Circuit Court for Washington County
Case No. C-21-CR-21-000537

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 563

September Term, 2023

MIQUAN RASHAD BROADUS

v.

STATE OF MARYLAND

Zic,
Albright,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: July 24, 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 Rule 1-104(a)(2)(B).

One early morning, Appellant, Miquan Rashad Broadus, left his apartment after fatally shooting a man. He was later arrested and charged by criminal information.

A jury in the Circuit Court for Washington County found Mr. Broadus guilty of seven charged crimes. Immediately after the jury's verdict, over Mr. Broadus' objection, the circuit court proceeded to sentence him.

In this timely appeal, Mr. Broadus presents four questions, which we have reworded as:

1. Whether the circuit court abused its discretion by giving a flight instruction, where the instruction was not supported by the evidence and contradicted the court's self-defense instruction.
2. Whether the circuit court abused its discretion by declining to delay sentencing for a Pre-Sentencing Investigation (PSI) Report.
3. Whether the circuit court abused its discretion by considering improper factors at sentencing.
4. Whether the circuit court imposed an illegal sentence by entering a commitment record inconsistent with the sentence announced on the record.[1]

[1] Mr. Broadus presented the following questions:

1. Did the Trial Court abuse its discretion and err when it gave a modified version of jury instruction MPJI-Cr 3:24 Flight or Concealment of Defendant over the objection of Appellant's Defense Counsel, as the instruction was not supported by the evidence and contradicted the self-defense instruction given by the Court?
2. Did the Trial Court abuse its discretion when it refused to delay sentencing for a Pre-Sentence Investigation Report and to afford Defense Counsel time to compile and present mitigation on behalf of Appellant, stating its preference for

(Cont'd. . .)

For the following reasons, we affirm.

BACKGROUND

The Shooting[2]

On September 18, 2021, at around 5:40 a.m., Mr. Broadus fatally shot Donovan Disney inside Mr. Broadus' apartment on Franklin Street in Hagerstown. Then he left.

The day before the shooting, Mr. Disney and his girlfriend, Arianna Peters, met Mr. Broadus at a Sheetz gas station in Hagerstown. Having recently arrived from Martinsburg, West Virginia, and not knowing anyone in Hagerstown, Ms. Peters and Mr. Disney were looking for a place to stay. Mr. Broadus agreed to let them stay with him at his apartment. At Mr. Broadus' apartment, Ms. Peters and Mr. Disney did drugs with

ensuring the community received a resolution rather than granting a continuance?

3. Did the Trial Court abuse its discretion and deprive Appellant of his due process right to a fair sentencing by making comments during sentencing regarding "uncharged crimes" purportedly committed by Appellant and its own desire for the use of a firearm to be "quadruple counted" as an aggravating factor in the Sentencing Guidelines?

4. Did the Trial Court impose an illegal sentence where the Commitment Record imposes incarceration of eight more years than the Trial Court's oral sentence?

[2] Because Mr. Broadus does not challenge the sufficiency of the evidence, we recount the facts (in the light most favorable to the State) insofar as it is necessary to provide context to his contentions. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

multiple other people.[3]

On the morning of the shooting, Mr. Disney stepped outside the apartment and banged on the front door about 15 minutes later. As soon as Mr. Broadus opened the door, Mr. Disney hit him in the face with a "safe," a black lockbox about the size of a small television. A fistfight broke out between Mr. Disney and Mr. Broadus, and both men eventually fell to the ground and tussled. Ms. Peters watched the fight from just a few feet away. She testified that Mr. Broadus then got up, pulled out a gun, and started "pistol-whipping" Mr. Disney, who was still on the ground. Mr. Broadus also threatened to shoot Mr. Disney.

The gun went off. Ms. Peters saw blood "pouring out" of Mr. Disney's neck. She also saw Mr. Broadus heading out through the back door. Ms. Peters asked him to call someone, but Mr. Broadus continued to make his way out. Ms. Peters then took Mr. Disney downstairs through the front door and called for help. The police came minutes after.

Sergeant Alec Routhier was the first officer on the scene, dispatched at 5:47 a.m. and arriving within five minutes. He found Mr. Disney unconscious and bleeding from a gunshot wound in his neck, with Ms. Peters by his side. Mr. Disney was transported to a hospital, where he was pronounced dead from a gunshot wound to his torso. Sergeant Routhier did not see Mr. Broadus fleeing the area, but he acknowledged that his route to

[3] At trial, when asked if "everybody was using drugs" at Mr. Broadus' apartment, Ms. Peters replied, "Everybody, yes."

the scene only provided a view of the front of the apartment, making it impossible for him to see anyone running from the back.

Officer Andrew Main arrived "a couple minutes" after 5:47 a.m. and secured the scene. Mr. Broadus' apartment had two doors: the front door "right at the top of the steps" that Officer Main used, and the back door leading to a fenced-in area not visible from the road. The front door was wide open. The back door also appeared to be unlocked. Officer Main remained on the scene for hours, but he did not see Mr. Broadus.

When Forensic Scientist Amy Adams arrived at 9:49 a.m., officers were still securing the apartment. Over the next few hours, she collected evidence, including "one spent cartridge casing," marked "WIN 9 mm Luger," on a stairwell outside the front door, and "one apparent projectile" in the living room area. That night, the police also found a firearm on the roof of the apartment building, and examiners confirmed that both the cartridge casing and the projectile came from that firearm.

