARRIS

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: August 16, 2024

* 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 Maryland Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Wicomico County found appellant, Prentice Lee Harris, guilty of two counts of sexual abuse of a minor, three counts of first-degree rape, four counts of second-degree rape, eight counts of third-degree sex offense, eight counts of fourth-degree sex offense, second-degree assault, possession of marijuana with the intent to distribute, and possession of more than 10 grams of marijuana. Appellant raises the following questions for our review:

> 1. "Did the trial court err in denying defense counsel's motion for mistrial after the jury heard Detective Shultz's vouching for M.'s credibility?
>
> 2. Did the trial court err in denying defense counsel's motion for mistrial after the State vouched for M.'s credibility?
>
> 3. Does the cumulative effect of Detective Shultz's vouching for M. and the State's vouching for M. require reversal?
>
> 4. Is the evidence sufficient to sustain two of the counts for first-degree rape with the use or threat of a dangerous weapon?
>
> 5. Is Mr. Harris's sentence to life without the possibility of parole illegal?"

We hold that the circuit court did not abuse its discretion in denying appellant's motions for mistrial; that the cumulative effect of the two alleged instances of vouching do not require reversal; that the evidence was sufficient to sustain the convictions for first-degree rape while employing or displaying a dangerous weapon; but that appellant's sentence of life without the possibility of parole is illegal. We shall remand with instructions to strike the "no-parole" provision in appellant's sentence, but otherwise affirm the judgments.

I.

Appellant was indicted by the Grand Jury of Wicomico County on two counts of sexual abuse of a minor, six counts of first-degree rape, attempted first-degree rape, six counts of second-degree rape, attempted second-degree rape, nine counts of third-degree sex offense, nine counts of fourth-degree sex offense, first-degree assault, second-degree assault, possession of marijuana with the intent to distribute, and possession of more than 10 grams of marijuana.

Appellant proceeded to trial before a jury. After the presentation of evidence, the trial court granted appellant's motion for judgment of acquittal on attempted first-degree rape, three counts of first-degree rape, attempted second-degree rape, and one count of second-degree rape. Relevant to this appeal, the remaining counts of first-degree rape the court sent to the jury included two counts of first-degree rape while employing or displaying a dangerous weapon and one count of first-degree rape through the threat of imminent serious physical injury. The jury acquitted appellant of one count of second-degree rape, one count of third-degree sex offense, one count of fourth-degree sex offense, and first-degree assault. The jury found appellant guilty of all remaining counts.

The court imposed a term of incarceration of twenty-five years for the first count of sexual abuse of a minor, a consecutive sentence of life imprisonment without parole for the first count of first-degree rape while employing or displaying a dangerous weapon, consecutive parole-eligible sentences of life imprisonment for each additional count of first-degree rape and the first count of second-degree rape, and consecutive terms of

incarceration of twenty years for the second and third counts of second-degree rape. The court merged or imposed no sentence on the remaining counts.

These charges stem from appellant's long-term abuse of M. Appellant was the romantic partner of the victim's late grandmother,[1] with whom he shared a home in Salisbury, in Wicomico County. The victim, M., who was sixteen years old at the time of trial, had been "very close" to her grandmother and frequently stayed overnight at her home. M. referred to appellant as her "Poppop," and appellant regarded M. and her siblings as his grandchildren.

Beginning when M. was twelve or thirteen years of age, appellant committed an escalating series of sexual assaults against her. During direct examination, M. testified to four specific sexual assaults:

> 1. When M. was "twelve or thirteen," appellant "touched [her] thighs and [her] privates" underneath her clothes and "made [her] touch his."
>
> 2. "[M]aybe a month or two later," appellant stripped down to his boxer shorts and ordered M. to remove her top and pants, and he rubbed "[h]is privates" against hers through their underwear.
>
> 3. "Maybe a week" after the previous assault, appellant forcibly raped M. while they were in a car, parked near an apartment complex.
>
> 4. "[M]aybe a few weeks after" the "car ride," while they were in his home, appellant "showed [M.] his guns," pointed a gun at her thigh, and forcibly raped her "over and over again."

M. then testified that, after appellant first began to have vaginal intercourse with her, he did so frequently. He would force her to fellate him to orgasm. According to M.,

[1] M.'s grandmother died in March 2021.

appellant "choked" her "a few times" to coerce her to engage in sexual relations, while, at other times, he would give her cannabis before sex "to calm [her] down."

