Circuit Court for Baltimore City
Case No. 122263001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 563

September Term, 2024

NIZAH DANIELS

v.

STATE OF MARYLAND

Graeff,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 27, 2026

On September 25, 2023, a jury in the Circuit Court for Baltimore City convicted Nizah Daniels, appellant, of first-degree murder, use of a handgun in the commission of a crime of violence, possession of a regulated firearm by a minor, and wearing, carrying, or transporting a handgun. The court sentenced appellant to life imprisonment, all but 50 years suspended, for the conviction of first-degree murder, 10 years, consecutive, for the conviction of use of a handgun in the commission of a violent crime, five years, consecutive, for the conviction of possession of a regulated firearm by a minor, and three years, concurrent, for the conviction of wearing, carrying, or transporting a handgun.

On appeal, appellant presents three questions for our review,[1] which we recast as four:

1. Did the circuit court commit reversible error by propounding compound questions during *voir dire*?

2. Did the circuit court rely on impermissible considerations at sentencing?

3. Did the circuit court impose an illegal sentence for first-degree murder?

[1] In his brief, appellant articulates the issues as follows:

> 1. Was Mr. Daniels denied his constitutional right to an impartial jury when the trial court asked a critical voir dire question in such a way that impermissibly shifted the burden of determining bias to the juror?
>
> 2. Is Mr. Daniels' sentence illegal and should his sentence for wearing and carrying a handgun merge into his sentence for use of a handgun in the commission of a crime of violence?
>
> [3.] Did the court rely on impermissible considerations when sentencing Mr. Daniels?

4. Did the circuit court err by failing to merge appellant's sentence for wearing, carrying, or transporting a handgun with his sentence for use of a handgun in the commission of a crime of violence?

For the reasons set forth below, we shall vacate appellant's sentence for wearing, carrying, or transporting a handgun, but otherwise affirm the judgments of the circuit court.

BACKGROUND

On the afternoon of September 2, 2022, Jeremiah Brogden was fatally shot in the parking lot of Mergenthaler Vocational-Technical High School ("Mervo").[2] Lashawn Webb, a Baltimore City School Police Officer, witnessed the shooting and assisted in apprehending the gunman. At trial, Officer Webb testified that, during dismissal, he observed a young black male "verbally interacting" with a Mervo student. Although Mervo students were wearing uniforms, the individual Officer Webb saw was dressed in regular clothing. As he approached the young man, Officer Webb saw him draw a handgun and fire it toward Mr. Brogden before fleeing the scene.

Officer Webb pursued the suspect, first on foot and then in a police vehicle driven by his partner, Corporal Kenya Hall-Phyall. Officer Webb maintained visual contact with the suspect as the suspect turned into an alley, but Officer Webb lost sight of the suspect after he "made a right" and "jumped over a gate." Moments later, Officer Webb saw the suspect emerge from the alley. Upon exiting the police vehicle, Officer Webb and Corporal

[2] The witnesses at trial generally referred to Mergenthaler Vocational-Technical High School as "Mervo." For the sake of concision and consistency, we will do the same.

Hall-Phyall drew their firearms and ordered the suspect to the ground, where he was handcuffed.

With the suspect in custody, Officer Webb returned to the vehicle and drove to the scene of the shooting, where he attempted to render emergency aid to Mr. Brogden until paramedics arrived. Meanwhile, Corporal Hall-Phyall was joined by Officer Marcus Lansey, who had been pursuing the suspect on foot. After searching the suspect's person, Officer Lansey placed him in the back of a police car. He and Corporal Hall-Phyall then transported the suspect back to the scene of the shooting.

Juanita Gaines, a Mervo employee and former police officer, also was present at the scene of the shooting and observed the ensuing pursuit of appellant. Ms. Gaines heard several gunshots at approximately 3:00 p.m. and saw a man wearing a black hoodie and "grayish" sweatpants, whom she later identified as appellant, running toward her. The man's left hand was tucked inside his hoodie pocket, clutching his side as he ran. Ms. Gaines—who was qualified as an expert in identifying armed individuals—testified that these characteristics were consistent with someone who was armed.