More than two months later, on December 7, 2021, Mr. Broadus was served with a summons and a criminal information.[4]

Trial

From May 9 to May 11, 2023, a three-day jury trial took place as scheduled. On

[4] Mr. Broadus was charged with first-degree murder (Count 1); second-degree murder (Count 2); first-degree assault (Count 3); second-degree assault (Count 4); use of a firearm in the commission of a crime of violence (Count 5); carrying a handgun on his person (Count 6); carrying a loaded handgun on his person (Count 7); illegal possession of a firearm with a disqualifying conviction (Count 8); illegal possession of a regulated firearm (Count 9); and illegal possession of ammunition (Count 10).

the second day, at the end of the defense's case, the trial court advised Mr. Broadus of his right not to testify. The State then proffered Mr. Broadus' prior convictions, including one false statement to a police officer, multiple possession of CDS (non-marijuana) convictions, one distribution of cocaine, and one credit card theft. The State also proffered, and Mr. Broadus did not dispute, that three of those convictions – false statement to a police officer, credit card theft, and distribution of cocaine – could be used to attack his credibility under Maryland Rule 5-609 if he testified.[5] The trial court proceeded to ask Mr. Broadus about his age, educational background, and mental health history, confirming that his decision not to testify was made knowingly and voluntarily.[6]

The same day, the trial court also discussed potential jury instructions with the parties. Mr. Broadus objected to the giving of the pattern flight instruction from Maryland's Pattern Jury Instructions-Criminal ("MPJI-Cr"). He claimed that the language of the pattern instruction, MPJI-Cr 3.24, "assumes that a crime has been committed" and did not "appl[y] to this scenario." Later that day, Mr. Broadus again "object[ed] to th[e] instruction as a whole," but then proposed a modified flight instruction. The trial court

[5] Under Rule 5-609(a), evidence that a witness has been convicted of a crime, once established by the witness' admission or by public record, may be used to attack his or her credibility if the crime is "an infamous crime or other crime relevant to the witness's credibility" and if "the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or objecting party."

[6] In response to the court's inquiry, Mr. Broadus stated that he was 29 years old, graduated high school, was not under the influence of drugs, alcohol, or medication, and had never been under the care of a psychologist, psychiatrist, or any other mental health professional or institution. He also stated that no one threatened or intimidated him in any way to get him not to testify.

accepted Mr. Broadus' proposed modification and gave the following flight instruction the next day:

> A person's flight and/or concealment of evidence is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt. Flight and/or concealment of evidence under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight and/or concealment of evidence. If you decide there is evidence of flight and/or concealment of evidence, you must decide whether this flight and/or concealment of evidence shows a consciousness of guilt.[7]

Mr. Broadus noted an exception to the giving of this flight instruction.[8]

[7] The first line of MPJI-Cr 3.24 provides: "A person's flight [concealment] immediately after the commission of a crime, or after being accused of committing a crime, is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt." The trial court modified this instruction by removing the phrase "immediately after the commission of a crime, or after being accused of committing a crime" from the first line.

[8] As a preliminary matter, the State argues that Mr. Broadus waived his claim of error regarding the giving of the flight instruction by failing to object after the trial court gave the modified flight instruction. Under Maryland Rule 4-325(f), "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Here, Mr. Broadus complied with Rule 4-325(f) by raising an exception after the trial court instructed the jury:

> THE COURT: Are there any exceptions to the instructions as I have given them so far?
>
> THE STATE: Not from the State.
>
> [DEFENSE]: No other than the flight thing we already dealt with.
>
> THE COURT: The flight. Okay and your exception for flight is noted.

The issue of the giving of the flight instruction is thus preserved for our review.

The jury found Mr. Broadus not guilty of attempted first- and second-degree murder, but convicted him of voluntary manslaughter,[9] first-degree assault, second-degree assault, use of a firearm in the commission of a crime of violence, carrying a handgun on his person, illegal possession of a firearm with a disqualifying conviction, and illegal possession of ammunition.[10]

Sentencing

After the verdict, the circuit court announced: "It's the [c]ourt's intention to sentence today. . . . If you have a motion to continue this sentencing, I'd like to hear it now[.]" Mr. Broadus requested postponement of sentencing and a PSI, but the court denied both requests and took a recess. When the court reconvened, Mr. Broadus renewed his requests, stating that he wanted to "have proper time to prepare [his] family . . . given the fact that he was acquitted of the two . . . essentially more serious charges," and that he wanted the PSI report to include victim impact statements, which he had just received. The court again denied both requests, noting that it also had received the impact statements from Mr. Disney's family and, despite not being a "fast reader," had sufficient

[9] Mr. Broadus was convicted of voluntary manslaughter as an implicit, lesser-included offense of murder. *See Bowers v. State*, 227 Md. App. 310, 319 (2016) ("Because manslaughter is an implicit, lesser included offense within murder, an indictment or criminal information on which the defendant stood trial will never even have mentioned the word manslaughter.") (cleaned up).

[10] Apparently, the charge of illegal possession of a regulated firearm (Count 9) was not submitted to the jury. At sentencing, however, the court merged this charge into illegal possession of a firearm with a disqualifying conviction (Count 8). The circuit court also entered a judgment of acquittal on the charge of carrying a loaded handgun on his person (Count 7).

time to review them.

The circuit court proceeded with sentencing. After Mr. Disney's family members addressed the court, the court invited Mr. Broadus to "submit anything [he] wish[ed] to submit." Mr. Broadus, through counsel, proffered his age, marital status, family, education, history of substance abuse, and that he suffered from Guillain-Barré syndrome (though his counsel admitted not knowing "all the details" of the disorder). Upon the court's inquiry, the State also proffered that Mr. Broadus was shot seven times and hospitalized in Washington, D.C. prior to his arrest. Mr. Broadus' mother then spoke, emphasizing that he has a "big heart." Finally, Mr. Broadus himself spoke in allocution before the court announced his sentences.

The circuit court sentenced Mr. Broadus for use of a firearm in the commission of a crime of violence, illegal possession of a firearm with a disqualifying conviction, and voluntary manslaughter. The court merged the other offenses for sentencing purposes. In announcing sentence, the court referred to Mr. Broadus' residence as "a hive of activity" and stated it would not punish him for "a whole bunch of uncharged crimes" there, but emphasized that his firearm-related convictions should be "quadruple counted."

