Circuit Court for Baltimore City
Case No. 119254013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1060

September Term, 2021

DONALD L. RICHARDSON, JR.

v.

STATE OF MARYLAND

Graeff,
Leahy,
Ripken,

JJ.

Opinion by Graeff, J.

Filed: August 17, 2022

On September 13, 2021, a jury in the Circuit Court for Baltimore City convicted appellant, Donald L. Richardson, Jr., of second-degree assault and reckless endangerment. On the same day, the court sentenced appellant to ten years' imprisonment for the conviction of second-degree assault and five years, consecutive, for the conviction of reckless endangerment.

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

1. Was the evidence legally sufficient to support appellant's conviction of second-degree assault?
2. Did the circuit court abuse its discretion in declining to give a jury instruction on voluntary intoxication?
3. Did the circuit court abuse its discretion when it prevented appellant from testifying about the continuing effect of a drug he ingested two days prior to the assault?
4. Did the circuit court base its sentences on impermissible considerations?

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

FACTUAL AND PROCEDURAL BACKGROUND

On August 13, 2019, Harold McCray was assaulted at his workplace, the Cylburn Arboretum, located in Baltimore City, Maryland.[1] Appellant subsequently was charged with first-degree assault, second-degree assault, reckless endangerment, and use of a dangerous weapon with intent to injure.

[1] Throughout the transcripts, Cylburn is occasionally spelled "Clyburn."

At trial in September 2021, Officer Jahmoor Acosta, a patrol officer for the Baltimore City Police Department, testified that, on August 13, 2019, he responded to a call that a patient had eloped from the psychiatric ward of Sinai Hospital. Officer Acosta eventually located the patient, who was already in the custody of another officer, in Cylburn Arboretum, across the street from the hospital. The patient, who was later identified as appellant, did not have a shirt on, and he looked "very sweaty," like he had been running around. Officer Acosta transported appellant back to the hospital. Officer Acosta observed that appellant had urinated on himself.

Edward Miller, an employee for the Baltimore City Recreation and Parks who worked at Cylburn Arboretum, testified that, on the day of the incident, he observed a "well-built" black man in the morning walking around the Arboretum, completely naked. Appellant came up to the glass door of the Arboretum and asked to use Mr. Miller's cell phone, but Mr. Miller declined. Mr. Miller called 911 to report that there was a man at the Arboretum "'walking around and harassing [the] employees.'" Mr. Miller subsequently saw appellant in police custody wearing a pair of sweatpants.

Melissa Grim, a Baltimore City Recreation and Parks employee who worked at the Cylburn Arboretum, testified that, when she arrived at work in the morning of the day of the incident, she received a report that "there was a naked man on the property." Thereafter, Ms. Grim observed a well-built, young man wearing sweatpants and no shoes. She called the police to report what she had seen. Ms. Grim called the police a second time when she observed appellant pick up a pitchfork while wandering about in the Arboretum.

Shortly thereafter, Ms. Grim saw Mr. McCray, battered and on the ground, close to one of the buildings in the Arboretum.

Mr. McCray, who was 74 years old at the time of the incident, testified that he worked as a city farms manager for Baltimore City. His office was located on the second floor of the Cylburn Arboretum. On August 13, 2019, Mr. McCray got to his office at approximately 7:15 a.m. He saw a police officer, who informed him that there was someone on the premises who had eloped from Sinai Hospital. Mr. McCray walked out of his office at approximately 8:00 a.m. holding his briefcase, which contained his coffee mug, when he observed a "muscular" man, who was approximately six feet tall, on the landing of the second floor. Appellant was almost nude with "what looked like a curtain" covering his mid-section. Mr. McCray described what happened afterwards:

> I asked him "Are you trying to get out of the building?" And his response was "Oh, I'd much rather go up to see the tower."[2] Well, I froze and I said "I can show you how to get out of the building. There's no exit upstairs." So his response to me was "I'm not going to hurt you" so we started going down the steps and before we can get out the building he had attacked me with my coffee mug that was in my bag.

As Mr. McCray was being attacked by appellant, he struggled to get out of the door. He eventually opened the door and fell on the ground of the front patio of the building, at which point appellant started hitting him in his face and head until Mr. McCray lost

[2] Mr. McCray explained that "[t]he tower is the top floor of the [Arboretum] and there's really nothing up there."

consciousness. Appellant hit him with his mug at least four times.[3] When Mr. McCray hit the ground, his car keys fell out of his briefcase, and appellant took the keys.

