UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2780

September Term, 2015

KAHLIL JULIAN HALL

v.

STATE OF MARYLAND

Meredith,
Leahy,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: March 9, 2017

The present case requires us to determine whether testimony that the Appellant, Kahlil Julian Hall, was a drug user was appropriately admitted against him in a case in the Circuit Court for Carroll County in which Hall had been indicted for four counts of first-degree assault, five counts of use of a firearm in the commission of a crime of violence, two counts of attempted robbery, and one count each of armed robbery, conspiracy to commit armed robbery, conspiracy to commit first-degree assault, second-degree assault, second-degree assault against a law enforcement officer, reckless endangerment, resisting arrest, attempted armed robbery, first-degree burglary, and third-degree burglary. We also are called upon to determine whether the trial judge abused his discretion in meting out consecutive sentences to Hall for each of the four convictions for the use of a firearm in the commission of a crime of violence under Section 4-204 of the Criminal Law Article of the Maryland Code (2002, 2012 Repl. Vol.).[1] Hall presents two questions for our review:

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[1] Section 4-204 of the Criminal Law Article of the Maryland Code (2002, 2012 Repl. Vol.) provides:

> (a) *Firearm defined*. — (1) In this section, "firearm" means:
>
> (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
>
> (ii) the frame or receiver of such a weapon.
>
> (2) "Firearm" includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.
>
> (b) *Prohibited.* — A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.
>
> (c) *Penalty.* — (1) (i) A person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of

(continued . . .)

I. Did the trial court err in permitting the State to present evidence that appellant was a drug user?

II. Did the trial court err in sentencing appellant on the convictions for use of a firearm in the commission of a crime of violence?

Before us, Hall initially argues that the trial court judge failed to conduct the required analysis to determine whether the evidence of Hall's drug use was admissible "other crimes" evidence under Maryland Rule 5-404(b).[2] At trial, Hall's attorney objected to the testimony of Clyde Brown, Hall's accomplice, regarding Hall's drug use. In his colloquy with the judge, Hall's attorney averred that Brown's testimony would be inadmissible evidence of prior bad acts, to which the State rejoined that the evidence would be admissible as proof of motive:

> [HALL'S COUNSEL]: Objection. May we approach?
>
> (Whereupon, a Bench Conference follows:)
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> [HALL'S COUNSEL]: I think we are getting into a dicey area where Mr. Brown is going to talk about my client using drugs and things like that. And I think that

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(. . . continued)

> violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.
>
> (ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.
>
> (2) For each subsequent violation, the sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

[2] Maryland Rule 5-404(b) provides:

> (b) **Other crimes, wrongs, or acts**. Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

that is irrelevant without my client testifying at this point, Your Honor. We are getting into other crimes evidence. We are getting into other behaviors that the State is going to allege.

And at this point I don't think a foundation has been made properly. And I don't think it is appropriate for questioning at this point.

[THE STATE]: We are not going into any crimes of moral turpitude with the robberies. But they did use drugs together. And that was the motivation and the motive for them to commit this offense. So I think it is probative as to why they did what they did and as to the Defendant's guilt.

THE COURT: Anything further?

[HALL'S COUNSEL]: Nothing further.

THE COURT: All right. Objection overruled.

What Brown then testified to was his relationship with Hall and their shared history of drug use:

Q. Mr. Brown, what sort of interests did you have in common that you were stating about?

A. Drugs.

Q. And what kind of drugs are you speaking about?

A. Mainly pills but whatever.

Q. Okay. And during this time, did you use pills?

A. Yes.

Q. And tell me how you got started using pills.

A. I had a back injury and started going to the doctor getting pills.

Q. And when was that?

A. Right around 2009.

* * *

Q. And so when you first started the pills, you had a prescription to take. Right?

A. Yes.

Q. Did there come a time that you started taking pills without a prescription?

A. Yes.

Q. How did that come about?

A. I lost a prescription because I had Xanax in my system when I went to the doctor. And they stopped giving it to me after that.

