Circuit Court for Baltimore County
Case No. C-03-CR19-003965

UNREPORTED*

IN THE APPELLATE COURT**

OF MARYLAND

No. 1300

September Term, 2021

DEVONTE LAMONTE FARMER

v.

STATE OF MARYLAND

Graeff,
Tang,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: April 6, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant Devonte Lamonte Farmer was convicted in the Circuit Court for Baltimore County for violating Md. Code Ann., Transp. § 20-102(b)(1), failure to immediately stop vehicle at scene of an accident resulting in death, and Md. Code Ann., Transp. § 20-102(c)(3)(ii),[1] which identified penalties for failing to stop if defendant knew or reasonably should have known that the accident was likely to result in death. He presents the following questions for our review.

> 1. "Was there insufficient evidence for the jury to convict Mr. Farmer where he did not know or have reason to know that the accident resulted in a fatality?
> 2. Were Mr. Farmer's Confrontation Clause Rights violated where witnesses were allowed to testify at trial with face masks, hiding their facial expressions and demeanors?
> 3. Did the circuit court improperly merge the sentences where it merged the greater offense (Count 6) into the lesser included offense (Count 5), and then sentenced Mr. Farmer to a sentence exceeding the statutory maximum for the lesser included offense?"

We shall affirm.

I.

Appellant was indicted in an eight count indictment by the Grand Jury for Baltimore County for Count 1, Gross negligent manslaughter, Count 2, Criminal negligent manslaughter, Count 3, Driving while texting, Count 4, Use of handheld phone, Count 5, failure to immediately stop vehicle at scene of an accident resulting in death and Count 6,

[1] All subsequent statutory references herein refer to Md. Code Ann. Transp. § 20-102.

violation of Md. Code Ann., Transp. § 20-102(c)(3)(ii), which identifies the penalties for failing to stop if the driver knew or reasonably should have known that the accident was likely to result in death. The jury acquitted him of manslaughter by motor vehicle and criminally negligent manslaughter.[2] He was convicted of two charges, Counts 5 and 6. At sentencing, the court merged Count 5 into Count 6, and sentenced appellant to a term of incarceration of ten years, all but seven suspended.

We glean the following facts presented at the trial. On May 8, 2019, appellant was traveling on I-795 to pick up his son from school. According to an eyewitness, appellant's car sideswiped a pickup truck in the lane directly to his right, causing the truck to swerve off the road.[3] The truck struck a sign and a tree. Sadly, and significantly, the operator of the truck died soon after the collision at the hospital as a result of the accident. The decedent's truck was traveling at seventy-three miles per hour at the time of the crash. There is no comparable data for appellant's vehicle. Appellant failed to stop or return to the scene of the accident.

The police arrived at the scene and then began to search for appellant. Appellant's mother and sister contacted him later that evening and advised him that the police were looking for him. Appellant met the officers and accompanied them to the police station where he answered their questions.

[2] Prior to submission of the case to the jury, the State entered a *nolle prosequi* to Counts 3 and 4. Counts 5 and 6 were renumbered as Counts 3 and 4.

[3] Appellant maintains that the pickup truck swerved into his lane of traffic. Appellant notes in his brief that this disputed fact does not bear on the issues raised in this appeal.

Appellant expressed surprise and shock when advised by the police that anyone had died in the accident or that he was aware that the car he had contact with had swerved off the road. He maintained that he looked for a place to pull over but saw in his rearview mirror a black vehicle he believed to be following him. He exited about a mile later and waited in the parking lot of a nearby school for the car to pull in after him. When the car did not arrive, appellant picked up his son and returned to the Baltimore City District Court for his pending eviction proceeding. After assessing the scene of the collision, police began to search for appellant. Appellant's car suffered significant damage on the passenger side, losing the front right wheel covering. Additionally, after the police had confiscated and searched appellant's vehicle, they found a large piece of the fender trim from the decedent's pick-up truck in the back cargo area.

Appellant's trial took place during the Covid-19 pandemic. The issue of whether jurors would wear face masks arose at the beginning of the trial. Defense counsel asked the court whether the witnesses would be allowed to wear face masks while testifying. The court gave the witnesses two options: (1) wear a face mask, or (2) remove the face mask and testify behind a glass face shield provided by the court. Each witness chose to wear face masks, blocking the lower portion of the face. Defense counsel objected, based upon the Sixth Amendment to the United States Constitution, specifically the Confrontation Clause.