We supply additional facts, including the details of Mr. Broadus' sentences, below as needed.

DISCUSSION

The Flight Instruction

On appeal, Mr. Broadus challenges the giving of the flight instruction itself,

without disputing the trial court's modification of the MPJI-Cr flight instruction. His sole argument is that the flight instruction, modified or not, should not have been given because there was no factual evidence supporting the conclusion that he fled from the scene.[11]

We begin by discussing the standards of review. Generally, a trial court's decision to give a particular jury instruction is reviewed for abuse of discretion. *Wright v. State*, 474 Md. 467, 482 (2021). However, "whether the evidence is sufficient to generate the desired instruction is a question of law," which we review *de novo*. *Hayes v. State*, 247 Md. App. 252, 288 (2020); *Rainey v. State*, 480 Md. 230, 255 (2022). Under the *de novo* standard, we "independently determine whether the requesting party produced the minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Rainey*, 480 Md. at 255 (cleaned up). This is a low evidentiary hurdle; the requesting party must only produce "some evidence" to support the instruction. *Bazzle v. State*, 426 Md. 541, 551 (2012).

In order to generate a flight instruction, the evidence must support the following four inferences: "[1] that the behavior of the defendant suggests flight; [2] that the flight

[11] A trial court must give a requested jury instruction when "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (cleaned up). In this appeal, Mr. Broadus only challenges the second requirement.

suggests a consciousness of guilt; [3] that the consciousness of guilt is related to the crime charged or a closely related crime; and [4] that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime." *Thompson v. State*, 393 Md. 291, 312 (2006).

Here, Mr. Broadus challenges only the first inference, arguing that the evidence shows his departure from the scene, but not flight. "[E]vidence of flight is defined by two factors: first, that the defendant has moved from one location to another; second, some additional proof to suggest that this movement is not simply normal human locomotion." *Hoerauf v. State*, 178 Md. App. 292, 323 (2008) (citation omitted). "Departure from the scene after a crime has been committed, of itself, does not warrant an inference of guilt." *Id.* at 324 (citation omitted). "[F]or departure to take on the legal significance of flight, there must be circumstances present and unexplained which, in conjunction with the leaving, reasonably justify an inference that it was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt." *Id.* at 324–25 (citation omitted). Mr. Broadus claims that the record "is devoid of any testimony that indicated that [he] did anything more than walk away from the scene of the crime," likening his case to *Hoerauf*.

Mr. Broadus' reliance on *Hoerauf* is misplaced. In *Hoerauf*, the defendant's friends robbed victims at a train station in the early afternoon. 178 Md. App. at 297–98. The defendant then walked away from the scene with his friends. *Id.* at 298. At that time, "the police had not arrived, nor was their arrival imminent." *Id.* The victims also testified

that, during the robbery, the defendant "stood somewhat to the side," without "doing anything," and was not "in the group." *Id.* at 327. We held that the defendant's "behavior did not constitute flight, and the trial court erred in giving the flight instruction," noting that "[t]here was no evidence that [the defendant] attempted to flee the neighborhood or to secrete himself from public view to avoid apprehension." *Id.* at 326.

By contrast, after shooting Mr. Disney, Mr. Broadus left his own home early in the morning, through a backdoor not visible from the road. Despite knowing that he shot Mr. Disney, Mr. Broadus "did not remain at the scene to find out whether his companion would survive his injuries." *Hallowell v. State*, 235 Md. App. 484, 512 (2018). Having just fired a gun in an apartment building, he could also fairly "presume that authorities would be arriving to the scene shortly[.]" *Page v. State*, 222 Md. App. 648, 670 (2015); *Hayes*, 247 Md. App. at 294–95. Indeed, Mr. Broadus "made incredibly good time" in leaving the crime scene, as the police officers arrived only minutes later. *Hallowell*, 235 Md. at 512. When the officers arrived, the front door to his apartment "was wide open," the back door was apparently unlocked, and there was no one inside the home.

Overall, the timing and surrounding circumstances of Mr. Broadus' departure reasonably supports an inference that he "attempted to flee the neighborhood or to secrete himself from public view to avoid apprehension." *Hoerauf*, 178 Md. App. at 326. The discovery of an abandoned firearm, which matched the cartridge and the projectile found at Mr. Broadus' apartment, strengthens that inference. The trial court did not abuse its

discretion in giving the flight instruction.[12]

Denial of Postponement for Presentence Investigation

Mr. Broadus next challenges the circuit court's denial of his requests to postpone sentencing and order a PSI.[13] Mr. Broadus asserts that, by sentencing him without ordering a PSI or a postponement, the circuit court "stripped [him] of his absolute right to present mitigating information," and failed to "tailor[ ] an appropriate sentence to fit" him, not merely his crime. He also claims that "[a] re-sentencing is required to remedy this violation."

[12] Since sufficient evidence supported the giving of the flight instruction here, the trial court could not refuse to give the instruction on the basis that the evidence also supported the self-defense instruction; to hold otherwise would allow the court to "improperly assume[] the jury's role as fact-finder." *Dykes v. State*, 319 Md. 206, 224 (1990). *See also Silva v. State*, 422 Md. 17, 34 (holding that it is the role of the jury as factfinder to resolve conflicting inferences "[w]hen the evidence . . . can go either way[.]").

[13] A PSI is "an investigation of the relevant background of a convicted offender . . . designed to act as a sentencing guide for the sentencing judge." *Germain v. State*, 363 Md. 511, 522 (2001) (citation omitted). Its goal is to assist the sentencing court in "individualizing the sentence to fit the offender and not merely the crime." *Id.* at 523 (citation omitted). A PSI varies in scope and focus, but typically contains the following items:

> (1) complete description of the situation surrounding the criminal activity; (2) offender's educational background; (3) offender's employment background; (4) offender's social history; (5) residence history of the offender; (6) offender's medical history; (7) information about environment to which the offender will return; (8) information about any resources available to assist the offender; (9) probation officer's view of the offender's motivations and ambitions; (10) full description of the defendant's criminal record; and, (11) recommendation as to disposition.