Q. So when you say you lost it, you mean he refused to give you anymore.

A. Correct.

Q. And did you continue taking pills after that?

A. Yes. I was addicted.

Q. And did there come a time that you started using other drugs other than the pills?

A. Yes.

Q. What else did you use?
A. Heroin.
Q. And why did you start using heroin in addition to the pills?
A. It was cheaper and made more sense, same effect.
Q. And do you believe you became addicted to heroin then?
A. Yes.
Q. And you said it was cheaper. Was money becoming an issue for you with regards to your drug use?
A. Isn't money an issue with everybody? Sure. Yes.
Q. I'm sorry. Yes?
A. Yes.
Q. So tell me how you started hanging or spending time with Mr. Hall.
A. I mean, like I said, we had mutual interest.
Q. Well, you said that was drugs. But how -- I mean, did you use drugs together? How did that work?
A. Sure. Yes.
Q. Okay. And you just gave your address when you took the stand. Were you living at that address back in 2014?
A. I was staying with the Halls for a little bit of time there, even before.
Q. You are speaking of the Defendant?
A. Yes.

With respect to Brown's testimony, it is legion that "other crimes" evidence is not admissible to show propensity to commit a crime but may be admissible if the evidence fits within one or more of the exceptions in Rule 5-404(b), as we stated in *Wilder v. State*, 191 Md. App. 319, 343 (2010), *cert. denied*, *State v. Wilder*, 415 Md. 43 (2010):

> This Rule and "the common law preclude the admission of other crimes [or other acts] evidence, unless the evidence fits within a narrowly circumscribed exception." *Carter v. State,* 366 Md. 574, 583, 785 A.2d 348 (2001). In addition, Md. Rule 5–403[3] requires the exclusion of relevant evidence if its admission proves to be unfairly prejudicial.

[3] Maryland Rule 5-403 provides:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

> The propensity rule is a rule of exclusion. *See Wynn v. State,* 351 Md. 307, 312, 718 A.2d 588 (1998); *Harris v. State,* 324 Md. 490, 500, 597 A.2d 956 (1991). "Evidence of prior criminal acts is not admissible to prove the guilt of the defendant." *Carter,* 366 Md. at 583, 785 A.2d 348. The ordinary prohibition against the admission of "other crimes" evidence "ensure[s] that a defendant is tried for the crime for which he or she is on trial and to prevent a conviction based on reputation or propensity to commit crimes, rather than on the facts of the present case." *Sessoms v. State,* 357 Md. 274, 281, 744 A.2d 9 (2000).

The admissibility of "other crimes" evidence is determined by a three-part test articulated in *State v. Faulkner*, 314 Md. 630 (1989), and primarily depends on "whether the evidence fits within one or more of the *Ross* [*v. State*, 276 Md. 664, 669−70 (1976),] exceptions." *Faulkner*, 314 Md. at 634. Embodied in Rule 5−404(b), the *Ross* exceptions to non-admissibility of "other crimes" evidence permit the admission of such evidence to establish motive, intent, absence of mistake, a common scheme or plan, and identity, *Ross*, 276 Md. at 669−70, as long as the "accused's involvement in the other crimes is established by clear and convincing evidence." *Faulkner*, 314 Md. at 634; *see also Boyd v. State*, 399 Md. 457, 482 (2007) (Rule 5−404(b) "embodies the Maryland common law of evidence concerning other crimes, etc., which existed prior to adoption of the Rule."). *Faulkner*'s final step involves a balancing test that weighs the probative value of the evidence against its potential prejudice: "The necessity for and probative value of the 'other crimes' evidence is to be carefully weighed against any undue prejudice likely to result from its admission." *Faulkner*, 314 Md. at 635. In the present case, the State offered the evidence to prove motive.[4]

[4] In *Emory v. State*, 101 Md. App. 585, 605–6 (1994), we considered how the use of "other crimes" evidence may be used to establish motive:

(continued . . .)

With respect to the logistics regarding the admission of "other crimes" evidence, we turn to *Streater v. State*, 352 Md. 800 (1999). In that case, Streater had been charged with stalking, harassing, and misusing the telephone. The trial judge admitted into evidence, in its entirety, a protective order that the victim, his wife, had previously obtained against her husband, without any consideration in the record regarding the admissibility of the specific factual findings contained in the order.