What happened next at the trial as it relates to the jury instructions, the verdict, the sentencing, the merger of Counts 5 and 6, and the Indictment and particular charges are

less clear in this record.[4] The two significant charges, for our purposes, are Count 5 and Count 6.

Count 5 of the Indictment reads as follows:

> ". . . Devonte Lamont Farmer . . . being the driver of a vehicle involved in an accident that resulted in the death of William Fanning, did fail to immediately *stop* said vehicle as close as possible to the scene of the accident without obstructing traffic more than necessary, in violation of Transportation Article, Section 20-102(b)(1) of the Annotated Code of Maryland, against the peace, government and dignity of the State. (Failure To Immediately Stop Vehicle At Scene Of Accident Involving Death, TA .20.102.b1,14572.)"

Count 6 of the Indictment reads as follows:

> ". . . Devonte Lamont Farmer . . . did violate Transportation Article 20-102 ("Driver failing to stop at the scene of an accident resulting in death") and *knew* or reasonably should have known that the accident might result in death of another person and death occurred to another person, against the peace, government and dignity of the State. (Failure to Stop Vehicle and Remain at Scene of Accident Involving Death, TR.2-.102.c3ii, 14573C.)"

Notably, both Count 5 and Count 6 charge appellant with failure to *stop* at the scene, although Count 6 adds the aggravator requiring scienter that a death occurred. Neither count includes failure to *return* to the accident scene.

[4] We point out that appellant does not argue before this Court a fatal variance between the indictment and the conviction, a constructive amendment of the indictment by the jury instructions, or plain error. Instead, he argues that the court merged improperly Counts 5 and 6 and thereby imposed an illegal sentence of ten years instead of the permissible five-year statutory maximum sentence for Count 5.

Along with the manslaughter instructions, the court instructed the jury that the defendant is charged with two offenses: failure to stop at the scene of an accident resulting in death, *and failure to return or remain at the scene of an accident resulting in death.* As to each of these offenses, the court instructed the jury that to convict the defendant, the jury must find that the defendant knew or reasonably should have known that the accident might result in the death of another person. The court included a reasonable doubt instruction. There was no objection to these instructions.

The verdict sheet contained four counts: Count 1, manslaughter by motor vehicle, Count 2, criminally negligent manslaughter, Count 3, failure to stop at accident involving death; and Count 4, failure to return and remain at scene of accident involving death. Counts 5 and 6 were renumbered and sent to the jury as Counts 3 and 4. Notably, Count 4 on the verdict sheet stated, "failure to return and remain at scene of accident involving death," a charge not reflected in the Indictment.

The jury found appellant not guilty of the two manslaughter charges and guilty of failure to immediately stop at the scene, knowing that death would result, and failure to return and remain at the scene, knowing that death would result. At sentencing, appellant's counsel alerted the trial court as to a variance between the charges set out in the indictment and the instructions given by the trial court, stating as follows:

> "[O]ne thing I had discovered when I was reviewing the indictment, with respect to which instructions were presented to the jury, and what the verdicts of the counts that the jury came back [with a verdict of] guilty, I had . . . noticed that there was a discrepancy with respect to the sixth count in the indictment and how it is cited and charged . . .. [T]he sixth

> count charges [§ 20-102(c)(ii)] which is the citation for the penalty for that . . . particular violation. . .. What was submitted to the jury was [§ 20-102(b)(2)], . . . [so] I wanted to present that to the Court . . .. In our opinion, . . . an issue was submitted to the jury that did not exist in the indictment."

The court responded that "(b)(1) and (b)(2) are there, but it's not as if they're---they're cited, that's just in the instructions. It's not as if they're even cited, you know, as exclusive of one another." The discussion turned to remedy and whether the court could impose a separate or consecutive sentence for each count. Defense counsel advised the court that when they get to sentencing, the court should merge the sentence, and the State responded that it "intended to ask for a concurrent sentence on the sixth count to the fifth count." The court responded, stating "upon sentencing, I will be merging Count 6 into Count 5." Everyone agreed that Count 5 was the failure to immediately stop at the scene, § 20-102(b)(1) violation. The court then sentenced appellant to ten years, all but seven years suspended, followed by two years' probation. This timely appeal followed.