At some point, Mr. McCray regained consciousness and dragged himself under a tree. He then observed two people walking past and mumbled to them that he had just been attacked and needed help. Mr. McCray was subsequently transported to Sinai Hospital, where he underwent several surgeries. His injuries included an ocular fracture to his left eye, a dislocated and fractured shoulder, bruising on his rib cage, and an abrasion on his head. At trial, he testified that he still suffered from the injuries he sustained:

> [T]he trauma to my eye caused me to have an outbreak of shingles and so I had extraordinary pain in the eye. . . . I have severe dry eyes that requires using compresses twice a day, warm compresses twice a day and specialized medicine. I also had a scratched cornea that required specialized medicine so that the cornea could heal and that worsened my glaucoma so that nerve damage that were caused by the glaucoma was worse. . . . [A]lso there was a tube that was placed for draining the eye because of the surgery and that affected my tastebuds and also my sense of smell.

After four months of physical therapy, he had permanent nerve damage that limited the mobility in his arm. Moreover, as a result of the incident, he started seeing a psychiatrist and a therapist, and he retired completely from his work.

Officer Thomas Johncox, a patrol officer for the Baltimore City Police Department, testified that, on August 13, 2019, he responded to a call by Sinai Hospital security about an eloped patient, who was later identified as appellant. The caller informed Officer

[3] State's Exhibit 11, a photograph of Mr. McCray's coffee mug, showed that the coffee mug had multiple dents. Mr. McCray testified that the coffee mug did not have any dents when he arrived at the Arboretum.

Johncox that appellant had run across the street to Cylburn Arboretum, so Officer Johncox arrived there to canvass the area. He saw appellant and took him into custody "without incident."

There was blood on appellant's body, but no visible injuries. Appellant was then placed with Officer Acosta for transport. Mr. Miller informed Officer Johncox that there was an injured person on the premises whom Officer Johncox later identified as Mr. McCray. Officer Johncox described Mr. McCray as "badly disfigured." He stated: "[Mr. McCray] looked like his face was disfigured. He had [] blood all over his face. He looked like he was beaten to a pulp. Looked like someone tried ripping off part of his face like he had deep lacerations. Just blood everywhere." Officer Johncox called for an ambulance, and Mr. McCray was transported to Sinai Hospital.

Kevin Colter, a Baltimore City crime laboratory technician, testified that he responded to Sinai Hospital on the day of the incident. Mr. Colter took pictures of appellant and Mr. McCray. Mr. Colter did not observe any visible injuries on appellant, although, he spotted blood on appellant's body. Appellant had a quiet, nonengaging demeanor when Mr. Colter was taking appellant's pictures. Mr. Colter then went to Cylburn Arboretum to take pictures of the surroundings. He took pictures of Mr. McCray's coffee mug and other items that had "suspected blood" on them.

At the end of the State's case, appellant made a motion for judgment of acquittal on all charged counts, without offering any argument in support thereof. The circuit court denied the motion.

Appellant testified in his defense. Prior to his testimony, the State made a motion in limine to preclude appellant from testifying "as to not being responsible because of any mental illness or previous hospitalization." The court granted the motion, stating that such testimony was improper without expert testimony.

Appellant testified that he was 31 years old. Counsel asked why he was at Sinai Hospital on the day of the incident, but before appellant could answer, the prosecutor objected, and a bench conference commenced. Defense counsel argued that testimony surrounding appellant's drug ingestion on August 11 that led him to Sinai Hospital was relevant to show that he was voluntarily intoxicated at the time of the incident on August 13, 2019. The circuit court stated that an expert was required to establish that appellant's alleged intoxication "two days earlier . . . could carry forward." The court stated that an expert was required to testify regarding the effect of the drug on appellant. If appellant wanted testimony that he took a drug and his actions two days later were "connected to that," an expert was required.