Id. at 522 n.9 (citation omitted).

Ordering a PSI or a postponement falls within the sound discretion of the court. *See Mainor v. State*, 475 Md. 487, 499 (2021) (postponement); *Armstead v. State*, 195 Md. App. 599, 615 (2010) (ordering of PSI). "Where the decision or order of the trial court is a matter of discretion it will not be disturbed on review except on a clear showing of abuse of discretion[.]" *Mainor*, 475 Md. at 499 (citation omitted). An abuse of discretion occurs when "no reasonable person would take the view adopted by the circuit court." *Id.* (citation omitted). The party requesting a PSI or postponement has the burden of adequately justifying its request. Md. Code Ann., Corr. Servs. ("COR") § 6-112(b)(2) ("The party that requests [a PSI] has the burden of establishing that the investigation should be ordered."); *Mainor*, 475 Md. at 506 (holding that the defendant "met the burden to adequately justify his PSI request under COR § 6-112(b)(2)"); *Kelly v. State*, 195 Md. App. 403, 439 (2010) (no abuse of discretion in denying a postponement of sentencing where the defendant "failed to identify what information he was unable to present due to the court's denial of his request").

Mainor v. State, 475 Md. 487, illustrates when a court's refusal to order a PSI or postpone sentencing constitutes an abuse of discretion. In *Mainor*, the trial unexpectedly went into a second day, preventing the defendant's mother from attending due to work obligations. 475 Md. at 496. After the jury convicted the defendant, the court announced its intent to sentence him the same day. *Id.* at 496–97. When the defendant requested a PSI, the sentencing court asked, "What will a long-form PSI tell me?" *Id.* at 503. The defendant, through counsel, replied: "Well, for example, my client's mother was here

yesterday, she's unable to be here this morning. I do think it's important that the [c]ourt has some background information about my client in order to fashion an appropriate sentence." *Id.* at 504. Though the defendant also explained that his mother could not attend because of her work and that his sentence would likely be substantial, the court insisted on proceeding to sentence him with neither a PSI nor his mother's testimony, remarking, "it's obviously not that important to [the defendant's mother]." *Id.* at 497. The court then sentenced the defendant to 40 years of imprisonment, "using no information other than [his] age at the time of the crime . . . his age at the time of sentencing . . . and his criminal record." *Id.* at 508.

On appeal, our Supreme Court held that the denial of the PSI request was an abuse of discretion, stating, "no reasonable person could determine that a PSI would be entirely unhelpful in individualizing [the defendant's] sentence." *Id.* The Court emphasized that the sentencing court gave the defendant "no other opportunity to present mitigation" and relied solely on his age and criminal record, even though the defendant had sufficiently informed the court that the trial's unanticipated extension prevented him from offering additional background information through his mother's testimony. *Id.* The Court concluded, "in this case where almost no additional background information was readily available, a PSI irrefutably would have benefited the sentencing process." *Id.* at 509.

In reaching that conclusion, the *Mainor* Court rejected the State's argument that the defendant needed to "proffer case-specific reasoning or articulate specific circumstances" to get a PSI. *Id.* at 505. The Court reasoned that even though such proffer

may be "useful" in persuading a sentencing court, "it would be illogical to require a showing of specific information anticipated to be revealed by a future investigation that . . . had not yet been undertaken." *Id.* at 506. Instead, the Court held that the defendant adequately justified his PSI request by "effectively communicating the absence of availability of any alternative source of background information," i.e., his mother's live testimony. *Id.*

Our Supreme Court also held that the court's failure to postpone the defendant's sentencing violated his right to present mitigation under Maryland Rule 4-342(e). *Id.* at 502. The Court found that, based on the defendant's exchange with the sentencing court, there was "no doubt that the [court] was aware that [the defendant] wished for his mother to testify on his behalf, which was only possible if the sentencing was postponed to a later date." *Id.* at 510. The Court further noted that, by refusing to postpone sentencing, the court "eliminated [the defendant's] opportunity to present mitigating information in *either* manner proposed by [him]—namely a long-form PSI or his mother's testimony." *Id.* at 502 (emphasis added). Thus, the Court held that the sentencing court's "exclusion of *both* [mother's testimony and PSI], without an alternative source of additional information available, was manifestly unreasonable and therefore constituted an abuse of discretion." *Id.* at 513 (emphasis added).

Mr. Broadus claims that his case is "almost completely analogous" to *Mainor*, urging us to hold that the circuit court abused its discretion by denying his PSI and postponement requests. He argues that, as in *Mainor*, the circuit court gave the parties no

advance notice before announcing its intent to sentence him immediately after the verdict, thus "improperly prioritizing the community's interest in closing the case ahead of [his] absolute right to allocution[.]" Mr. Broadus also argues that the court had "a very limited amount of information" at sentencing but ignored the need for a PSI and additional time to gather sufficient mitigating information. We disagree and hold that *Mainor* is distinguishable from the present case.

Here, without needing a PSI or postponement, ample background information about Mr. Broadus was already available at sentencing. During the trial, the State adduced evidence regarding Mr. Broadus' home and drug use there. On the second day, when Mr. Broadus elected not to testify, the court heard information about his education, mental health history, and prior convictions, some of which reflected on his character for truthfulness. With the trial concluding on schedule, Mr. Broadus' mother was able to provide, and did provide, mitigating statements at sentencing. *Cf. Mainor*, 475 Md. at 508 (noting that an unanticipated delay in the trial "preclud[ed] testimony from Mr. Mainor's mother"). The proffer by Mr. Broadus also contained details about his personal history, family and social relationships, substance abuse, and his suffering from Guillain-Barré syndrome. In sum, the circuit court had sufficient background information about Mr. Broadus, including his "reputation, prior offenses, health, habits, mental and moral propensities, and social background." *Id.* at 506 (quoting *Jones v. State*, 414 Md. 686, 693 (2010)).