II.

Before this Court, appellant argues that the State failed to present sufficient evidence to convict him of violating § 20-102(b)(1) and § 20-102(c)(3)(ii). Appellant argues that the evidence was insufficient to establish that he knew or reasonably should have known that the accident resulted in death. Appellant maintains that the State presented no evidence to prove that he knew there had been a fatality when he left the scene of the accident.

Appellant argues that his reaction when informed of the death was one of shock, indicative of his prior ignorance.

According to appellant, the State presented only circumstantial evidence to prove that appellant knew or reasonably should have known that the accident resulted in death. First, the State presented appellant's phone records as evidence that he knew there may have been a death because he searched for an auto repair shop. Second, the State presented evidence of appellant's internet search history following the accident which showed that he searched for "accident on 795 today," "Baltimore car crash today," and "Baltimore car accident reports." While the latter two searches showed reports of a fatality, appellant asserts that the State presented no evidence that he had read them. Moreover, even if he had read them, the searches were more than ninety minutes and five hours following the accident. Appellant rejects the State's argument that an accident involving two vehicles traveling at highway speeds is potentially fatal and, instead, suggests that a vehicle "experiencing a sideswipe would not necessarily result in a fatality." Additionally, the State's eyewitness testified that the damage to appellant's car was only "mild to moderate" and his car was drivable. There is no reason that appellant would assume the other vehicle had a different result. Appellant argues that this circumstantial evidence is merely strong suspicion or probability and cannot prove his knowledge.

Appellant argues that the court's masking directive violated his United States Constitutional Sixth Amendment right of confrontation. Appellant argues that it was not necessary for the witnesses to wear face masks because vaccines were widely available at

the time, infections had declined, and Maryland no longer had a mask mandate in effect. He asserts that there were sufficient precautions for Covid-19 including: distancing measures, enhanced cleaning procedures, and Plexiglass barriers. Appellant argues that the ability to observe a witness' demeanor is at the core of the Sixth Amendment right and face masks undermine that right. Appellant argues that masking of witnesses is allowed only when the defendant poses a threat or trauma to a testifying witness, and he asks this Court to grant a new trial because all the witness testimony was given behind a face mask.

Lastly, appellant argues that the trial court merged his convictions improperly at sentencing. During the trial, appellant's counsel noted that Count 6 including a violation for which he was not charged. Appellant asserts that the trial court's remedy – merging the greater offense, Count 6, into the lesser offense, Count 5 – was incorrect. Consequently, his sentence of a term of incarceration of ten years exceeds the statutory maximum of Count 5, which is five years. Appellant argues that his sentence is illegal because of the improper merger. Appellant asks this Court to vacate his sentence and remand to the trial court for a correction.

The State responds that the evidence was legally sufficient for the jury to find that appellant knew or reasonably should have known that the accident might result in death. The State asserts that this Court must defer to any reasonable inferences a jury could have made regarding appellant's state of mind. The State argues that there is no distinction between circumstantial and direct evidence. Additionally, proof of scienter is most often inferred from circumstances. The State asserts that there was ample evidence to find that

appellant had the requisite scienter. First, the accident occurred on the highway at high speeds. Second, the jury could infer that there was no way appellant did not see the crash, regardless of his assertion that he had not. The decedent's vehicle traveled on the highway in the same direction as appellant's vehicle for 234 feet before its final crash, and appellant could have witnessed this in his rearview mirror. Third, the damage to appellant's vehicle was indicative of the severity of the accident. Fourth, there was a large piece of fender trim from the decedent's vehicle in appellants car. Fifth, a jury could infer that appellant's actions after the accident are indicative that he knew the accident could have been fatal. Sixth, a jury could disbelieve appellant's expressions of shock when the police during the police interview informed him of the fatality.