As she watched the man flee the scene, Ms. Gaines observed an object fall from his pocket, and she directed a member of her staff to search for the item.[3] She then pursued the suspect on foot, but lost sight of him when he turned into the alley. After radioing for backup, she spotted the man as he rounded a corner. After Corporal Hall-Phyall and Officer

[3] Ms. Gaines initially suspected that the object was a handgun, but the object retrieved was a cell phone.

Webb apprehended the suspect, Ms. Gaines went to the police station. She gave a recorded statement to the police and identified appellant from a photo array as the fleeing suspect.

Officer Antonio Groomes, another Baltimore City police officer who responded to a report of the shooting at Mervo High School, testified that, after seeing that the victim was receiving aid, he searched the alley and found a handgun discarded in a recycling bin. Officer Groomes remained in the alley until crime lab technicians and homicide detectives arrived and retrieved the weapon.

Detective Kelsey Roberts, the primary homicide detective assigned to the case, arrived on the scene with Detective Michael Curtin at approximately 3:43 p.m. While Detective Roberts remained at Mervo, Detective Curtin proceeded to the alley where Officer Groomes had found the firearm. The handgun had a live round in the chamber and seven rounds in the magazine.[4] It bore no serial number. Detective Curtin recovered the weapon from the recycling bin, removed its magazine, and cleared the chamber. Once the firearm had been rendered safe, a crime lab technician assumed custody of the evidence and submitted it to the Evidence Control Unit.

During a canvass of the surrounding area, Detective Curtin obtained video footage from a Ring camera mounted on a residence near where the handgun had been found. The footage depicted an individual running down the alley and beginning to slow down as he approached garages next to the recycling bin from which the handgun was recovered.

[4] Another live round was located on the ground nearby.

Although one such garage obscured the camera's view of the recycling bin, Detective Curtin inferred that the individual seen entering the alley had placed the firearm there.

The police also recovered two cell phones and three spent cartridge casings from the scene. The handgun and cartridge casings were subsequently submitted to Jennifer Ingbretson, a firearms examiner with the Baltimore City Police Department, for analysis. Ms. Ingbretson test-fired the handgun, which she identified as a K1 Polymer 80 nine-millimeter Luger. She then compared the test-fired cartridge casings to those recovered from Mervo. Testifying as an expert in firearms identification and microscopic comparison, Ms. Ingbretson opined that the latter cartridge casings "were consistent with having been fired [from] the K1 Polymer 80 firearm."

The police submitted the nine-millimeter handgun and magazine to Madear Charles, a forensic scientist with the Forensic Processing Unit. No latent fingerprints were found on either the firearm or the magazine, but the swabs yielded a mixed DNA profile from a major male contributor and at least two minor contributors. A comparison of appellant's DNA to the profile identified him as the major contributor.

The cell phones recovered from the scene belonged to Mr. Brogden and appellant. Appellant's phone was submitted to the Cyber and Electronic Crimes Unit, where Sergeant Joseph Wiczulis performed a data extraction to retrieve photos and text messages sent on the day of and immediately before the shooting. In one such text message sent at 2:15 p.m. on the day of the shooting, appellant indicated that he was at Mervo. In a second message, sent two minutes later, he added: "I have a joint on me[.]" Based on her training and

experience, Detective Roberts understood the phrase to mean that "he has a gun on him." In additional text messages sent at 2:58 p.m. that day, appellant directed the recipient to call his mother, stating: "I'm caught." Sergeant Wiczulis also extracted a photo from the phone, taken on the morning of the shooting, which depicted appellant holding what appeared to be a handgun.

On September 3, 2022, the day after the fatal shooting, Detectives Roberts and Curtin attended the autopsy of Mr. Brogden's body, which was performed by Dr. Donna Vincenti, a forensic pathologist with the Office of the Chief Medical Examiner. Mr. Brogden sustained three bullet wounds—to the head, chest, and left shoulder. Dr. Vincenti, whom the court accepted as an expert in the field of forensic pathology, identified the cause of death as "[m]ultiple gunshot wounds" and the manner of death as homicide.