Given this background information available at sentencing, the circuit court did

not abuse its discretion in turning down Mr. Broadus' PSI and postponement requests. *Compare Mainor,* 475 Md. at 508 (finding abuse of discretion where the court had no information other than the defendant's age and criminal record at the time of sentencing), *with Kelly*, 195 Md. App. at 439 (finding no abuse of discretion in denying a continuance request where the defendant "presented the court with information regarding [his] age, his educational history, his family background, work experience, and family involvement" and his father's mitigating testimony). True, "postponements should be granted liberally to obtain such [mitigating] information, especially where no such information is readily available absent a postponement" and "where the possible conviction is of serious violent crimes carrying lengthy sentences." *Mainor*, 475 Md. at 509 n.5. But here, mitigating information was readily available, Mr. Broadus was acquitted of two murder charges, which his counsel acknowledged as "essentially more serious charges," and his convictions carried mandatory minimum sentences, limiting somewhat the court's ability to individualize his sentence.[14]

Mr. Broadus' failure to justify his PSI and postponement requests further supports our conclusion that the circuit court did not abuse its discretion in denying them. His initial requests came when the court announced its intent to proceed to sentencing

[14] Two of Mr. Broadus' non-merged convictions—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 and illegal possession of a firearm with a disqualifying conviction under Section 5-133(c) of the Public Safety Article — both carry five-year statutory minimum sentences.

immediately after the verdict, yet he offered no explanation for these requests:

> THE COURT: We'll - - We'll convene at, uh, we'll convene in 15 minutes, uh, regarding sentencing. I would - - If there was a motion - - If you have a motion to continue this sentencing, I'd like to hear it now, if anybody does, but it's the Court's predilection to sentence today. We have people who are concerned here today to listen. If there's anything you need to prepare, I would give you that chance perhaps.
>
> [DEFENSE:] Judge, I - - I - - If the family and all wants to make their impact statements, I certainly understand that if they don't want to come back. **Given the - - the nature of the verdict, um, I would like a little bit of time to prepare for, uh, sentencing.**
>
> THE COURT: Well the, um, understanding that but no specific reason given - -
>
> [DEFENSE:] **I'd ask if we could order a Pre-Sentence Investigation**.
>
> THE COURT: **No sir**. Uh, the, um, the - - We'll convene at, uh, at 3:55 in this matter.

(emphasis added).

Mr. Broadus' subsequent requests for a postponement and a PSI did not fare better, as he failed to "effectively communicat[e] the absence of availability of any alternative source of background information." *Mainor*, 475 Md. at 505–06; *see also Kelly*, 195 Md. App. at 439 (noting that the defendant failed to identify information that he was unable to present due to the denial of postponement). In support of these requests, Mr. Broadus only cited his desire to incorporate victim impact statements into the PSI and to "have proper time to prepare [his] family." Having already received and reviewed the impact statements, the circuit court reasonably concluded that a PSI or a postponement was unnecessary. *See Mainor*, 475 Md. at 508 (acknowledging that the gathering of additional background information "may be unnecessary [where] the court

had previously received the information").

Mr. Broadus maintains that the denial of the PSI and postponement requests was an abuse of discretion because it prevented him from presenting details regarding his Guillain-Barré syndrome and his having been shot seven times prior to his arrest. We disagree. Though Mr. Broadus knew about his own Guillain-Barré syndrome and gun violence experience, he never mentioned them as grounds for his PSI and postponement requests. If Mr. Broadus believed that this information was important for fashioning his sentence, it was incumbent upon him to bring it to the court's attention; he did not do so.

Further, despite the denial of his PSI and postponement requests, Mr. Broadus had the opportunity to provide additional details about his Guillain-Barré syndrome and gun violence experience before sentencing. During his allocution, he detailed his history with Guillain-Barré syndrome, its debilitating symptoms, and its impact on his life.

> First off, I want to say I'm sorry for what happened to Disney. Um, I want to say Guillain-Barr[é] syndrome is also a nerve - - a nerve symptom which is to the brain and to the back of your neck. I almost loss [*sic*] my life fighting that disease getting hit in the head before. Um, I was in the hospital paralyzed. Um, I've been through a lot of trauma all - - all my life but, um, I just - - I just, um, wish everything would have turned out differently that night. That's all I'd like to say.[15]

[15] In similar terms, Mr. Broadus' reply brief describes Guillain-Barré syndrome, providing that it is a neurological disorder which could result in paralysis and hospitalization:

> Guillain-Barr[é] (gee-YAH-buh-RAY) syndrome is a rare disorder in which your body's immune system attacks your nerves. Weakness and tingling in your hands and feet are usually the first symptoms. These sensations can quickly spread, eventually paralyzing your whole body. In its most severe
>
> (Cont'd. . .)

Similarly, Mr. Broadus acknowledged and supplemented the State's proffer that he had been hospitalized after being shot seven times in Washington, D.C. prior to his arrest.

> THE COURT: . . . The [c]ourt has a question for the State and that is, what are the circumstances of his apprehension?
>
> [THE STATE:] Your Honor, my understanding that Mr., um, that Mr. Broadus went down to - - down to the District of Columbia. I do not know why. Uh, he was assaulted in the District of Columbia, was shot six times.
>
> [MR. BROADUS]: Seven.
>
> THE COURT: He - - He was shot?
>
> [THE STATE:] He was shot seven times.
>
> THE COURT: Okay. Thank you.
>
> [THE STATE:] He was shot seven times and while he was in the hospital, he was located by Sergeant Weaver. That's how.