(. . . continued)

> Motive is not a formal element of a crime but, rather, a circumstantial fact that sometimes may help to prove guilt. "Which of the weekend guests had a motive to poison the baroness?" 2 *Weinstein's Evidence,* § 401[14] describes how "other crimes" evidence may sometimes be used to establish motive:
>
> > Evidence of another crime has been admitted to show the likelihood of defendant having committed the charged crime because he needed money, sex, goods to sell, was filled with hostility, sought to conceal a previous crime, or to escape after its commission.
> >
> > *See Veney v. State,* 251 Md. 182, 199–200, 246 A.2d 568 (1968) (evidence of armed robbery and of shooting of one police officer admissible to show motive for murder of second police officer who tried to arrest him). *See also Martin v. State,* 40 Md. App. 248, 389 A.2d 1374 (1978) (evidence that defendants had escaped from prison, to show motive for stealing car of kidnapping and sex offense victim, should not have been admitted because motive was clear and unequivocal and was not an issue in the case); *Jackson v. State,* 87 Md. App. 475, 485–487, 590 A.2d 177 (1991); *Stancil v. State,* 78 Md. App. 376, 383, 553 A.2d 268 (1989).
>
> There is, of course, a great deal of arbitrariness that goes into the categorizing of admissible "other crimes" evidence into discrete kinds or types of relevance. Showing that a defendant had a motive to commit a crime simply helps to establish that he had the requisite *intent* to commit the crime. Showing which suspect had a motive to commit a crime, moreover, also helps to establish the *identity* of the criminal. Furthermore, the demonstrated possession of a motive helps to show that the criminal act was *neither a mistake nor an accident.* Material purposes significantly overlap.

Streater, on appeal, argued that the factual findings were "other crimes" evidence that were improperly admitted. The Court of Appeals agreed, concluding that "the factual determinations regarding the other crimes contained within the protective order each must be analyzed separately from the question of the admissibility of the protective order itself." *Id.* at 814. The Court determined that the trial judge had not made a threshold inquiry as to whether each of the factual statements was admissible under Rule 5-404(b) and under *Faulkner*'s 3-step analysis but should have, in order to enable appellate review:

> As a final consideration, we emphasize that, should the trial court allow the admission of other crimes evidence, it should state its reasons for doing so in the record so as to enable a reviewing court to assess whether Md. Rule 5-404(b), as interpreted through the case law, has been applied correctly. As we observed in *Lodowski*, 302 Md. at 728, 490 A.2d at 1247:
>
> > "[T]he trial judge should make, on [other crimes] evidence relevant to the issue, factual findings. . . . These findings should be made in light of the applicable law governing the admissibility of such evidence. And it would be better if [the trial court] spread on the record the reasons for [the] ruling on the challenge [to the admissibility of the other crimes evidence." (Citation omitted).

Id. at 810–11 (citations omitted).

In *Hill v. State*, 134 Md. App. 327 (2000), we also had occasion to opine regarding the extent to which a trial court judge should provide her reasoning regarding the application of the three-part *Faulkner* test prior to the admission of "other crimes" evidence. Hill had been charged with first and second degree assault, use of a handgun in the commission of a crime of violence, and carrying a handgun. On appeal, Hill alleged the trial judge had abused his discretion because he had not applied a *Faulkner* analysis. Although the issue had not been preserved, we chose to address the allegation in dicta. We observed that the trial judge must have considered the three-step process and

addressed the implications of admitting the evidence, because the arguments presented articulated the *Faulkner* analysis:

> Every step in the three-step process was touched upon by defense counsel. Counsel emphasized that the charges arising from appellant's transportation of the handgun had been severed from the assault charges and that the State was using evidence of that offense in an impermissible manner. Counsel recounted how the gun was recovered and argued that the prejudicial effect of the evidence outweighed its probative value. Accordingly, defense counsel set before the court all of the steps necessary for the court to reach its conclusion. In addition, the court's question about whether Alvarez would identify the gun indicated that it was considering the importance of that evidence.
>
> We conclude that unlike in *Streater*, in which there was nothing to indicate that the court properly considered the admissibility of "other crimes" evidence, the record in this case was not silent. Although the trial court did not expressly state its reasons on the record, the record discloses that it was aware of the governing rule and appreciated the importance of the evidence and its impact on the trial. *See Ayers*, 335 Md. at 635–36, 645 A.2d 22 (although trial judge did not spell out every step in thought process in admitting "other crimes" evidence, where record revealed, *inter alia*, that judge was aware of the governing rule and appreciated importance of the evidence, there was no error in placing evidence before the jury).