During cross-examination, trial counsel attempted to impeach M. with a statement she had made to a social worker from the Child Advocacy Center. The following occurred:

> [DEFENSE COUNSEL]: You also told the jury that the only time that gun was involved in your sexual, [appellant's] sexual relations with you was one point in time when he pointed the gun at your thigh, correct?
>
> [M.]: Yes.
>
> [DEFENSE COUNSEL]: Is that yes?
>
> [M.]: Yes.
>
> [DEFENSE COUNSEL]: Do you recall speaking to Ms. Fleming?
>
> [M.]: Yes. And said he keeps guns around.
>
> [DEFENSE COUNSEL]: You told Ms. Fleming that at some point in time Mr. Harris pointed the gun at your head?
>
> [M.]: Yes. That was close to when told.
>
> [DEFENSE COUNSEL]: You just had the opportunity to tell the jury about Mr. Harris pointing the gun at you, why didn't you tell the jury moments ago about Mr. Harris allegedly pointing the gun at your head?
>
> [M.]: 'Cause I don't like thinking about it, it makes me not want to live. Do you think I wanna feel like that?
>
> (Witness crying.)
>
> [DEFENSE COUNSEL]: Thank you, [M.] I don't have any further questions of this witness at this time, Your Honor.

On redirect examination, the prosecutor provided M. an opportunity to clarify her testimony:

[THE STATE]: And the time he used the gun, I think you said you thought it was real; is that right?

[M.]: Yes.

[THE STATE]: And I had asked you if you ever saw him shoot "the gun", did you think I meant the gun he was showing you at that time?

[M.]: Yes.

[THE STATE]: But you said you've seen him actually shoot a different gun in the past; is that right?

[M.]: Yes.

[THE STATE]: I think you said it was silver; is that right?

[M.]: Yes.

[THE STATE]: And the one he used in the sexual incidents, I think you said was black, right?

[M.]: Yes.

[THE STATE]: Did you think the one he was using during the sexual incidents was real because you had seen the prior one?

[M.]: Yes.

[THE STATE]: And you said he had actually pointed it at your head at a closer incident to when you told people about what was happening, right?

[M.]: Yes.

Eventually, in December 2021, M.'s mother ("Mother")[2] learned from someone in the neighborhood that appellant had been abusing her daughter. Mother, after arriving home from work shortly after midnight, awakened M. and asked her whether appellant had

[2] To protect M.'s identity, we have redacted the names of her mother and grandmother.

abused her. M. "put her head down and started crying." Mother contacted the police immediately.

After Salisbury and Wicomico County law enforcement agencies investigated the matter, they arrested appellant. Appellant waived his *Miranda* rights and made an inculpatory statement to Detective Daniel Schultz of the Wicomico County Sheriff's Office in which appellant acknowledged that he had sexual contact, including vaginal intercourse, with M. Several portions of this interview were contested at trial, and one of those portions is a subject of this appeal.

During the direct examination of Detective Schultz, parts of the interview he had conducted with appellant were played to the jury. Beforehand, the prosecutor and defense counsel had agreed to certain redactions, which, as pertinent here, included any statements by Detective Schultz in which he vouched for the victim's credibility. The jurors were given transcripts (which had been appropriately redacted), but shortly after playback had commenced, the following comment from Detective Schultz was played for the jury:

> "She's a very sexualized older looking girl, you know what I mean? And I can see it as a thing where she was curious and you're the male figure in her life. And she would ask you for advice even, anything along those lines, okay? Now, here, here's the deal. My point in talking to you is, this is your opportunity to tell your part, okay? *Because I know, I know by talking to her and how she feels about you, that's she's not lying about all of it, okay?*"

(Emphasis added.) The italicized text above was supposed to be redacted. Both parties agreed that it was a statement by Detective Schultz to appellant, in which the detective vouched for the victim's credibility. Appellant moved for a mistrial.

The prosecutor explained that he had given his copy of the transcript to a member of the jury.[3] Because he didn't have his redacted transcript, he inadvertently played a portion of the recording he did not intend to play. The State recommended a curative instruction. The court agreed that the recording had contained improper vouching and instructed the jury as follows:

> "Ladies and gentlemen of the jury, you have a copy of the transcript which shows a redaction on there. There was a portion that was played, a brief portion, I'm going to ask you to disregard, I'm ordering you to disregard that portion that was redacted on your transcript that was played. You are not to consider that in any fashion."