After further discussion, the circuit court ruled that appellant could testify, consistent with counsel's proffer, that after he ingested a drug, he felt sick and called for medical assistance. The Maryland Transit Administration Police ("MTA Police") transported appellant to Sinai Hospital and petitioned the Baltimore City District Court for appellant's commitment to Sinai Hospital. The court noted that the State had elicited testimony from its witnesses that appellant eloped from the psychiatric ward of Sinai Hospital, and therefore, the court would allow testimony about appellant's drug

intoxication.[4] The court confirmed that defense counsel was allowed to ask appellant "about why he was at the hospital in terms of taking the [ecstasy]."[5]

Appellant testified that, on August 10, 2019, he called 911 after ingesting ecstasy and subsequently falling in and out of consciousness.[6] Appellant was transported to Sinai Hospital, where he was "in and out of sleep." When he woke up on August 13, 2019, and learned what day it was, he told the hospital staff that he had to leave to report to Guilford Avenue. The hospital staff told appellant that he could not leave without seeing a doctor. Appellant then went to a door with a fire alarm and pushed the fire alarm. The door opened, and appellant ran out of the hospital. He initially hid in the woods, and then he went to Cylburn Arboretum.

Appellant saw Mr. McCray and asked Mr. McCray to help him get past the police to get to Guilford Avenue. Mr. McCray said no, that the police were looking for him, and he needed to go back to the hospital. Mr. McCray then grabbed his hand and said that he was going to call the police. Appellant "felt like [Mr. McCray] was trying to hold [him] in there until the police came," so appellant "assaulted him to get away." He punched Mr.

[4] The court noted that, at that point, no one had requested an instruction on voluntary intoxication.

[5] The drug was referred to as Molly, the street name for ecstasy. *Ecstasy or MDMA (Also Known as Molly*), United States Drug Enforcement Administration, https://www.dea.gov/factsheets/ecstasy-or-mdma-also-known-molly, available at https://perma.cc/4DGD-EFG2 (last visited Aug. 11, 2022).

[6] Other evidence indicated that the date was August 11, 2019.

McCray in the head and face and ran outside. Appellant denied hitting Mr. McCray with a mug.

Once outside, he went to the green house and told people working there to call the authorities and tell them that he was tired of running. He then sat on the ground to wait for the police because he did not want them to think he was aggressive and "tase" him. The police then arrested appellant and took him back to the hospital. Appellant testified that, while he was in the police car, he was silent and "paranoid like [he] didn't want nobody to get close to [him]."

While in the police car, he urinated on himself. Appellant was held in the psychiatric ward of Sinai Hospital for two days following his arrest.

At the conclusion of all the evidence, defense counsel again moved for a judgment of acquittal. With respect to second-degree assault, counsel argued that, based on appellant's testimony that his intent was to leave as opposed to assaulting Mr. McCray, the "general intent that . . . would be required for that count . . . [was] not present."

The court denied the motion for judgment of acquittal with respect to the charge of second-degree assault, but it granted judgment of acquittal on the charge of carrying a dangerous and deadly weapon openly with the intent to injure. The court stated that there was no scientific or forensic evidence that tied the coffee mug to appellant, and Mr. McCray did not testify that he was struck with the coffee mug.[7]

[7] We note that Mr. McCray did testify that appellant hit him with his mug.

The jury found appellant not guilty of first-degree assault, guilty of second-degree assault, and guilty of reckless endangerment. As indicated, the court sentenced appellant to a total of 15 years.

This appeal followed.

DISCUSSION

I.

Sufficiency of the Evidence

Appellant contends that the evidence was not sufficient to support his conviction for assault in the second degree. He asserts that, when he punched Mr. McCray, his intent was not to harm him, but only "to get away from [Mr. McCray's] grasp."

The State contends that the evidence was sufficient to support appellant's conviction of second-degree assault. It asserts that specific intent to injure is not an element of second-degree assault predicated on a battery, which is a general intent crime. Moreover, the State argues that the jury could rationally infer that appellant "intended the natural results of his actions when he viciously beat the victim."

The Court of Appeals has set forth the applicable standard of review in determining the sufficiency of the evidence, as follows:

> The sufficiency of the evidence is viewed in the light most favorable to the prosecution. *Corbin v. State*, 428 Md. 488, 514 (2012) (internal citations omitted). "[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . 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." *Smith v. State*, 415 Md. 174, 184 (2010) (emphasis in original). The purpose of our review is not to engage in a "review of the record that would

> amount to, in essence, a retrial of the case." *Titus v. State*, 423 Md. 548, 557 (2011). As such, the appellate court does not "re-weigh" the credibility of witnesses or attempt to resolve any conflicts in the evidence. *Fuentes v. State*, 454 Md. 296, 307–08 (2017).
>
> We do, however, assess "whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged[.]" *White v. State*, 363 Md. 150, 162 (2001) (internal citations omitted). Although circumstantial evidence alone is sufficient to support a conviction, "the inferences . . . must rest on more than mere speculation or conjecture." *Smith*, 415 Md. at 185. Those inferences must "afford the basis for an inference of guilt beyond a reasonable doubt." *Id.* (internal citations omitted).