Id. at 354; *see also Cousar v. State*, 198 Md. App. 486 (2011) (determining that, unlike *Streater*, the trial court appropriately applied the three steps of the *Faulkner* analysis, because both sides had argued every aspect of the *Faulkner* test, including the evidence's admissibility under Rule 5-404(b)'s "accident or absence of mistake" exception; limiting instructions were also given to the jury).

In the instant case, the record is silent as to whether the trial judge considered Rule 5-404(b) and the *Faulkner* process to determine whether evidence of Hall's drug use was admissible. Although "other crimes" evidence was mentioned, only probity was suggested as a variable when the judge overruled the objection, without more. A silent

record, again, invokes *Streater* error because we have no articulated basis upon which to evaluate why the trial judge ruled the way he did.

In concluding that the trial court judge erred, we now consider whether the error in admitting Hall's drug use was harmless. The Court of Appeals in *Dorsey v. State*, 276 Md. 638, 659 (1976), articulated the standard for assessing harmless error as:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed "harmless" and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of — whether erroneously admitted or excluded — may have contributed to the rendition of the guilty verdict.

Lest it be said that the standard of harmlessness is impossible to reach, we recognize that in *Gutierrez v. State*, 423 Md. 476, 499–500 (2011), the Court of Appeals determined that another erroneous admission of "other crimes" evidence was harmless.

In *Gutierrez*, Gutierrez was charged with first-degree murder, first-degree assault, and use of a handgun in the commission of a crime of violence following a shooting death. At trial, multiple witnesses testified that the victim's murder by Gutierrez was motivated by his affiliation with a gang. The issue in the case was whether a "gang expert" could testify, who "generally described the violent customs" of Gutierrez's gang. *Id.* at 482. Gutierrez was convicted, and the Court of Appeals considered whether "expert testimony about the history, hierarchy, and common practices of a street gang" was admissible "other crimes" evidence under Rule 5-404(b)'s proof of motive exception. *Id.* at 481.

The Court determined that while four of the expert's statements were admissible, the testimony that Gutierrez's gang was the most violent was admitted in error because it was not probative as to "why the defendant was the person who committed the particular crime charged." *Id.* at 499. The Court determined, however, that the admission of the statement was harmless, because there was a "mountain" of evidence that identified Gutierrez as the shooter as well as that Gutierrez was looking for a target to satisfy his gang initiation requirement. *Id.* at 500.

Like the mountain of evidence in *Gutierrez*, the evidence of Hall's guilt in the present case is overwhelming. While one of the victims testified that Hall and Brown broke into the house with pointed guns and masked faces, demanding drugs and money, another victim testified to taking Hall's gun from him in the living room and beating Hall until "he stopped fighting back." A Maryland State Police trooper testified, on arrival, to finding the front door of the victims' house kicked in and Hall supine on the living room floor in a face mask, lying atop a shotgun; Hall was arrested, at the scene of the crime, after kicking the police officer. To say that reference to Hall's drug use created error that was harmful to the rendition of a guilty verdict would be ridiculous.

With respect to the second question presented, Hall was sentenced to four consecutive five-year sentences for having used a firearm during the commission of a crime of violence in addition to four twenty-year sentences for the four counts of first-degree assault to run concurrently, twenty years for attempted armed robbery to run concurrently with the first-degree assault counts, five years for first-degree burglary to run concurrently with the assault counts, and eighteen months for resisting arrest to run

concurrently with the first-degree assault counts. Hall contends that the imposition of four consecutive five-year sentences for the convictions for the use of a firearm in the commission of a crime of violence was in error, brought about by the State.