The trial court took a short recess to provide the prosecutor the opportunity to ascertain precisely when he would stop playback in accordance with the redacted transcript going forward.

During rebuttal closing argument, another incident occurred which appellant now alleges constituted improper vouching. The prosecutor was explaining that, while the interview between Detective Schultz and appellant had included many instances in which Detective Schultz had seemed to excuse appellant's behavior, this had been an investigative tactic and the jury should not excuse appellant's behavior. The prosecutor stated as follows:

> "And Detective Schultz is, again, he's trying to, like, egg him on, he's like, oh, yeah, that's definitely what happened. It's absurd. It's ridiculous. It's not something you should believe as the reality. The reality you should believe is what [M.] testified to very credibly, because of the raw emotion and reaction she was having."

[3] When copies were distributed to the jurors, an extra copy was needed because the trial court, in an abundance of caution, had empaneled three alternate jurors instead of two.

At that time, defense counsel did not object. Thereafter, however, the prosecutor further explained why the jurors should believe M., stating as follows:

> "And [M.] testified I think very credibly, just by the situation that, you know, she had seen him fire a real firearm on a previous occasion, and [Mother] said she'd seen him fire–"

Defense counsel objected, and, once again, moved for a mistrial on grounds of improper vouching. The prosecutor denied that he had vouched for the witness. The court found that the State was "definitely getting close to the line if … not over it, in terms of the vouching." The court denied the mistrial but offered defense counsel a curative instruction. Defense counsel requested that the court repeat the instruction on the presumption of innocence and reasonable doubt after the conclusion of the prosecutor's rebuttal closing argument. The court sustained the defense objection, and the prosecutor resumed his rebuttal. After the prosecutor had concluded, the trial court repeated the instruction on the presumption of innocence and reasonable doubt that it had given before closing arguments.

As noted above, the jury found appellant guilty. This timely appeal followed.

II.

Before this Court, appellant contends that the trial court erred, at two different points in the trial, in denying his motions for mistrial. First, he maintains that the trial court should have declared a mistrial after the prosecutor played to the jury a portion of an interview (which was supposed to have been redacted) in which Detective Schultz vouched for the victim's credibility. Second, appellant maintains that the prosecutor improperly vouched for the victim's credibility in rebuttal and that the trial court should have declared a mistrial

at that point. Appellant further argues that, even if a mistrial was not warranted for either incident, the cumulative prejudice was sufficient to warrant reversal.

The State counters that the trial court did not abuse its discretion in denying either motion for mistrial. Regarding the inadvertent playback of a redacted part of the interview, the State contends that the trial court acted within its discretion in giving a curative instruction to minimize any unfair prejudice to appellant. Regarding the prosecutor's rebuttal closing argument, the State contends that the prosecutor did not vouch for the victim's credibility, but that to the extent his comments may have been improper, any error was harmless.

Appellant next contends that the evidence was insufficient to sustain one of the convictions for first-degree rape while employing or displaying a dangerous weapon. M. testified about four discrete sexual assaults, but only one of those involved the use or threat of a dangerous weapon. She confirmed this testimony on cross-examination. Appellant argues that one of his two convictions for first-degree rape while employing or displaying a dangerous weapon was unsupported by the evidence.

The State counters that M. testified about two separate instances in which appellant pointed a gun at her while sexually assaulting her. The State argues that, on redirect examination, M. clarified that there was an incident in which appellant pointed a gun at her head, separate from the incident in which appellant pointed a gun at her thigh. Because there were two incidents in which appellant raped M. while pointing a gun at her, two convictions for first-degree rape while employing or displaying a dangerous weapon were supported.

Finally, appellant contends that his sentence of life without the possibility of parole is inherently illegal because the State failed to provide proper notice of its intent to seek that sentence. Approximately one year before trial, the State sent appellant a notice reading:

> "YOU ARE HEREBY NOTIFIED that the State of Maryland, upon conviction of the Defendant for the charge of Rape in the First Degree (Criminal Law §3 303), will seek a mandatory minimum sentence of twenty-five (25) years and not exceeding life pursuant to Criminal Law §3-303(d)(4) in accordance with the age considerations of §3-303(c)."