As such, we find no merit in Mr. Broadus' claim that the circuit court deprived him of his right to present mitigation.

In sum, Mr. Broadus failed to make a clear showing that the circuit court abused its discretion. *Mainor*, 475 Md. at 499. The court's denial of Mr. Broadus' PSI and postponement requests will remain undisturbed.

Improper Sentencing Consideration

Mr. Broadus also challenges the circuit court's comments and remarks during sentencing, claiming that they demonstrate the court's "predisposition to sentence [him]

> form Guillain-Barr[é] syndrome is a medical emergency. Most people with the condition must be hospitalized to receive treatment.

for the firearm crimes without regard to a tailored and individualized sentence." As we understand his claim, Mr. Broadus points to three categories of comments made by the circuit court: *one*, those concerning his residence, in which the court referred to it as a "hive of activity" and remarked that it heard Mr. Broadus' apartment address "far too often;" *two*, those regarding activities at the residence, such as "uncharged crimes;" and *three*, those regarding his firearm-related charges, such as calling the firearm "the devil's right hand" and stating that those charges "should be quadruple counted."

As a preliminary matter, the State contends that Mr. Broadus' argument is not preserved for our review, and we agree. For all rulings and orders other than evidentiary ones, an objection must be made "at the time the ruling or order is made or sought." Md. Rule 4-323(c). Unless a defendant timely objects that the court relied upon impermissible sentencing considerations, such claim is waived. *Reiger v. State*, 170 Md. App. 693, 700–01 (2006), *cert. denied*, 397 Md. 397 (2007); *Rudder v. State*, 181 Md. App. 426, 476 (2008). Because Mr. Broadus raised no objection during or after the circuit court's announcement of sentence, nothing is preserved for our review.

Relying on *Reiger*, 170 Md. App. at 702, Mr. Broadus claims that he was "reluctant to interpose an objection out of an abundance of caution that it might affect the sentence about to be imposed," but we remain unpersuaded. In *Reiger*, we held that the defendant waived his claim about the court's having considered something impermissible at sentencing, noting that he failed to object at sentencing despite having "ample opportunity to do so." 170 Md. App. at 702. Likewise, here, while the circuit court was

making the comments that Mr. Broadus now challenges on appeal, he did not object to any of them. Moreover, although Mr. Broadus filed a series of post-trial motions after sentencing, i.e., at a time that he could no longer be concerned about the impact such objections might have on a yet-to-be-imposed sentence, at no point did he challenge the court's consideration of impermissible factors.[16] *See id.* (noting the defendant's failure to object to the sentencing court's comments "after the court ruled at the hearing, or on motion for reconsideration"). Therefore, the issue was not preserved.

But even if the issue had been preserved, Mr. Broadus would not fare any better. A sentencing court has "virtually boundless discretion in devising an appropriate sentence," *Cruz-Quintanilla v. State*, 455 Md. 35, 40–41 (2017) (citation omitted). The court may also "consider the perspective of the victim, the community, and other factors, including any personal knowledge the judge may have gained from living in the same community as the offender." *Ellis v. State*, 185 Md. App. 522, 557–58 (2009) (cleaned up). Of course, the court must not be "motivated by ill-will, prejudice or other impermissible considerations." *Jackson v. State*, 364 Md. 192, 200 (2001).[17] At sentencing, a defendant

[16] Mr. Broadus filed the following post-trial motions: (1) Motion for New Trial, filed May 19, 2023; (2) Application for Review of Sentence, filed June 9, 2023; and (3) Motion to Modify Sentence, filed June 14, 2023. None of these post-trial motions alleged that the court considered impermissible factors.

[17] Under Maryland law, there are only three grounds for our review of a sentence: (1) whether the sentence violates constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence is outside statutory limits. *Gary v. State*, 341 Md. 513, 516 (1996). This appeal only involves the second ground.

is entitled to not only actual fairness and impartiality, but also to the appearance of fairness and impartiality. *Mainor*, 475 Md. at 517.

When a sentencing court's comments could lead a reasonable person to question the court's impartiality, such comments constitute an abuse of discretion, amounting to sentencing based on impermissible sentencing criteria. *Jackson*, 364 Md. at 208. When a defendant complains about the court's comments, "[w]e do not review these comments in isolation; rather, we review the entirety of the [court's] comments at sentencing and consider the challenged comments in that context." *Ellis*, 185 Md. App. at 552.

Jackson illustrates what comments may exceed the "outer limit" of the sentencing court's broad discretion. 364 Md. at 195. There, the court made the following remarks at sentencing:

> Now, unfortunately, a number of communities in the lovely city of Columbia have attracted a large number of rotten apples. Unfortunately, most of them came from [Baltimore City]. And they live and act like they're living in a ghetto somewhere. And they weren't invited out here to behave like animals . . . . [G]oing to somebody—going out of the way to go to somebody else's house and confront people with sawed-off shotguns is what they do in the city. That's why people moved out here. To get away from people like Mr. Jackson. Not to associate with them and have them follow them out here and act like this was a jungle of some kind. So. It's not.
>
> […]
>
> Civilized people are not on the roads at 3:30 in the morning, confronting other people with sawed-off shotguns. Civilized people don't own sawed-off shotguns.

Jackson, 364 Md. at 197–98 (cleaned up). Despite the court's comments, there was no evidence in the record that the defendant was from Baltimore City. *Id.* at 201 n. 7.

Therefore, our Supreme Court reasoned that the court's comments could give rise to a reasonable impression that the severity of its sentence depended "on something beyond the facts and circumstances of the crime and the background of petitioner —specifically . . . on a belief that petitioner was from Baltimore City." *Id.* at 198. Likewise, our Supreme Court noted that the sentencing court's use of terms like "ghetto," "jungle," and "animals," could lead a reasonable person to draw an inference that the defendant was "improperly sentenced by the sentencing judge in part because of his being an African-American." *Id.* at 202.