During sentencing, the State asserted that the trial judge should impose consecutive sentences for the firearms convictions under Section 4-204 of the Criminal Law Article of the Maryland Code (2002, 2012 Repl. Vol.), while Hall argued that Section 4-204 did not require that sentences for multiple convictions for the use of a firearm in the commission of a crime of violence run consecutively when the incidents of use occurred simultaneously. The judge, in sentencing Hall to consecutive five-year terms for each use of a firearm in the commission of a crime of violence, acknowledged that the four victims were awakened in the middle of the night "at point blank range of a gun":

> This case is a very serious case. It deals with what we will call a home invasion for purposes of descriptive analysis of the situation in the middle of the night. Further into the middle of the night and closer to the morning really. The defendant was found guilty to have showed up at someone's home, entered that residence armed and there are a mother, her boyfriend, a son and another lady spending -- sleeping in the house who are suddenly finding themselves at point blank range of a gun.
>
> And there was the defense's posture during the trial essentially was that this was a drug deal gone bad and [Hall's attorney] rather well argued to the jury that this is a -- what is missing from all of the cases [is] an explanation of how all of this occurred, it just makes no sense. Well, I thought about that at the time and that may be true but ultimately it doesn't make any difference. We all have a right to peaceably sleep at 3:00 a.m. or I forgot the precise time that this occurred in your home without somebody breaking the door down, coming in with a gun and pointing it at people's faces.

Hall argues that the trial judge erroneously interpreted Section 4-204 to require consecutive sentences for each of the four convictions for the use of a firearm in the

commission of a crime of violence when three of the four violations did not occur "subsequent" to each other; each, according to Hall, occurred during one incident and merits only one five-year sentence with the other three sentences to run concurrent with the first and each other. The State agrees that consecutive sentences under Section 4-204 are not mandatory but argues that imposition of consecutive sentences was appropriate. While everyone, thus, recognizes that a conviction causes a five-year minimum sentence, they disagree with respect to the imposition of consecutive five-year sentences when the violations occurred in one incident.

Section 4-204 of the Criminal Law Article of the Maryland Code (2002, 2012 Repl. Vol.) prohibits the use of a firearm in the commission of a crime of violence or felony and provides that consecutive sentences will be imposed for "each subsequent violation":

> (a) *Firearm defined*. — (1) In this section, "firearm" means:
>
> (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
>
> (ii) the frame or receiver of such a weapon.
>
> (2) "Firearm" includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.
>
> (b) *Prohibited.* — A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.
>
> (c) *Penalty.* — (1) (i) A person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.
>
> (ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

> (2) For each subsequent violation, the sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

At the outset, Hall argues that the trial judge did not appropriately exercise his discretion in imposing consecutive sentences because he was erroneously led by the State to believe that he had to impose consecutive sentences. In addition to the fact that the record does not support Hall's contention that the trial judge held the erroneous belief that he was required to give consecutive sentences, we "presum[e] that trial judges know the law and apply it properly." *State v. Chaney*, 375 Md. 168, 181 (2003). We have no reason to question that presumption here.

Whether consecutive sentences can be meted out by the trial judge for the four convictions for the use of a firearm in the commission of a crime of violence can be readily answered by reference to the Court of Appeals' decision in *Garner v. State*, 442 Md. 226 (2015). In *Garner*, Garner had shot one victim multiple times while demanding money and again shot the victim in the neck as he tried to escape. In addition to his convictions for attempted first-degree murder and attempted robbery with a dangerous weapon, Garner was convicted on two counts of the use of a firearm in the commission of a crime of violence, for which the trial judge imposed two sentences to be served consecutively. Garner argued before the Court of Appeals that his convictions for the use of a firearm in the commission of a crime of violence did not warrant consecutive sentences when all of the acts occurred in one incident with one victim.

To address the propriety of imposing consecutive sentences, the Court recognized that defining the unit of prosecution was the crucial inquiry in determining what constitutes a conviction and sentence under Section 4-204:

> Here, the question is whether the unit of prosecution for use of a handgun in the commission of a crime of violence is the victim or the underlying crime of violence. "[W]hether a particular course of conduct constitutes one or more violations of a single statutory offense . . . turn[s] on the unit of prosecution of the offense[, which] is ordinarily determined by reference to legislative intent." *Purnell v. State*, 375 Md. 678, 692, 827 A.2d 68, 76 (2003) (citation and internal quotation marks omitted); *see also Moore v. State*, 198 Md. App. 655, 680, 18 A.3d 981, 995 (2011) ("The key to the determination of the unit of prosecution is legislative intent." (Citations omitted)); *Triggs v. State*, 382 Md. 27, 43, 852 A.2d 114, 124 (2004) ("[T]he unit of prosecution reflected in the statute controls whether multiple sentences ultimately may be imposed."). Legislative intent, in turn, is determined by "look[ing] first to the words of the statute, read in the light of the full context in which they appear, and in light of external manifestations of intent or general purpose available through other evidence." *Davis v. State*, 319 Md. 56, 60, 570 A.2d 855, 857 (1990) (citation and internal quotation marks omitted).

Garner, 442 Md. at 236–37. In considering the language of Section 4-204, the Court concluded that the relevant unit of prosecution was the crime of violence:

> [Section] 4-204(b)'s language is clear and ambiguous—a person may not use a handgun to commit a statutorily defined crime of violence or any felony. In other words, [Section] 4-204(b) criminalizes the use of a handgun in any felony (without limitation on which felony) or in one of the statutorily defined crimes of violence (limiting the crime of violence to those defined by statute). It is the crime of violence or felony, not the victim or the criminal transaction, that forms the basis for the handgun conviction; indeed, [Section] 4-204 makes no mention whatsoever of the victim or the criminal transaction.

Id. at 242. The Court thereby determined that Garner's two convictions for the use of a firearm in the commission of a crime of violence, whether or not more than one victim was involved, provided an appropriate basis for the imposition of two consecutive sentences.

Where there had been multiple victims involved, as in the present case, the Court of Appeals in *Brown v. State*, 311 Md. 426, 429–36 (1988), also determined that consecutive sentences were appropriate when there had been numerous uses of a handgun in the commission of crimes of violence under Section 36B(d) of Article 27 of the Maryland Code (1957, 1982 Repl. Vol., 1987 Supp.), the predecessor statute to Section 4-204.[5] The Court recognized that separate convictions and consecutive sentences for multiple uses of a handgun in the commission of crimes of violence against multiple victims took into consideration the heightened level of culpability:

> We are convinced that multiple handgun use convictions and sentences are appropriate where there are multiple victims. Brown's use of a handgun put each victim in the cases at bar in fear of death or serious bodily harm. Punishment for criminal conduct should be commensurate with responsibility and a defendant who terrorizes multiple persons with a handgun is more culpable than a defendant who terrorizes only one.

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[5] The Court of Appeals in *Garner* recognized that *Brown* had identified the unit of prosecution under Section 36B(d) as the crime of violence. *Garner*, 442 Md. at 238. Section 36B(d) of Article 27 of the Maryland Code (1957, 1982 Repl. Vol., 1987 Supp.) provided:

> (d) *Unlawful use of handgun or antique firearm in commission of crime; penalties.* – Any person who shall use a handgun or an antique firearm capable of being concealed on the person in the commission of any felony or any crime of violence as defined in § 441 of this article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor:
>
> > (1) For a first offense, be sentenced to the Maryland Division of Correction for a term of not less than 5 nor more than 20 years, and it is mandatory upon the court to impose no less than the minimum sentence of 5 years.
> > (2) For a second or subsequent offense, be sentenced to the Maryland Division of Correction for a term of not less than 5 nor more than 20 years, and it is mandatory upon the court to impose no less than a minimum consecutive sentence of 5 years which shall be served consecutively and not concurrently to any other sentence imposed by virtue of the commission of said felony or misdemeanor.

Id. at 436; *see also Battle v. State*, 65 Md. App. 38, 50–51 (1985), *cert. denied*, 305 Md. 243 (1986) ("[W]e need only find sufficient evidence that there were two separate underlying crimes of violence, and that a handgun was used in each. That both of the underlying crimes evolved from one act of the appellant—the use of the handgun—does not preclude such a finding.").

In the present case, Hall was convicted of four instances of the use of a firearm in the commission of a crime of violence, each of which was predicated upon brandishing a weapon against each of the four victims. The trial judge recognized that Hall had terrorized each of the four victims by pointing guns "at people's faces" and thereby acknowledged that the unit of prosecution was the crime of violence against each victim. He did not err.

As a result, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.