State v. Morrison, 470 Md. 86, 105–06 (2020) (parallel citations omitted).

Md. Code Ann., Crim. Law Art. ("CR") § 3-203(a) (2021 Repl. Vol.), provides: "A person may not commit an assault." "'Assault' means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." CR § 3-201(b). "Under Maryland common law, an assault of the battery variety is committed by causing offensive physical contact with another person." *Nicolas v. State*, 426 Md. 385, 403 (2012).

Here, appellant testified that he punched Mr. McCray in his head and face. Witnesses testified, and pictures of Mr. McCray after the assault showed, that Mr. McCray's face was bloodied and disfigured.

Appellant's argument that the evidence was insufficient to support his conviction because he did not intend to harm Mr. McCray fails for two reasons. First, second-degree assault is a general intent crime that requires only the intent "to do the immediate act with no particular, clear or unidentified end in mind." *Thornton v. State*, 397 Md. 704, 738

(2007). *Accord Johnson v. State*, 223 Md. App. 128, 147, *cert. denied*, 445 Md. 6 (2015). Thus, it is irrelevant whether appellant meant to harm Mr. McCray. Second, the jury was free to disregard appellant's testimony in this regard. The evidence was sufficient to support appellant's conviction of second-degree assault.

II.

Jury Instruction

Appellant contends that the circuit court abused its discretion in declining to give a requested jury instruction on voluntary intoxication. He asserts that he met his burden of producing evidence of voluntary intoxication by establishing that he ingested ecstasy two days earlier, that he was hospitalized as a result, that he "exhibited unusual behavior and . . . experienced blacking out and urinary incontinence."

The State contends that the circuit court "properly exercised its discretion in declining to give a jury instruction on voluntary intoxication." It argues that this instruction was not generated by the evidence presented at trial, and therefore, "the court properly determined that the instruction was not applicable to the facts of this case." Because appellant failed to call an expert to testify that, at the time of the incident, appellant was affected by the ecstasy, "there was no evidence from which the jury could rationally conclude that [appellant] was still intoxicated two days after ingesting ecstasy," and "there was no evidence that he was so intoxicated that he could not form a criminal intent." Moreover, the State argues that, even if the court erred in failing to give this instruction,

the error was harmless because appellant was convicted only of crimes for which the defense of voluntary intoxication was inapplicable.

A.

Proceedings Below

Defense counsel requested an instruction on voluntary intoxication, arguing that, based on the evidence that appellant ingested ecstasy, called 911 based on how he was feeling afterward, and was committed to the psychiatric ward of Sinai Hospital, the jury could infer that appellant was voluntarily intoxicated at the time of the incident. The State argued against giving that instruction, asserting that appellant's testimony that he took the drug on August 10, approximately three days before the incident at issue, did not show that he was voluntarily intoxicated on the day of the incident. Counsel stated that appellant

> testified that he woke up that morning; that he realized where he was. He realized he needed to be somewhere, so he purposely left Sinai; that he went to Cylburn Arboretum; and that he was intending to elude the police; . . . and then he testified to assaulting Mr. McCray. He was aware of all of his actions that day. His actions that day, his own testimony show[ed] that he had the ability to . . . have intent at the incident.
>
> Additionally, there[] [had] been no testimony as to, outside of the fact that he was out of sorts, there[] [had] been no testimony as to his demeanor that would indicate that he was so intoxicated that he could not form specific intent.

Defense counsel argued in response that there was testimony that appellant "blacked out" on August 10 and that appellant urinated on himself while in police custody on August 13. With respect to the State's argument regarding the elapsed time, counsel stated that appellant remained "in the custody of the hospital for the duration of four days, and on the

date of the allegation or incident in question, there [was] evidence . . . of [appellant's] incontinence, [his] [] flat demeanor."[8] Counsel concluded that the jury could reasonably infer from the evidence that appellant was "still under the influence of the [ecstasy] that he ingested for the duration of the four day period or five day period."