We will include additional facts, as warranted, in our discussion of the issues.

DISCUSSION

I.

Voir Dire

A.

Parties' Contentions

Appellant contends that the circuit court abused its discretion in *voir dire* by posing two compound questions, which he claims "improperly shifted the burden of determining bias to the jurors." Specifically, he asserts that the court erred in asking the venire:

> Would any member of the jury panel be unable to render a fair and impartial verdict for the [d]efendant purely based on the race, religion or ethnic origin of the [d]efendant?
>
> Does any member of the jury panel have any philosophical, moral, religious, or other belief which would affect your ability to render a fair and impartial verdict in this case?

Appellant argues that "the trial court had a duty 'on its own motion' to ask the question[s] properly . . . even if the defendant was the one who provided [the] improperly worded question[s]."

The State contends that appellant failed to preserve this issue for appellate review because he did not object below to these questions. Alternatively, the State asserts that appellant "waived any complaint he may have had about the phrasing of the two propounded questions" by accepting the empaneled jury "without qualification or reservation" at the conclusion of *voir dire*. Finally, the State maintains that, even if appellant's claims were properly before this Court, the compound questions were permissible because they provided reasonable assurance that prejudice would be discovered.

B.

Proceedings Below

On the morning of the first day of trial, defense counsel requested that the circuit court supplement its proposed *voir dire* inquiries with three additional "strong-feelings"

questions.[5] Defense counsel did not, however, object to or otherwise address the compound questions he now challenges. After conferring with counsel, the court posed the first of the two questions at issue: "Does any member of the jury panel have any philosophical, moral, religious, or other belief which would affect your ability to render a fair and impartial verdict in this case?" Five prospective jurors stood in response to this question.[6] The court then proceeded to the second question, asking: "Would any member of the jury panel be unable to render a fair and impartial verdict for the [d]efendant purely based on the race, religion, or ethnic origin of the [d]efendant?" This time, only two jurors stood—both of whom had also risen in response to the former question. Defense counsel did not object to either inquiry.

At the conclusion of its general *voir dire*, the court inquired of counsel: "Any objections to the [c]ourt's voir dire?" The State and defense counsel both answered: "No, Your Honor." The court then conducted individual *voir dire* of the prospective jurors who had affirmatively responded to one or more of its questions. After the court had concluded its individual *voir dire*, the deputy clerk asked whether the panel was acceptable to the defense. Defense counsel replied: "Acceptable."

[5] Although it did not adopt those questions outright, the court agreed to incorporate aspects of two of them into its general *voir dire*.

[6] All five of these prospective jurors were subsequently struck.

C.

Preservation & Waiver

"Ordinarily, an appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Maryland Rule 4-323(c) "governs the 'manner of objections during jury selection,' including objections made during *voir dire*." *Smith v. State*, 218 Md. App. 689, 700 (2014) (citation omitted). The Rule provides, in pertinent part:

> For purposes of review . . . on appeal of any [non-evidentiary] ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.

Md. Rule 4-323(c). Consistent with the requirements of Rule 4-323(c), this Court has repeatedly held that, "[t]o preserve successfully for appeal 'any claim involving a trial court's decision about whether to propound a *voir dire* question, a defendant must object to the court's ruling.'" *Robson v. State*, 257 Md. App. 421, 459 (quoting *Foster v. State*, 247 Md. App. 642, 647 (2020)), *cert. denied*, 483 Md. 520 (2023). *Accord Lewis v. State*, 262 Md. App. 251, 281 (2024); *Mungo v. State*, 258 Md. App. 332, 369, *cert. denied*, 486 Md. 158 (2023). "The purpose of the preservation rule is to avoid error because, if counsel alerts the court to an error, the court typically has the opportunity to remedy it." *Mungo*, 258 Md. App. at 369 (citing *Robson*, 257 Md. App. at 460-61).