Here, unlike in *Jackson*, the challenged comments on Mr. Broadus' address (and its nearby area) do not indicate that the circuit court considered anything "beyond the facts and circumstances of the crime" for sentencing. *Id.* at 201. At trial, the court heard testimony regarding Mr. Broadus' initial encounter with Mr. Disney and Ms. Peters at a gas station, drug activities at his apartment that night, and the shooting of Mr. Disney in the same apartment the next morning. At sentencing, the circuit court recounted its understanding of the case:

> But it's five in the morning, everybody involved appears to have been using drugs, and then in the - - in that crucible at [omitting number] East Franklin Street, uh, events like this are almost inevitable. You start [omitting number] East Washington Street, uh, which this [c]ourt hears that address far too often.[18]

[18] Here, the circuit court mentioned two different addresses: Mr. Broadus' apartment on East Franklin Street and an East Washington Street address, where the events leading up to the shooting "start[ed]." It was the East Washington Street address, not Mr. Broadus' apartment, that the court commented on hearing "far too often." After (Cont'd. . .)

Thus, in making these comments, the court permissibly relied upon "perceptions derived from evidence presented at the trial." *Lambert v. State*, 209 Md. App. 600, 605 (2013) (citation omitted).

The circuit court's comments referring to Mr. Broadus' apartment as a "hive of activity" also do not suggest impermissible consideration of his residence in sentencing. The first "hive of activity" comment came on the second day of the trial, as the trial court expressed its concern that Ms. Peters' (unchallenged) testimony regarding drug use at Mr. Broadus' apartment might be used against him:

> [T]here has already been an admission that there was a hive of criminal activity ongoing in that - - in that location absent the, um, the homicide and absent the possession, the illegal possession of the weapon prior to because, uh, the only witness that has testified so far, and there may be other witnesses, says that there was hours of drug use in there. And the cases that I was concerned about that the [c]ourt was anticipating is where the - - where there are independent criminal reasons for flight.

The circuit court again mentioned "hive of activity" during sentencing after Mr. Broadus argued that his first- and second-degree assault convictions should merge into his voluntary manslaughter conviction "in terms as applied to the facts in this case." Addressing his merger argument, the circuit court stated:

> **Then there's a whole bunch of uncharged crimes that were happening that you're not going to get punished for, which is the drug use and all the comings and goings on that place at [omitting number] East Franklin**

sentencing, the court issued a probation order that prohibited Mr. Broadus from entering the East Washington Street address, again noting, "That's where these folks met." Mr. Broadus met Mr. Disney and Ms. Peters at a gas station in Hagerstown, indicating that the court's comments on the East Washington Street address likely referred to the gas station's location.

> **Street. It looked like a hive of activity. Uh, and I'm a firm believer that, you know, people are - - are, call me old-fashioned, but not a lot good happens after midnight before the sun comes up. Because there's an awful lot of activity coming and going there that everybody was involved in.**
>
> So we get on to the events of the early morning. And the [c]ourt believes there is, uh, great credence, um, to the comments that the - - the events that happened there, uh, really boiled down into a - - a series that happened over seconds.
>
> So the [c]ourt will merge the, um, second-degree assault into the first-degree assault and will merge, not under the *Blockburger* test, but under the - - the idea that it is all one event under fundamental fairness, that count into 10 years for the crimes of violence that happened there.

(emphasis added). The court then merged Mr. Broadus' first- and second-degree assault convictions into his voluntary manslaughter conviction, for which he had already received a 10-year sentence. Since the merger resulted in an overall *lower* sentence, we see no reasonable inference that Mr. Broadus' sentence was more severe because of where he lived.

Likewise, the circuit court did not abuse its "virtually boundless discretion" when it commented on "uncharged crimes" and other activities at Mr. Broadus' apartment. *Cruz-Quintanilla*, 455 Md. at 40 (citation omitted). In full context, the circuit court stated, "there's a whole bunch of uncharged crimes . . . that you're not going to get punished for," thus disavowing any consideration of those activities. *See Holmes v. State*, 209 Md. App. 427, 460 (2013) (noting that the sentencing court's statement that it "do[es]n't talk about negotiations" indicates its refusal to consider any pre-trial discussions). In any event, considering those activities is not an abuse of discretion, as the

sentencing court "may properly consider uncharged or untried offenses." *Martin v. State*, 218 Md. App. 1, 45 (2015) (citation omitted).

Finally, in challenging the circuit court's comments on his firearm-related offenses, Mr. Broadus "makes no allegation that there was a characteristic of, or fact about" him that the court impermissibly relied upon. *Ellis*, 185 Md. App. at 557. The challenged comments, including that the firearm-related convictions should be "quadruple counted," imply the court's view on Mr. Broadus' offenses, not on "an impermissible factor *regarding appellant*, such as appellant's race or origin." *Id.* (emphasis in the original). "A court has a power to impose whatever sentence it deems fit as long as it does not offend the constitution and is within statutory limits as to maximum and minimum penalties," *Malee v. State*, 147 Md. App. 320, 335 (2002) (citation omitted). Mr. Broadus was sentenced to 15 years, all but eight years suspended for his possession of a firearm with a disqualifying conviction, and to 20 years for the use of a firearm in the commission of a crime of violence, both sentences being within the statutory maximum. Md. Code Ann., Pub. Safety § 5-133(c)(2) (15-year maximum sentence for possession of a firearm with disqualifying conviction); Md. Code Ann., Crim. Law § 4-204(c)(1)(i) (20-year maximum sentence for use of a firearm in the commission of a crime of violence).