The circuit court denied appellant's request for a jury instruction on involuntary intoxication. The court noted appellant's testimony that he ingested a drug that made him feel sick, and he then called for medical care. It stated that the fact that the MTA Police obtained an involuntary commitment for appellant to be placed at Sinai Hospital did not "establish, at the time, intoxication." Although it meant that appellant was committed because he had "issues," those issues had not been presented to the court. Other than appellant's own testimony, there were no medical records or other information that was presented to explain appellant's commitment to the hospital. Additionally, there was no evidence that the drug made appellant intoxicated. The court stated:

> We then are confronted with the testimony provided by [appellant] that he woke up in a hospital, asked the date, realizing that he had an appointment to be elsewhere, and he figured out a way to disable the locked door by triggering a fire alarm, and then fleeing the hospital. There is no evidence, and I would suggest the evidence weighs heavily to the contrary, that he was completely competent at that time.
>
> And the issue with regard to intoxication has to date all the way back to taking the [ecstasy]. There's no other substance, no alcohol, no nothing, which is suggested would impact [appellant] in such as [sic] way to be able to argue that he was voluntarily intoxicated. He then [in the] interaction with Mr. McCray, combining both their testimonies, McCray says he asked for

[8] Counsel stated that her reference to appellant's flat demeanor referred to the fact that, upon his capture by the police, appellant appeared disengaged.

> help evading the police. He was evading the police because he had another place to be. There's no evidence that he was intoxicated.
>
> And even [counsel's] description that [appellant] was flat . . . doesn't establish [appellant] [was] intoxicated. Quite frankly, it would cause, I think, a reasonable and possibly the only inference that he was obeying and compliant with the police. The video shows [appellant] on the parking lot where essentially he [was] being cooperative before [he] [was] being given any orders.
>
> * * *
>
> If these events had occurred on the date that [appellant] took the [ecstasy], immediately afterwards, but he was in the hospital and slept for two days, and got up, and absconded, and then all of this followed. It was because of his absconding from the hospital and custody of the hospital and his need, the [sic] felt need he had, to go to Guilford Avenue, none of which would be consistent with even a suggestion that [he] [was] intoxicated, and I will not permit the voluntary intoxication issue to be presented to the jury in terms of instructions and, therefore, will not do so.

At the conclusion of the court's jury instructions, defense counsel noted an objection to the court's failure to instruct the jury on involuntary intoxication. The court reiterated its earlier ruling that there was insufficient evidence to establish a basis for such instruction.

B.

Analysis

Maryland Rule 4-325(c) provides that "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." We review the trial court's refusal or grant of a jury instruction using the abuse of discretion standard. *Stabb v. State,* 423 Md. 454, 465 (2011). In determining whether a trial court abused its discretion, we consider the following factors: "'(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable

under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.'" *Bazzle v. State*, 426 Md. 541, 549 (2012) (quoting *Stabb*, 423 Md. at 465).

Defense counsel requested Maryland Criminal Pattern Jury Instruction 5:08, which provides as follows:

> You have heard evidence that the defendant acted while intoxicated by [drugs] [alcohol]. Generally, voluntary intoxication is not a defense and does not excuse or justify criminal conduct. However, when charged with an offense requiring a specific intent, the defendant cannot be guilty if [he] [she] was so intoxicated, at the time of the act, that [he] [she] was unable to form the necessary intent.
>
> A specific intent is a state of mind in which the defendant intends that [his] [her] act will cause a specific result. In this case, the defendant is charged with the offense of (offense requiring a specific intent), which requires the State to prove that the defendant acted with the specific intent to (specific intent). [Voluntary intoxication is not a defense to (offense not requiring a specific intent), (offense not requiring a specific intent), and (offense not requiring a specific intent).]
>
> In order to convict the defendant, the State must prove, beyond a reasonable doubt, that the degree of the intoxication did not prevent the defendant from acting with that specific intent. A person can be [drinking] [taking drugs] and can even be intoxicated, but still have the necessary mental faculties to act with a specific intent.

Md. Crim. Pattern Jury Instr. 5:08 (2d ed. 2012 & Supp. 2021). This is a correct statement of the law.