Even when a party properly objects to a propounded *voir dire* question, he or she may subsequently waive that objection. "[W]aiver is the intentional relinquishment of a known right, or conduct that warrants such an inference." *Brice v. State*, 225 Md. App.

666, 679 (2015) (quotation marks and citation omitted), *cert. denied*, 447 Md. 298 (2016). A defendant waives an objection to *voir dire* by expressing satisfaction with the *voir dire* examination as conducted. In *Brice*, for example, we held that the appellant explicitly "waived his right to . . . requested questions by defense counsel responding 'No' to the court's request for any further comment or objection to the *voir dire* questions that had been asked." *Id.*

A defendant may also waive "an objection to a propounded, purportedly prejudicial, *voir dire* question" by "accept[ing] unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process." *State v. Stringfellow*, 425 Md. 461, 469, 472 (2012). The Supreme Court of Maryland has explained that such an objection "relates directly to the composition of the jury because a prejudicial voir dire question, when propounded, may inject the very prejudice that voir dire attempts to filter out." *State v. Ablonczy*, 474 Md. 149, 165 (2021) (cleaned up). Thus, when a party objects to a propounded question, his or her subsequent unqualified acceptance of the empaneled jury "is directly inconsistent with the earlier complaint about the jury, which the party is clearly

waiving or abandoning."[7] *Id.* at 162 (emphasis omitted) (quoting *Stringfellow*, 425 Md. at 470).

D.

Analysis

In this case, appellant failed to object to the compound *voir dire* questions at issue, and therefore, he did not preserve the issue for appellate review. Moreover, after the general *voir dire* had concluded, the court asked the parties whether they had any objections to its examination. By answering in the negative, defense counsel waived any objections to the *voir dire* questions as propounded. Finally, following the court's individual *voir dire* of the venire, defense counsel stated that the empaneled jury was "[a]cceptable." By thus expressing his unqualified acceptance of the jury as empaneled, appellant again waived any objection he may have had to the *voir dire* questions propounded by the court. Accordingly, this issue is not only unpreserved, but it was twice waived, and we will not, therefore, consider it.[8]

[7] An objection to the court's refusal to pose a requested *voir dire* question, by contrast, is merely "incidental to the inclusion/exclusion of prospective jurors" and is therefore compatible with the subsequent acceptance of the jury as empaneled. *State v. Stringfellow*, 425 Md. 461, 470 (2012). Accordingly, such objections are "not waived by the objecting party's unqualified acceptance . . . of the jury panel[.]" *Id. See also Benton v. State*, 224 Md. App. 612, 622 (2015) ("Benton did not waive his objection to the trial court's failure to ask the requested voir dire question by ultimately accepting the empaneled jury."); *Kegarise v. State*, 211 Md. App. 473, 477 n.2 (2013) ("Unqualified acceptance of [a] jury panel does not waive an objection to a judge refusing to ask a proposed voir dire question[.]" (Quotation marks and citation omitted)).

[8] Appellant does not ask us to review this unpreserved issue for plain error under Maryland Rule 8-131(a), and we decline to do so.

II.

Sentencing Considerations

A.

Parties' Contentions

Appellant contends that the circuit court erred in allowing Ms. Gaines, "a member of Mervo's Special Operations Unit[,] to provide victim impact testimony on behalf of herself, the staff[,] and students at the school." He argues that neither she nor the students qualified as "victims" within the meaning of Section 11-403(b) of the Maryland Code, Criminal Procedure Article ("CP"), and therefore, Ms. Gaines was ineligible to testify at the sentencing hearing.[9] Appellant asserts that "the court impermissibly considered claims made by Ms. Gaines[] regarding unknown students when sentencing [him]."