Appellant argues that the notice was defective because it declared the State's intent to seek a life sentence, not a sentence of life without the possibility of parole. Appellant acknowledges that defense counsel did not object at the sentencing hearing. However, according to appellant, the defective notice rendered the sentence inherently illegal within the meaning of Rule 4-345(a), obviating the need for a contemporaneous objection. In the alternative, appellant asks that, we review the notice issue for plain error.

The State argues that the notice was sufficient because it referred to code provisions that allow the State to seek life imprisonment without parole. But, even to the extent that the notice was insufficient, the State alleges the defect amounted to a mere procedural error that cannot give rise to an illegal sentence.

III.

We begin with appellant's argument that the court should have granted a mistrial either during the direct examination of Detective Schultz or during the State's rebuttal. A

mistrial is an extraordinary remedy, appropriate only where no other remedy is adequate to protect a defendant's right to a fair trial. *Rainville v. State*, 328 Md. 398, 406-08 (1992); *Kosmas v. State*, 316 Md. 587, 594-95 (1989); *Guesfeird v. State*, 300 Md. 653, 658-59 (1984). We review a trial court's denial of a motion for mistrial, in favor of giving a curative instruction, for abuse of discretion. *Carter v. State*, 366 Md. 574, 587-88 (2001) A court abuses its discretion where its ruling is "well removed from any center line imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (citations and quotations omitted).

Beginning with the incident on the direct examination of Detective Schultz, neither party disputes that the jury was exposed, *albeit* inadvertently, to inadmissible evidence; they disagree, however, about the remedy the trial court should have ordered. The remedy the court adopted here was to give a curative instruction rather than to declare a mistrial. In the specific context of a trial court's decision to give a curative instruction rather than declaring a mistrial to cure a jury's exposure to inadmissible evidence, we determine whether the prejudice from the disputed testimony "transcended the curative effect of the instruction." *Rainville*, 328 Md. at 408.

Maryland appellate courts apply a test, derived from *Guesfeird v. State*, 300 Md. 653, 658-59 (1984), which sets forth five non-exclusive factors that guide our analysis: (1) whether the inadmissible evidence "was repeated or whether it was a single, isolated statement;" (2) whether the evidence was "solicited by counsel, or was an inadvertent and unresponsive statement;" (3) whether the evidence was important to the case; (4) whether

the credibility of the witness who made the reference was a crucial issue; and (5) whether "a great deal of other evidence exists." *See also Kosmas*, 316 Md. at 595.

We acknowledge that, while the prosecutor did not broadcast the statement intentionally—indeed, the trial court expressly found that it "wasn't done on purpose" — the prosecutor's negligence in doing so after agreeing not to weighs against the State. Further, Detective Schultz's commentary pertained to the credibility of M., a key witness.

The playback of Detective Schultz's remark, vouching for the victim's credibility, was an isolated event.[4] It was an instance of vouching that occurred in the same breath as many other statements that were clearly facetious. Immediately before the statement in which the detective asserted that he believed M., he made the same statements seemingly excusing appellant that the State argued should not be taken at face value. It is not clear, therefore, that the jury would have interpreted this statement as credibility vouching and not merely a police tactic to induce appellant to confess. Moreover, other powerful admissible evidence of appellant's guilt was presented in this case, most importantly, appellant's own admissions, in the same interview, that he had engaged in sexual contact and intercourse with the victim.

After weighing all the factors, we cannot say that the trial court's denial of the motion for mistrial, in favor of giving a curative instruction, was well removed from any center line imagined by us and beyond the fringe of what we deem minimally acceptable.

[4] Appellant argues, here, that the jury may have believed that, because this redaction contained vouching, others may have as well. We do not believe that this is necessarily the case.

Nash, 439 Md. at 67. Nor can we say that no reasonable person would have taken the view adopted by the trial court, *i.e.,* that an instruction was sufficient to cure any prejudice arising from the vouching. We find no abuse of discretion.

As for the prosecutor's remarks in rebuttal closing, we do not find prosecutorial vouching. Vouching typically occurs when a prosecutor "places the prestige of the government behind a witness through personal assurances of the witness's veracity or suggests that information not presented to the jury supports the witness's testimony." *Spain v. State*, 386 Md. 145, 153 (2005). This does not mean that a prosecutor is precluded from making any comments about the witness's credibility. *Spain*, 386 Md. at 154. Such comments are proper and do not constitute vouching so long as any conclusions regarding the witness's credibility are based on the evidence introduced and admitted at trial. *Id.* at 155.