The trial court, however, declined to give the instruction based on the second requirement, finding that the instruction was not applicable under the facts of the case. A requested jury instruction generally is applicable if the requesting party produces "some evidence" that supports giving the instruction. *Bazzle*, 426 Md. at 550–51.

When a crime requires a specific intent, voluntary intoxication may constitute a defense if the defendant was so intoxicated that he lacked the capacity to form the requisite specific intent. *Wood v. State*, 209 Md. App. 246, 306–07 (2012), *aff'd*, 436 Md. 276 (2013). Voluntary intoxication is not, however, a defense to a general intent crime. *See Newman v. State*, 236 Md. App. 533, 565 (2018) ("[V]oluntary intoxication, no matter how severe, is no defense to a crime requiring a mere general intent. Both depraved heart murder and involuntary manslaughter of the gross criminal negligence variety are mere general intent crimes on which voluntary intoxication would have no erosive effect."). *Accord Harris v. State*, 353 Md. 596, 603 (1999) ("It has long been the law in Maryland that while voluntary intoxication is a defense to a specific intent crime, it is not a defense to a general intent crime.").

Even with respect to specific intent crimes, the evidence must show that the defendant was so intoxicated that he could not form the requisite specific intent. *See Bazzle*, 426 Md. at 555. As the Court of Appeals has made clear, "mere intoxication is insufficient to negate a specific intent." *Id.* at 553. As the Court explained:

> Evidence of drunkenness which falls short of a proven incapacity in the accused to form the intent necessary to constitute the crime merely establishes that the mind was affected by drink so that he more readily gave way to some violent passion and does not rebut the presumption that a man intends the natural consequence of his act.

Id. at 553–54 (quoting *Hook v. State*, 315 Md. 25, 31 n.9 (1989)).[9]

[9] "[T]here is no logical and, therefore, no doctrinal distinction between voluntary intoxication induced by alcohol and voluntary intoxication induced by the use of drugs." *Cirincione v. State*, 75 Md. App. 166, 176, *cert. denied*, 313 Md. 611 (1988).

Here, the only specific intent crime before the jury was first-degree assault, which is comprised of a second-degree assault plus the intent to cause serious physical injury to another. *See* CR § 3-202(b)(1) ("A person may not intentionally cause or attempt to cause serious physical injury to another."). *Accord Snyder v. State*, 210 Md. App. 370, 385–86 ("To raise the offense from second-degree assault to first-degree assault, the State must prove, beyond a reasonable doubt, that the defendant committed a second-degree assault and then prove the additional requirement that the defendant committed the assault . . . with the intent to cause serious physical injury."), *cert. denied*, 432 Md. 470 (2013).

Voluntary intoxication was not generated as a defense here because there was no evidence that appellant was intoxicated to the extent that he could not form the specific intent to cause serious injury to Mr. McCray when he assaulted him on August 13, 2019. Accordingly, appellant did not meet his burden of producing *some* evidence from which the "'jury [could] rationally conclude that the evidence supports the application of'" the defense of voluntary intoxication. *Bazzle*, 426 Md. at 550 (quoting *Dishman v. State,* 352 Md. 279, 292–93 (1998)). The circuit court did not abuse its discretion in declining to give the requested jury instruction on voluntary intoxication.

Moreover, as the State notes, appellant was convicted only of general intent crimes for which voluntary intoxication is not a defense. *See Morgan v. State*, 252 Md. App. 439, 467 (2021) (The "mens rea for second-degree assault is a general intent to harm."); *Holt v. State*, 50 Md. App. 578, 580 (1982) (Battery is a general intent crime.); *Marlin v. State*, 192 Md. App. 134, 163 ("[R]eckless endangerment is merely a general intent crime."),

cert. denied, 415 Md. 339 (2010). Appellant was acquitted on the charge of first-degree assault, which was the only crime for which voluntary intoxication was a defense. Accordingly, even if the court erred in declining to instruct on voluntary intoxication, any error was harmless and does not warrant reversal of appellant's convictions.

III.

Testimony about the Effect of Ecstasy on Appellant

Appellant contends that the circuit court "improperly restricted [his] right to testify and to present his defense" because the court did not permit him to testify as to the continuing effects of the ecstasy he ingested "up to and including on August 13, 2019." He argues that this "arguably impaired his constitutional right to present his defense of voluntary intoxication and interfered with [his] right to due process of law during his trial."