The State contends that this issue is not preserved for review because appellant "never objected to Ms. Gaines's statement, never asked that the court discount her statement in fashioning a sentence, and never argued that she did not fit the statutory

[9] Md. Code Ann., Crim. Proc. ("CP") § 11-403(b) (2025 Repl. Vol.) provides, in pertinent part:

> (b) In the sentencing or disposition hearing the court, if practicable, shall allow the victim or the victim's representative to address the court under oath before the imposition of sentence or other disposition:
>
> (1) at the request of the prosecuting attorney;
>
> (2) at the request of the victim or the victim's representative; or
>
> (3) if the victim has filed a notification request form under § 11-104 of this title.

definition of either a 'victim' or of a 'victim's representative.'" It argues that, "by failing either to 'object at the sentencing, or submit a motion for reconsideration,'" appellant waived his contention that the court considered impermissible sentencing considerations. In any event, the State contends that appellant's claim is without merit. It asserts that, "even if CP § 11-403 did not vest in Ms. Gaines a statutory right to speak at sentencing, it did not divest the court of the right to hear from her." The State notes that, although CP § 11-403 requires the court to permit certain testimony, it retains discretion to consider additional victim-impact evidence. Consequently, the State contends, "the court was well within its broad discretion to hear from [Ms. Gaines] to amplify its understanding of Mr. Brogden's murder at Mergenthaler High School and the effects it had."

B.

Proceedings Below

Ms. Gaines was the first of two victim impact witnesses called by the State at appellant's sentencing hearing.[10] She testified as follows:

> MS. GAINES: My name is Juanita Gaines. I am the Ambassador for the (indiscernible at 10:17:07) at Mervo Vocational-Technical High School. I am here in support of the staff and students at Mervo High School to include Jeremiah Brogden.
>
> Your Honor, this year would be Jeremiah's Senior Year. This Thursday, May the 16th, would be his senior farewell. This month, May the 24th, would be his senior prom. June the 8th would be his graduation, which he will get his high school diploma. He will be celebrated at farewell this Thursday. Decision date was last Friday for the seniors. Jeremiah would have received, I'm sure, so many scholarships for his athletics.

[10] The State also submitted five written victim impact statements.

> On September the 5th, 2022, we had a ninth grader that committed suicide because of what he observed on September the 2nd, 2022, of Jeremiah being executed on school grounds. We have another student, a freshman, who is a sophomore right now. Grandmom had to admit him into Sheppard Pratt. He's been there for four months after the incident and refused to return to Mervo unless he's been issued a bullet[]proof vest.
>
> This is the impact that it has -- this situation that this young man has endured our community as a whole. Myself, I had 12 years of law enforcement. I signed up -- it's a possibility I may get injured in the line of duty, or my colleague may get injured. But when I left law enforcement and went into education, I didn't sign up to observe one of my students being gunned down on school grounds. That's not what I signed up for. So[,] it has made a huge impact on myself whereas I had to get back into therapy and try to go into school every day and be strong for these kids.
>
> When these kids leave their homes, they become our responsibility. And what transpired that day I just feel like there was something else that maybe I could have done. That's what I'm struggling to deal with just because of his actions. This young man, I'm sure, he had several chances. Several chances.
>
> I'm just asking Your Honor that he be given the max. Thank you.

Appellant did not object to Ms. Gaines being called as a witness or to any portion of her testimony.

In announcing appellant's sentence, the circuit court noted the traumatic effect of the "school shooting" on the Mervo High School student body. It then expressly referenced Ms. Gaines's victim impact testimony, stating:

> [I]t's not often that you have law enforcement portraying themselves as vulnerable people, testifying about the children and the reaction of the children who they serve. It's not often that you see that[] or hear that. Because, as Ms. Gaines says, when the parents turn their children over to the school, they become their children, the school becomes a family. And, so, part of the reason why I feel traumatizing to the students at the school is because they are losing, or have lost, family members.

Appellant did not note an objection during or after the announcement of his sentence.

C.