In this case, the prosecutor's first comment on M.'s credibility was a declaration that the jurors "should believe" the version of events that M. "testified to very credibly, because of the raw emotion and reaction she was having." This was tied directly to the witness's demeanor, which the jurors had the opportunity to observe and weigh for themselves. The second comment, that M. testified "very credibly," was tied directly to her performance on the witness stand. The prosecutor made no reference to M.'s behavior, motive, or credibility rooted in evidence not presented to the jury. We hold that the prosecutor did not vouch for M. during rebuttal closing argument. The trial court did not abuse its discretion in failing to grant a mistrial at that point.

As for appellant's cumulative error claim, it fails because there was no cumulative error. There was only a single instance where the jury was exposed to inadmissible evidence, when the prosecutor inadvertently played back Detective Schultz's comment, vouching for M. And, as previously established, that comment was not, alone, sufficient to warrant a new trial.

IV.

We turn to appellant's argument that the evidence was insufficient to sustain the convictions for two counts of rape in the first degree while employing or displaying a dangerous weapon. We review the evidence to determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In conducting that review, we "defer to any possible reasonable inferences the [trier of fact] could have drawn from the admitted evidence." *State v. Mayers*, 417 Md. 449. 466 (2010).

We acknowledge that, on direct examination, M. described a single occasion in which appellant raped her while threatening her with a dangerous weapon, the incident in which appellant pointed a gun at her leg. However, on cross-examination and redirect examination, M. testified to a separate incident in which appellant pointed a gun at her head. A reasonable jury, upon hearing this evidence, could infer that there had been two separate incidents: the first when appellant pointed the gun at her leg, and the second, when appellant pointed the gun at her head. Testimony of a single witness as to an event is

sufficient to establish that it occurred. *Braxton v. State*, 123 Md. App. 599, 671 (1998); *Mobley v. State*, 270 Md. 76, 89 (1973). Therefore, the evidence was sufficient to sustain two convictions of rape in the first degree while employing or displaying a dangerous weapon.

V.

We turn to appellant's contention that his sentence of life without parole was illegal. We begin with the matter of preservation. Both parties concede that appellant did not object to improper notice at his sentencing proceeding. Thus, he must demonstrate, on appeal, not only that the court erred in imposing a sentence for which he had been given improper notice, but also that the error is of a sort that may be addressed by this court even if unpreserved.

The court may correct an illegal sentence at any time. Md. Rule 4-345(a). The phrase "at any time" in Rule 4-345 means that the preservation requirements do not apply to challenges to illegal sentences; that is, we may correct an illegal sentence even if the defendant failed to object at the sentencing hearing. *State v. Bustillo*, 480 Md. 650, 664 (2022). However, the scope of illegality to which this rule applies is narrow. *Id.* at 665. The illegality must inhere in the sentence itself; *i.e.*, "there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful." *Chaney v. State*, 397 Md. 460, 466 (2007). Illegality does not

stem from mere "procedural errors" in the sentencing proceeding. *Montgomery v. State*, 405 Md. 67, 74-75 (2008).

The notice requirement appellant alleges that the State violated is found in Md. Code. Ann. Crim Law § 3-303(e), which states in pertinent part as follows:

> "If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial."

We must determine whether violation of § 3-303(e) results in a sentence that is intrinsically and substantively unlawful, or whether violation of § 3-303(e) results in mere procedural error.

The Maryland Supreme Court has considered whether defects in the State's notice of an enhanced penalty render a sentence illegal. In *King v. State*, 300 Md. 218 (1984), the State provided notice of its intent to seek enhanced punishment under Md. Code. Ann. Art. 27, §36B, which, at the time, provided as follows:

> "If the person has previously been once convicted of unlawfully wearing, carrying, or transporting a handgun in violation of § 36B, ... he shall be sentenced to the Maryland Division of Correction for a term of not less than 1 year nor more than 10 years, and it is mandatory upon the court to impose no less than the minimum sentence of 1 year."