As to masked witnesses at trial, the State maintains that the circuit court did not violate appellant's right to confront the witnesses by permitting the witnesses to testify at trial wearing face masks that partially covered their faces because of the ongoing Covid-19 pandemic. The State argues that although the United States Supreme Court has established a preference for face-to-face confrontation, it is not an absolute guarantee. The right may be satisfied without a completely unobstructed view of every witness's face. Here, the public policy was clear – to protect against the spread of the potentially deadly virus. Moreover, the jury was able to perceive the witnesses' eyes, eyebrows, body language, and tone of voice without obstruction or limitation. Accordingly, the trial court did not abuse its discretion in permitting the witnesses to choose between face masks and

clear face shields, and the witness's choice to wear the face mask did not deprive appellant of his right to confrontation.

Addressing the sentencing and merger issue, the State argues that appellant received the merger remedy that he requested and was sentenced legally under Transp. §§ 20-102(b)(1) and (c)(3)(ii) for an offense for which he was charged and found guilty. The State argues that merger was appropriate,[5] that the trial court sentenced appellant properly only on Count 5, as submitted to the jury, and that the sentence was not an illegal sentence. The State recognizes that Count 5, a violation of Transp. § 20-102(b)(1), charged failure to stop at the scene of a fatal accident, a misdemeanor subject to maximum term of imprisonment of five years. No scienter requirement is included in that charge. The State argues that Count 6 added the scienter element that appellant knew or should have known that death of a person was involved, thereby exposing appellant to a maximum term of incarceration of ten years pursuant to subsection (c)(3)(ii). The State recognizes that Count 6 is ambiguous in that the Indictment states only that appellant did violate "Transportation Article 20-102," and does not specify § 20-102(b)(2) or include the language "failure to return to and remain at the scene." In fact, the only statutory reference contained in Count 6 is a reference to the penalty provision, "TR 20-102.c3ii," not a substantive charging

[5] The State agrees that merger was proper, under the rule of lenity or arguably under the required elements test. Interestingly, the State posits that it is unclear as to which of the two charges here is the greater or lesser charge. That is, does (b)(1) merge into (b)(2), or on the other hand, does (b)(2) merge into (b)(1)? The State concludes that "it is unnecessary in the circumstances of this case to resolve whether (b)(1) is a lesser included offense of (b)(2) under the required elements test."

section but a provision adding a scienter requirement that the driver knew or reasonably should have known that the accident might result in the death of another person and death occurred. The State maintains that "it is debatable whether, in addition to alleging the enhanced scienter element, Count 6 of the Indictment alleged liability for failing to return to and remain at the scene of a fatal accident under TR § 20-102(b)(2).[6] Addressing the jury instructions, the State notes that in the jury instructions (although no one objected) the elements of liability were distributed among the two counts in a way different from the Indictment. Counts 5 *and* 6 both alleged the enhanced scienter element under the penalty provision with Count 5 alleging failure to stop and Count 6 alleging failure to return and remain at the scene. In other words, says the State, Count 5 was presented to the jury as a combination of Counts 5 and 6, with the addition of an arguably uncharged crime, *i.e.*, violation of TR § 20-102(b)(2).

III.

We address first appellant's sufficiency of the evidence argument. The State was required to prove that appellant reasonably should have known that the accident might have resulted in death. The standard of review for sufficiency of the evidence is "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." *Derr*

[6] This argument of the State is hard to follow, as nowhere in Count 6 can we find the word "return."

v. State, 434 Md. 88, 129 (2013). In reviewing this claim, we do not engage in a retrial of the case or look to resolve any evidentiary conflicts. *State v. Albrecht*, 336 Md. 475, 478 (1994). We defer to the finder of fact, the jury, deferring to any possible reasonable inference the jury could have made from the admitted evidence. *State v. Mayers*, 417 Md. 449, 466 (2010). Maryland law makes no distinction between direct and circumstantial evidence; either may be sufficient to support a conviction. *Hebron v. State*, 331 Md. 219, 226 (1993).

We hold the evidence was sufficient for the jury to support the judgments of convictions. The record reflects that the accident happened on the highway at high speeds. The jury could have believed that the accident was impossible to miss. The State's witness saw the crash in his rearview mirror, and the decedent's vehicle traveled in the same direction as appellant's vehicle for 234 feet after the crash. The significant damage to appellant's car was indicative of a serious accident, evidenced by a large piece of bumper from decedent's truck stored in the cargo area of appellant's vehicle. Appellant did not stop, although he could have, and his telephonic search history indicates he understood that the accident was severe. The jury was entitled to disbelieve his testimony that he first learned the accident was fatal when the police informed him. *See Carter v. State*, 10 Md. App. 50, 54 (1970).