Waiver & Preservation

In *Abdul-Maleek v. State*, 426 Md. 59 (2012), the Supreme Court of Maryland distinguished between inherently illegal sentences—which may be challenged at any time—and a court's alleged reliance on improper sentencing considerations. The Court explained:

> Allegations of impermissible considerations at sentencing are not "illegal sentences" subject to collateral or belated review and must ordinarily be raised in or decided by the trial court. And, subject to the appellate court's discretion under Maryland Rule 8-131(a), the defendant is not excused from having to raise a timely objection in the trial court.

Id. at 69 (cleaned up). A timely objection is therefore "required to prevent waiver of a defendant's claim that the sentencing judge relied upon impermissible sentencing considerations." *Ellis v. State*, 185 Md. App. 522, 550 (2009). *See also Reiger v. State*, 170 Md. App. 693, 702 (2006) (holding that the appellant "waived his impermissible sentencing considerations challenge by failing to object at sentencing"), *cert. denied*, 397 Md. 397 (2007). Just as a defendant must object to the court's apparent reliance on inappropriate sentencing criteria to avoid waiving the issue for appellate review, so too must he or she timely object to improper victim-impact evidence to preserve a challenge to its admissibility. *See Conyers v. State*, 354 Md. 132, 177 (holding that the appellant failed to preserve the issue of whether a victim impact witness impermissibly conveyed to the jury that appellant previously had been sentenced to death "since defense counsel made no

objection when [the witness] testified and since no relief was requested"), *cert. denied*, 528 U.S. 910 (1999); *Ball v. State*, 347 Md. 156, 198 (1997) (holding that the appellant failed to preserve his challenge to the scope of victim-impact testimony where the witness "delivered her testimony without a single objection from defense counsel"), *cert. denied*, 522 U.S. 1082 (1998).

In this case, appellant did not object to the State calling Ms. Gaines as a witness at the sentencing hearing or to any portion of her ensuing testimony. Accordingly, he has failed to preserve any challenge to Ms. Gaines's eligibility to testify as a victim-impact witness or to the content of her testimony. Nor did appellant object when the court announced the sentence. If appellant had timely raised his concerns, he would have afforded the court an "opportunity to reconsider the sentence in light of the defendant's complaint . . . or otherwise to clarify the reasons for the sentence in order to alleviate such concerns." *Reiger*, 170 Md. App. at 701. Instead, appellant remained silent and thus waived any challenge to the propriety of the court's sentencing considerations.

III.

Illegal Sentence

A.

Parties' Contentions

Appellant contends that the circuit court erred by adding a three-year period of probation to his sentence for first-degree murder after he had left the courtroom. Relying on *Cathcart v. State*, 397 Md. 320 (2007), he argues that, because the court "attempted to

impose a split sentence of life with all but 50 years suspended but failed to timely[] order a determinate period of probation, [appellant's] sentence is effectively limited to the unsuspended portion – 50 years."

The State contends that the court "lawfully imposed a split sentence including a three-year term of probation." It asserts that the sentence had not yet been "imposed" for purposes of Rule 4-345(c), when the court clarified the sentence by announcing a three-year probationary term. Moreover, it argues that, "[b]ecause the record does not clearly reflect that [appellant] had left the courtroom, the court could correct an evident mistake in the announcement of its sentence." (Emphasis omitted).

B.

Proceedings Below

The transcript of the sentencing hearing reflects that the circuit court announced appellant's sentences as follows:

> As to first degree murder, the sentence of the [c]ourt is life. The [c]ourt is going to suspend all but 50 years.
>
> As to use of a handgun in the commission of a crime of violence, the sentence of the [c]ourt is ten years to run consecutive to Count 1, first five years to be served without parole.
>
> As to minor in possession of a firearm[,] . . . the sentence of the [c]ourt is five years consecutive to Count 1.
>
> As to wear, carry, transporting a handgun, the sentence of the [c]ourt is three years concurrent with Count 1.
>
> The aggregate sentence is life, suspend all but 65 years, first five without parole.

At the court's direction, defense counsel advised appellant of his post-trial rights. According to the transcript, when defense counsel asked whether he understood those rights, appellant "move[d] [his] head up and down." The transcript then notes: "Defendant's absence is noted for the record at 11:05:29."