The context dispels any lingering notion that the court's comments were motivated by ill-will or prejudice. At sentencing, Mr. Broadus argued that the sentencing guidelines "double counted" the use of a firearm as an aggravating factor when a firearm is used in

voluntary manslaughter, which Mr. Broadus claimed was the "flagship crime" of this case. Later, in addressing Mr. Broadus' argument, the circuit court stated:

> The [c]ourt is not buying all this double counting and how many times can you count a handgun? You know, a lot. It should be double counted. It should be quadruple counted . . . The flagship crime here is the crime where this defendant elected to possess a firearm at all. That is the flagship crime. He has been prohibited from owning or possessing a firearm, period. This legislature has banned him from that, even in his own home.
>
> […]
>
> So when you had him down, you didn't have to pull the trigger . . . again, because the firearms are the flagship charge here. I want everybody to understand that. The devil's right hand. 20 years consecutive, first five years without the possibility of parole.

Again, the circuit court's comments only reflected its "perceptions derived from evidence presented at the trial." *Lambert*, 209 Md. App. at 605. While Mr. Broadus may disagree with the comments, they were by no means "purely speculative [or] based on no facts whatsoever." *Mainor*, 475 Md. at 516. The circuit court's comments on Mr. Broadus' firearm offenses did not go beyond the scope of its discretion.

For these reasons, Mr. Broadus' challenge to the circuit court's comments at sentencing was not properly before us, and even if it were, his arguments lack merit.

Commitment Record

As his final claim of error, Mr. Broadus challenges a portion of his current commitment record showing his sentence for possession of a firearm with a disqualifying

conviction was consecutive to the other sentences.[19] Relying on *Nelson v. State*, 66 Md. App. 304, 314–15 (1986), Mr. Broadus argues that the record is unclear as to whether his sentences were "meant to run concurrently or consecutively with each other," so we should construe his sentences as concurrent. He further argues that, by listing his sentences as consecutive, the commitment record amounted to an illegal sentence.

A sentence is not rendered illegal by an error in the commitment record. Md. Rule 4-351(b) ("An omission or error in the commitment record . . . does not invalidate imprisonment after conviction."); *see also Bratt v. State*, 468 Md. 481, 506 (2020) (noting that an omission of necessary information in a commitment record "only warrants correction to the commitment record, not the pronounced sentence"). A commitment record, just like a docket entry, is an "administrative document prepared by a clerk," not a court order. *State v. Bustillo*, 480 Md. 650, 686 (2022). Even if Mr. Broadus' current commitment record does not match the sentences announced on the record (here, it matches), his proper remedy is to file a motion to correct the commitment record. *Howsare v. State*, 185 Md. App. 369, 398 (2009). Therefore, Mr. Broadus' claim of illegal sentence fails.

At any rate, the commitment record is correct: Mr. Broadus' three sentences were

[19] Mr. Broadus' current commitment record was entered on May 23, 2023, superseding the prior record, which incorrectly stated that his sentence for use of a firearm in the commission of a crime of violence was consecutive to the sentence for second-degree murder, a charge of which Mr. Broadus was acquitted. Mr. Broadus' arguments here are directed at his current commitment record.

to be served consecutively. At the end of the hearing, the circuit court began with sentencing Mr. Broadus to fifteen years, all but eight years suspended, for his possession of a firearm with a disqualifying conviction (Count 8), noting that this sentence is "the first one to be served," then to ten years for voluntary manslaughter (Count 11), and, finally, to 20 years for use of a firearm in the commission of a crime of violence (Count 5).[20]

> THE COURT: Count eight, 5-133 (c). And that crime, uh, is the - - is the - - is one of the crimes that set this in motion, so it gets a separate penalty and, uh, it existed regardless of whether this manslaughter happened or not.
>
> **The sentence in that matter is - - in that count is the first one to be served because it's the first one that happened in time according to the facts as found.** And the sentence for that - - that matter is 15 years, uh, and the - - We look at the specific guidelines for that crime, uh, that count. The guidelines for that count alone are six years to 12 years. The [c]ourt imposes 15 years and suspends all but eight years on that crime. The first five years to be served without the possibility of parole. That crime was happening whether you pulled the trigger or not.
>
> […]
>
> THE COURT: And then there is the use of a firearm in the commission of the crime of violence. That is a misdemeanor. What's the maximum pen - - The maximum 15 years, first five years without or maximum of 20 years?
>
> [THE STATE:] 20 years, first five without. I'm sorry, your Honor, the 10 years was for what?
>
> THE COURT: The 10 years is for manslaughter.
>
> [THE STATE:] Okay, thank you.
>
> **THE COURT: The 10 years is for manslaughter and for - - the [c]ourt**

[20] Mr. Broadus concedes that the sentences for Count 5 and Count 11 are consecutive to each other.

is - - is merging under fundamental fairness, uh - -

[THE STATE:] The first-degree assault.

THE COURT: The first-degree, second-degree into the voluntary manslaughter.

[THE STATE:] Is that count - -

THE COURT: Consecutive.

[THE STATE:] Consecutive. Thank you.

THE COURT: And so in the use of a handgun in the commission of a crime of violence is, the maximum penalty is 20 years? Or 15? I'm asking you, [the State]?

[THE STATE:] Yes it is.

THE COURT: Which - - Which is it? 20 years or 15?

[THE STATE:] I'm sorry. It's 20 years.

THE COURT: Okay.

[THE STATE:] Yes.

THE COURT: So when you had him down, you didn't have to pull the trigger. (Unintelligible) wait for that, again, because the firearms are the flagship charge here. I want everybody to understand that. The devil's right hand. 20 years consecutive, first five years without the possibility of parole.

(emphasis added). Mr. Broadus does not challenge the transcript's accuracy.

Because the circuit court stated, without ambiguity, that the sentence for possession of a firearm with a disqualifying conviction (Count 8) "was the first one to be served," *Nelson* is inapposite. *Nelson*, 66 Md. App. at 309 (noting that the court did not state whether the sentences imposed were consecutive or concurrent). We see no error in Mr. Broadus' current commitment record.

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