Id. at 220 n.2. At the time, Rule 734b provided as follows:

> "No defendant shall be sentenced as a subsequent offender unless prior to acceptance of a plea of guilty or nolo contendere or at least 15 days prior to trial, whichever is earlier, the State's Attorney serves a notice on the defendant or his counsel that the State will seek increased punishment as authorized by law.

> The notice shall set forth each prior conviction to be relied upon."

Id. at 221 n.3. The State's notice in *King* was filed timely and informed the defendant that the State would be seeking increased punishment and that the maximum punishment would be ten years. *Id.* at 221. It failed to set forth the prior convictions to be relied upon. *Id.* King's counsel admitted that he had full knowledge of the convictions to be relied upon despite the defective notice. *Id.* at 221-22. The Court held that the purpose of the notice requirement had been satisfied and the defect was subject to a harmless error analysis. *Id.* at 232.

In *Carter v. State*, 319 Md. 618, (1990), the Court considered a case in which the State had failed to give any notice of its intent to seek enhanced punishment for driving under the influence under a subsequent offender enhancement. Because the defendant was unaware that the State was pursuing enhanced penalties, the Court held that he "did not have the opportunity to make a realistic assessment of the consequences" of his plea and trial strategies. As a result "the circuit court was prohibited from sentencing [Carter] as a subsequent offender."

From these two cases, the Court distilled a test for when failure to give notice of an enhanced penalty is procedural error and when it results in an illegal sentence. *Bailey v. State*, 464 Md. 685 (2019). Failure to give notice at all results in an illegal sentence; defects in the timeliness or contents of the notice are procedural errors subject to both preservation and harmless error analysis. *Id.* at 701; *see also Id.* at 692 (approvingly quoting the opinion of the lower court which directly asserted that "failure to give any notice before trial is

substantive and gives rise to an illegal sentence . . . failure to give timely notice is a procedural error").

The allegation here is that, although the State filed a notice of enhanced punishment, the State failed to give appellant any notice, prior to trial, that it would be seeking life without parole. A failure to inform a defendant of the enhancement sought creates the problem outlined in *Carter*. It deprives the defendant of the ability to make an informed assessment of the consequences he is facing when deciding whether to go to trial.[5] It fails in the fundamental purpose of the notice requirement set forth in *King*. Therefore, a deficiency of this magnitude would, if demonstrated, result in an illegal sentence as explained by *Bailey*. It is reviewable on appeal despite a lack of preservation.

We turn to the merits of appellant's contention. Plainly, the State's notice does not explicitly assert that the State was seeking a sentence of life without parole. Quite the contrary, it asserts that the State will seek a "mandatory minimum sentence of twenty-five (25) years and not exceeding life." A reasonable person might interpret this to mean that the maximum sentence sought was life rather than life without parole.

The State contends that, because the notice qualified the sought sentence as being "pursuant to Criminal Law §3-303(d)(4)," appellant should have been on notice that any penalty available under §3-303(d)(4) was being sought. §3-303(d)(4) indicates that an offender subject to the mandatory minimum "is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole." By referencing §3-

[5] This is particularly concerning in this case given that appellant turned down a plea agreement in order to go to trial.

303(d)(4), the State argues that it gave notice that a sentence of life without parole was on the table.

We disagree with the State. Section 3-303(d)(4) sets a mandatory minimum of twenty-five years. The State gave notice that it intended to seek that mandatory sentence. The State then stated that the maximum sentence it would seek was life. The sentence "the State of Maryland . . . will seek a mandatory minimum sentence of twenty-five (25) years and not exceeding life pursuant to Criminal Law §3-303(d)(4)" most naturally asserts that the State will seek a sentencing range of twenty-five years to life, a sentencing range permitted by §3-303(d)(4). The State did not give notice that it would seek life without parole, which is permitted but not required under §3-303(d)(4). The requisite notice that a sentence of life without parole could be imposed was not given. This deprived appellant of the ability to make an informed assessment of the consequences he was facing when deciding whether to go to trial and renders his sentence illegal. We shall remand this case to the circuit court to resentence appellant on Count 3 and to strike the "no-parole" provision.

JUDGMENTS OF CONVICTIONS AFFIRMED ON ALL COUNTS. CASE REMANDED TO THE CIRCUIT COURT FOR WICOMICO COUNTY FOR RESENTENCING ON COUNT THREE CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY WICOMICO COUNTY.