An audio-video recording of the proceeding does not depict the moment of appellant's departure from the courtroom. It shows him being shackled and escorted from the defense table between 11:04:58 and 11:05:09 before going out of frame. At 11:05:11, appellant reappears on a second camera. Although he is visible for only a second, appellant can be seen walking toward—and a few feet from—a courtroom door. Between 11:05:24 and 11:05:29, defense counsel advised the court that it had not expressly imposed a period of post-release probation. The court immediately responded: "Three years [of] supervised probation." Before excusing counsel, the court added that appellant's sentence would run from the date of his arrest on September 2, 2022. The video does not reflect when appellant exited the courtroom.

C.

Analysis

Maryland Rule 4-345 governs the revisory power of a sentencing court and provides, in pertinent part:

> (a) **Illegal Sentence.** The court may correct an illegal sentence at any time.

*** * ***

> (c) **Correction of Mistake in Announcement.** The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

The parties' arguments center on whether the court could correct its mistake in omitting a term of probation from the announcement of appellant's first-degree murder sentence pursuant to subsection (c). For his part, appellant asserts that because he had left the courtroom before the court attempted to correct the oversight, the addition of a term of probation impermissibly increased his sentence. The State, in turn, maintains that appellant was still present and that the sentencing proceeding was ongoing when the court supplemented its initial announcement. We need not resolve this factual dispute. The court's failure to attach a period of probation to the suspended portion of a mandatory life sentence rendered the announced sentence inherently illegal. Accordingly, even if the court could not correct the mistake in its announcement pursuant to Rule 4-345(c), it could remove the illegality by adding a period of probation pursuant to Rule 4-345(a). We explain.

The circuit court in this case clearly sought to impose a "split sentence" for first-degree murder. CP § 6-222(a) authorizes such sentences and provides, in pertinent part:

> (a) A circuit court or the District Court may:
>
> (1) impose a sentence for a specified time and provide that a lesser time be served in confinement;
>
> (2) suspend the remainder of the sentence; and
>
> (3)(i) order probation for a time [authorized by the statute.]

Accordingly, a "split sentence" is one in which the court imposes a term of imprisonment, suspends a portion of that term, and orders a period of post-release probation. *See Cathcart*, 397 Md. at 326.

In *Cathcart*, the Supreme Court of Maryland addressed the effect of omitting a probationary term from the suspended portion of an otherwise split sentence. 391 Md. at 324. Cathcart was convicted of first-degree assault and false imprisonment. *Id.* at 322. The court sentenced him to ten years' incarceration for the assault and a consecutive life sentence, with all but ten years suspended, for false imprisonment. *Id.* It did not, however, impose a period of probation.

On appeal to the Supreme Court of Maryland, Cathcart challenged the legality of his false-imprisonment sentence, arguing that the "life sentence," when coupled with the ten-year term for assault, impermissibly rendered him ineligible for parole for his entire twenty-year sentence.[11] *Id.* at 324-25. The Court rejected that argument, holding that "the sentence imposed for false imprisonment, despite its wording, was not a life sentence and has no attribute or collateral consequence of a life sentence." *Id.* at 325. It reasoned that when a court fails to include a period of probation in a purported split sentence, "the effect of the omission is to limit the period of incarceration to the unsuspended part of the sentence, that becomes, in law, the effective sentence." *Id.* at 330. The Court explained:

> Absent conditioning the suspension on a period of probation, the sentence would no longer be a split sentence, for without such a provision, there would

[11] Specifically, Cathcart claimed that his alleged parole ineligibility both resulted in a cruel and unusual punishment and improperly "intruded upon the discretion of the Parole Commission[.]" *Id.* at 325.

> be no ability for the court ever to direct execution of the suspended part of the sentence. No matter what the defendant may thereafter do, he or she could never be incarcerated, under that sentence, for a longer period of time than provided for by the unsuspended part.