IV.

We turn to appellant's claim that the trial court violated his right of confrontation under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights by permitting witnesses to wear face masks that covered the face from under the eyes to under the chin. We hold that appellant's confrontation rights were not violated when the judge permitted trial witnesses to wear face masks. Neither the United States Constitution nor Article 21 require judges to imperil public health. *See, e.g., Prince v. State*, 255 Md. App. 640, 662 (2022); *People v. Edwards*, 291 Cal. Rptr. 3d 600, 602-03 (Cal. Ct. App. 2022); *United States v. Clemons*, No. RDB-19-0438, 2020 WL 6485087 (D. Md. September 2021. 4, 2020); *Belcher v. State*, No. 82255, 2022 WL 1261300 (Nev. April 27, 2022); *Commonwealth v. Dixon*, 276 A.3d 794 (Pa. Super. Ct. 2022).

Appellant's trial took place in September 2021 during the Covid-19 pandemic. The witnesses wore face masks covering their nose and mouth.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights afford criminal defendants the right to confront witnesses in court. *Cox v. State*, 421 Md. 630, 642 (2011). Maryland courts analyze both rights under a similar analysis, with some recent divergence that is not relevant to this case.[7] *See Leidig*

[7] In *Leidig v. State*, 475 Md. 181, 236 (2021), the Court of Appeals held that it would diverge from the Sixth Amendment analysis in analyzing whether a scientific report is testimonial under Article 21 and make the analysis on independent state grounds. The Court held that "[u]nder Article 21, a statement contained in a scientific report is testimonial if a declarant reasonably would have understood that the primary purpose for

v. State, 475 Md. 181, 236 (2021). In reviewing constitutional challenges, we make our own independent constitutional appraisal, reviewing the law and applying it to the facts of the particular case. *Longus v. State*, 416 Md. 433, 457 (2010). We defer to the trial court's findings of fact, unless they are clearly erroneous. *Jones v. State*, 343 Md. 448, 457-58 (1996).

The United States Supreme Court has acknowledged that a defendant's right to face-to-face confrontation under the Sixth Amendment is not absolute. *Maryland v. Craig*, 497 U.S. 836, 844 (1990). The Court has held that while the Sixth Amendment evinces a preference for face-to-face confrontation, it "must occasionally give way to considerations of public policy and the necessities of the case." *Mattox v. United States*, 156 U.S. 237, 243 (1895). The combined effect of physical presence, oath, cross-examination, and observation of demeanor by the trier of fact can accomplish the objectives of the Confrontation Clause. *Craig*, 497 U.S. at 846.

Additionally, several federal and state courts have dealt with the Confrontation Clause issue that arose from face masks during the pandemic. Those courts have held that based upon public policy considerations of the Covid-19 pandemic, testifying witnesses wearing face masks in the courtroom do not violate the Confrontation Clause. *See, e.g, United States v. Clemons*, No. RDB-19-0438, 2020 WL 6485087 (D. Md. Nov. 4, 2020); *Prince v. State*, 255 Md. App. 640, 662 (2022); *Belcher v. State*, No. 82255 2022 WL

the creation of the report was to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 243.

1261300 (Nev. April 27, 2022); *People v. Edwards*, 291 Cal. Rptr. 3d 600 (Cal. Ct. App. 2022); *Commonwealth v. Dixon*, 276 A.3d 794 (Pa. Super. Ct. 2022). As many other courts have found, the mask accommodation during the Covid-19 pandemic did not violate the Confrontation Clause and fit well within the public-policy exception for face-to-face meetings because masks further the public policy interest of ensuring the health and safety of everyone in the courtroom during the pandemic. *United States v. Tagliaferro*, 531 F. Supp. 3d 844, 850 (S.D.N.Y. 2021).