The State contends that the circuit court "properly exercised its discretion in controlling the scope of [appellant's] testimony on an issue that it determined would require expert testimony." It argues that the court was "well within its discretion in determining that the issue of whether ecstasy could cause intoxication two days after ingestion was an area for expert testimony," as opposed to allowing appellant, a lay witness, to make that link. Thus, the State asserts that appellant was not prevented from presenting his defense, but rather, he was only "required to make a portion of [his defense] through an expert."

In any event, the State contends that, even if the court's ruling was erroneous, it was harmless beyond a reasonable doubt because the jury acquitted appellant of the only charge that required specific intent, and therefore, the only offense to which the defense of

voluntary intoxication would have applied.[10] The State concludes, therefore, that "there is no reasonable possibility that the court's ruling contributed to the jury's guilty verdict."

The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, guarantees the right of a criminal defendant to produce his own witnesses and present his defense. *Taneja v. State*, 231 Md. App. 1, 10 (2016), *cert. denied*, 452 Md. 549 (2017). This right, however, does not include a right to offer inadmissible evidence or testimony. *Id*.

"'Generally speaking, the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is clear abuse of such discretion.'" *Tetso v. State*, 205 Md. App. 334, 401 (quoting *Oken v. State,* 327 Md. 628, 669 (1992)), *cert. denied*, 428 Md. 545 (2012). The decision whether to admit a lay opinion is subject to the trial court's discretion. *Rosenberg v. State*, 129 Md. App. 221, 255 (1999), *cert. denied*, 358 Md. 382 (2000). There is an abuse of discretion where the circuit court's decision is "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *Gray v. State*, 388 Md. 366, 383 (2005)).

Maryland Rule 5-701 governs the admissibility of testimony by a lay witness. It provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful

[10] As indicated, the jury acquitted appellant of first-degree assault.

> to a clear understanding of the witness's testimony or the determination of a fact in issue.

Md. Rule 5-701. "'Lay opinion testimony is testimony that is rationally based on the perceptions of the witness[,]'" and typically involves things "'that cannot be described factually in words apart from inferences.'" *Walter v. State*, 239 Md. App. 168, 200 (2018) (quoting *Ragland v. State*, 385 Md. 706, 717–18 (2005)). Lay opinion testimony that a person is drunk or intoxicated may be admissible under the circumstances of a particular case. *Warren v. State*, 164 Md. App. 153, 168–69 (2005). Here, although appellant could have testified that he felt intoxicated at the time of the assault, the trial court was within its discretion in ruling that testimony that any intoxication on August 13, 2019 was caused by the ingestion of ecstasy two days earlier required expert testimony, and appellant could not make that link as a lay witness.

Even if the court erroneously limited appellant's testimony, the error was harmless. An error is harmless if the appellate court is "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."). *Dove v. State*, 415 Md. 727, 743 (2010) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). *Accord Dionas v. State*, 436 Md. 97, 108 (2013).

Here, appellant contends that the ruling limiting his testimony impaired his ability to present a defense of voluntary intoxication. Initially, as discussed, *supra*, mere testimony that appellant was intoxicated at the time of the assault was not sufficient to generate an instruction on the defense of voluntary intoxication. *See Bazzle*, 426 Md. at

553–54. Moreover, this defense is applicable only to specific intent crimes, *see Harris*, 353 Md. at 603, and the jury acquitted appellant on first-degree assault, the only specific intent crime before the jury. Appellant was convicted only of general intent crimes to which the defense of voluntary intoxication is inapplicable. *See Morgan*, 252 Md. App. at 467 (The "mens rea for second-degree assault is a general intent to harm."); *Marlin*, 192 Md. App. at 163 ("[R]eckless endangerment is merely a general intent crime."). Accordingly, we conclude that there is no reasonable possibility that the court's ruling limiting appellant's testimony contributed to the verdict.

IV.

Sentencing

Appellant's final contention is that the circuit court "may have based [his] sentences on impermissible considerations." The State contends that this contention is not preserved for review, and it is without merit.

A.