Id. at 329. In short, without a period of probation, the suspended portion of a sentence is a nullity, leaving only the unsuspended term as the effective sentence. *Id.* at 330. The Court thus concluded that Cathcart had, in fact, been sentenced to a ten-year term for false imprisonment. *Id.*

Noting that there was no mandatory minimum for false imprisonment, the Court further held that the omission of a period of probation had not rendered the sentence illegal. *Id.* To the contrary, the Court explained that it could not remand the case for the circuit court to impose a period of probation because "to do so would be tantamount to allowing it to increase the sentence from [a] fixed number of years to a life sentence[.]" *Id.*

In *Greco v. State*, 427 Md. 477, 504 (2012), the Supreme Court of Maryland applied *Cathcart* to a mandatory life sentence. The circuit court in that case sentenced Greco to life imprisonment with all but fifty years suspended for first-degree murder, but failed to impose a period of probation. *Id.* at 486. Consistent with its decision in *Cathcart*, the Court determined that this sentence "was converted by operation of law into a term-of-years sentence of fifty years imprisonment." *Id.* at 513. However, because first-degree murder carries a mandatory minimum sentence of life imprisonment, *see* Md. Code, Crim. Law Art. § 2-201(b), the Court held that Greco's converted term-of-years sentence was inherently illegal. *Id.* Accordingly, it concluded that, on remand, "the Circuit Court must impose a sentence of life imprisonment, all but fifty years suspended, *to be followed by*

some period of probation." *Id.* at 513 (emphasis added). In so doing, the Court reiterated that "[t]he correction of an illegal sentence may result in an increase over the erroneous sentence previously imposed on the defendant." *Id.* at 508 (quoting *Hoile v. State*, 404 Md. 591, 620 (2008)).

Against this backdrop, we return to the instant case. As in *Cathcart*, the circuit court initially failed to impose a period of probation on appellant's partially suspended life sentence, thereby "preclud[ing] it from having the status of a split sentence under CP § 6-222." *Cathcart*, 397 Md. at 330. As a result, the sentence was automatically converted to a flat 50-year term of imprisonment. *See Greco*, 427 Md. at 513. However, as in *Greco*, that effective sentence fell below the statutorily prescribed penalty for first-degree murder—life imprisonment with or without the possibility of parole—rendering it inherently illegal. *See id.* Thus, assuming without deciding that the court could not correct the mistake in its initial announcement of the sentence under Rule 4-345(c), it was nevertheless authorized to remove the resulting illegality pursuant to Rule 4-345(a). As *Greco* makes clear, 427 Md. at 513, the proper remedy was to impose "some period" of post-release probation, which is precisely what the court did. Accordingly, the addition of a three-year term of probation did not create an illegal sentence. Rather, it corrected the illegality inherent in the sentence as first announced.

IV.

Merger of Handgun Sentences

Finally, appellant contends that the circuit court erred by failing to merge his sentence for wearing and carrying a handgun into his sentence for use of a handgun in the commission of a violent crime. The State agrees, and we do as well.

"It is well settled that when convictions for use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun are based upon the same acts, separate sentences for those convictions will not stand." *Holmes v. State*, 209 Md. App. 427, 456 (citing *Wilkins v. State*, 343 Md. 444, 446-47 (1996)), *cert. denied*, 431 Md. 445 (2013). *Accord Freeman v. State*, 259 Md. App. 212, 223 (2023), *aff'd on other grounds*, 487 Md. 420 (2024); *Tilghman v. State*, 117 Md. App. 542, 571-72 (1997), *cert. denied*, 349 Md. 104 (1998). In this case, there is no dispute that appellant possessed a single firearm and that his handgun convictions arose from the same continuous course of criminal conduct. Accordingly, we will vacate appellant's three-year sentence for wearing, carrying, or transporting a handgun.

SENTENCE FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE PAID SEVENTY-FIVE PERCENT (75%) BY APPELLANT AND TWENTY-FIVE PERCENT (25%) BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.