In addressing the issue of the confrontation right of a criminal defendant where witnesses wore masks covering the nose and mouth, the California intermediate appellate court expressed well why wearing masks does not deny confrontational rights in *People v. Edwards*, 291 Cal. Rptr. 3d 600, 602-03 (Cal. Ct. App. 2022). The court explained as follows:

> "It is desirable to make jury duty less dangerous to jurors. The potential danger was not only to jurors, but also to Edwards, and to everyone else in the courtroom.
>
> Also vulnerable to danger would be others outside the courtroom who later encountered these people, and so on, in an increasing swath of multiplying contacts. A spark in a dry landscape can cause flames. One cannot say how much will burn.
>
> A mask covering the nose and mouth undeniably impairs jurors' ability to see a witness's face to a degree. Likewise, it is undeniable that judges must not allow a jury trial to spread a deadly contagion."

Id.

The *Edwards* court held that Edwards enjoyed his right to confront the witnesses against him. *Id.* at 603. Significantly, the court recognized that the Confrontation Clause permits a judge to follow national safety guidelines. The court noted that Edwards and the jurors saw and heard the witnesses testify under oath and were subject to cross-examination. The jury could see and hear the witnesses' reactions to the confrontation. The masks covered noses and mouths to minimize disease transmission. The same holds true to the case at bar. The court permitted the witnesses to wear a face mask to protect against Covid-19, covering their nose and mouth. They testified in the courtroom. The four factors outlined in *Craig*: physical presence, oath, cross-examination, and observation of demeanor by the trier of fact, were all satisfied in this case.

The jurors could see and hear the witnesses' reaction to the questions and could make their own determination of credibility. There was a clear public health necessity to provide protection to everyone in the courtroom. We find no abuse of discretion or error.

V.

We turn to appellant's final contention that the court merged improperly the greater offense into the lesser included offense, *i.e.*, that the court merged improperly Count 6 into Count 5. The key to solving the question presented in this case is recognizing the right question to answer. In this case, the question is *not* whether the trial court merged Count 6 properly into Count 5, but rather what is the proper, maximum penalty for the conviction under Count 5.

Having found that the evidence is sufficient to support the judgments of convictions, and that appellant was not denied his constitutional right of confrontation, the ultimate question before this Court is the legality of the sentence the trial court imposed.

Merger of offenses for sentencing purposes is not the real issue before this Court even though, at the trial level, all counsel and the court resorted to the concept of merger to resolve the conundrum before the court. In Count 5 in the Indictment (verdict sheet Count 3), appellant was charged and convicted of failing to stop a vehicle involved in an accident resulting in death of another person. Count 6 in the Indictment charges the same offense, failing to stop a vehicle involved in an accident resulting in death of another person, *but* includes, as an element, the enhanced sentencing element of scienter, knowledge that the accident might result in death of another person. Most significant to our analysis, Count 6 is not a separate crime, not a separate charge, but pursuant to the United States Supreme Court case of *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000), satisfies the requirement that any fact enhancing the sentence must be charged in an indictment and proven to the factfinder beyond a reasonable doubt.

The jury was instructed that in order to convict appellant of violation of Transp. § 20-102(b)(2) and 20-102(c)(3)(ii), the jury must find (beyond a reasonable doubt) that:

> (1) The defendant was operating a motor vehicle;
> (2) The defendant was involved in an accident which the defendant knew or reasonably should have known that the accident might result in the death of another person;
> (3) That William Fanning died as a result of the accident, as
> (4) That the defendant failed to return to and remain at the scene of the accident . . ..

The jury noted guilty on the verdict sheet as to Counts 3 and 4, the equivalent of Counts 5 and 6.[8] As the State notes correctly, "Farmer was indisputably charged with violating subsection (b)(1) (Count 5 in the indictment) and with the enhanced scienter element under subsection (c)(3)(ii) (Count 6 in the indictment)."

We hold that by sentencing appellant only on Count 5, as submitted to the jury, to a term of incarceration of ten years with all but seven years suspended, the circuit court imposed a legal sentence for violation of subsection (b)(1) with the enhanced scienter element under subsection (c)(3)(ii). We find no error.

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

[8] It is not relevant to our analysis that Count 4 as sent to and found by the jury was the charge of failure to return and remain at the scene because appellant was sentenced to a term of incarceration on Count 3, failure to stop at the scene when he knew or should have known that another person died.