Proceedings Below

During sentencing, counsel for the State read aloud Mr. McCray's impact statement. In the statement, Mr. McCray noted that he was 74 years old at the time of the incident and the resulting hospitalization was his first. Mr. McCray underwent several surgeries, including repair for his dislocated shoulder and his eyes, and he was subjected to months of physical therapy. Mr. McCray stated that he suffered from permanent nerve damage, he

had limited range of motion in his shoulder, and he suffered from dry eyes and general eye pain for which he must now use eye drops several times a day.

Additionally, the statement indicated that the incident affected Mr. McCray emotionally. In the statement, Mr. McCray explained:

> "As a gardener turning the soil, planting seeds, and watering my garden are all difficult tasks for me, whereas before, it was a pleasure. The assault left me uneasy in walking and balancing when kneeling in my garden.["]
>
> "As a photographer, I can no longer hold my Nikon digital camera with my left hand because of restricted range of motion. I cannot carry my camera bag over my left shoulder because of the pain.["]
>
> "My day to day routines have changed. Bathing requires thought about how to compensate for lack of range of motion. The task of cutting and grooming my hair is a challenge. I must negotiate every function, so to speak.["]
>
> "I used to enjoy cooking, and now the joy is far less so. Lifting and maneuvering cooking pots, roasting pans, and utilities requires a lot more thought. I have purchased an electric counter top oven to avoid the difficulty of lifting items to and from the oven. Cooking has become a chore because of the left shoulder limitations.["]

The statement went on to list the many other aspects of Mr. McCray's life that had been affected by the assault, including Mr. McCray's inability to return to Cylburn because of traumatic flashbacks, his difficulty driving and reading, the compromise of his overall ability to be physically self-dependent, and the significant economic toll he continued to experience.

After reading the victim impact statement, the prosecutor requested the maximum sentence of ten years for second-degree assault, and five years for reckless endangerment, noting the "horrific injuries to the victim, the random nature of the crime, and the profound

impact on the victim." Counsel also noted appellant's criminal record, which included armed robbery and fourth-degree burglary.

Appellant's aunt, Lisa Sims, spoke on his behalf. She apologized for appellant's actions, expressed remorse, and appealed to the court for leniency. Defense counsel also conveyed appellant's contrition and regret. Counsel requested the court impose the minimum sentence for both convictions. Appellant spoke on his behalf. He apologized for his actions, stated that he had learned from situation, and that he was working on his self-development.

The court began by thanking appellant's aunt for speaking on his behalf. The court noted that appellant had multiple prior criminal offenses. It also discussed the circumstances of the case, stating: "I cannot conceive how affected I would be if this had occurred to me. And I go to Cylburn Arboretum on a regular basis. If I had gone early on a particular day, I may have run into [appellant], and might be me who had the interaction." The court noted that appellant did not have any justification for the assault on Mr. McCray, and that the assault did not "appear to be born solely of anger." As indicated, the court imposed the maximum sentences of ten years on the second-degree assault conviction, and five years on the reckless endangerment conviction to run consecutively.

B.

Analysis

We agree with the State that appellant's challenge to the circuit court's comments and/or considerations in appellant's sentencing is not preserved for this Court's review.

"Under Maryland Rule 8-131(a), a defendant must object to preserve for appellate review an issue as to a trial court's impermissible considerations during a sentencing proceeding." *Sharp v. State*, 446 Md. 669, 683 (2016). *Accord Chaney v. State*, 397 Md. 460, 466–67 (2007) ("[A]ny other deficiency in the sentence that may be grounds for an appellate court to vacate it—impermissible considerations in imposing it, for example—must ordinarily be raised in or decided by the trial court and presented for appellate review in a timely-filed direct appeal."). "When . . . a judge's statement from the bench about the reasons for the sentence gives rise to the claim of impermissible sentencing considerations, defense counsel has good reason to speak up." *Reiger v. State*, 170 Md. App. 693, 701 (2006), *cert. denied*, 397 Md. 397 (2007). "[A]n objection is required to prevent waiver in these circumstances." *Id.* at 700. *Accord Kamara v. State*, 184 Md. App. 59, 81–82 (Appellant waived contention that sentencing court improperly considered whether his behavior constituted a pattern of domestic violence because "appellant did not object at the sentencing, or submit a motion for reconsideration."), *cert. denied*, 409 Md. 45 (2009).

Here, appellant did not object to the circuit court's statements at his sentencing proceeding. Accordingly, we will not address appellant's argument in this regard.

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