Circuit Court for Anne Arundel County
Case No. 02-K-13-000061

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1025

September Term, 2024

PAUL JAMES MICHAEL

v.

STATE OF MARYLAND

Berger,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 8, 2025

* 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).

This case arises following the revocation of probation for Paul Michael ("Michael"), appellant. On November 19, 2013, Michael pleaded guilty in two separate cases following his involvement in two distinct shooting incidents. In one case, Michael pleaded guilty to three counts of reckless endangerment, and was sentenced to a total of 15 years, all but nine years suspended, followed by five years of supervised probation. In the second case, Michael pleaded guilty to accessory after the fact to first-degree murder, and received a sentence of five years, to run consecutively to the reckless endangerment counts, without a term of probation.

In January 2023, the State filed a motion to revoke Michael's probation for the reckless endangerment convictions based on a conviction Michael incurred while serving his sentence. At the revocation of probation hearing in December 2023, a victim's representative for the murder victim was permitted to present victim impact testimony, even though the probation was not related to the murder conviction. Michael was removed from the courtroom following disruptive behavior, and the hearing proceeded in his absence. The court revoked Michael's probation and sentenced him to the six suspended years. Michael filed an application for leave to appeal, which was granted by the Court. This appeal followed.

QUESTIONS PRESENTED

Michael presents two questions for our review, which we have recast and rephrased as follows:[1]

[1] Michael phrased the questions as follows:

I. Whether the trial court erred in removing Michael from the courtroom and proceeding with the hearing in his absence.

II. Whether the trial court erred in permitting a victim's representative from the murder case to testify at the revocation of probation hearing for the separate reckless endangerment case.

For the following reasons, we affirm.

BACKGROUND

Michael's Guilty Pleas and Incarceration

On November 19, 2013, Michael pleaded guilty following his involvement in two cases, Case. No. 02-K-13-000061 ("Case No. 61"), and Case No. 02-K-13-002057 ("Case No. 2057"). Case No. 61 involved the August 26, 2012 shooting into a residence occupied by four people. At approximately 2:45 a.m., a vehicle drove up to the residence, and four or five shots were fired from the vehicle at the residence and nearby cars. Michael was later discovered to be the shooter. Case No. 2057 involved the October 13, 2012 shooting at approximately 1:30 a.m. of two individuals outside of a residence, Darren Costa and

1. Was it error to remove Mr. Michael for disruptive behavior from his sentencing on a violation of probation without first instructing him that he could return upon a promise to behave?

2. Did the court err in imposing a sentence by considering victim impact witness testimony from a victim representative in a different case in which Mr. Michael had been found guilty?

Matthew Morrow ("Morrow"). Morrow was killed while Darren Costa survived. The shots were fired from inside of a vehicle driven by Michael.

Michael pleaded guilty to both cases at the same time on November 19, 2013. The State noted:

> Based on the plea agreement, the defendant agrees to ask for no less than ten active years of incarceration. The State would be free to ask for the 20 years, which is the maximum penalty, suspend all but 14 years, leaving six years over the defendant's head with five years of supervised probation with the standard conditions as well as no contact with the State's witnesses or victims in either case. I believe that's the agreement.

In Case No. 61, Michael pleaded guilty to three counts of reckless endangerment. Michael was sentenced to five years for each count, all but three suspended, to be served concurrently, for a total of 15 years, all but nine suspended. Michael was also sentenced to five years of supervised probation following his release. In Case No. 2057, Michael pleaded guilty to accessory after the fact to first-degree murder. Michael was sentenced to five years, to be served consecutive to his incarceration in Case No. 61. Case No. 2057 did not carry an additional period of probation. Michael's aggregate sentence for both crimes was 20 years, all but 14 years suspended, followed by five years of supervised probation. The probation order entered on November 19, 2013 provided that Michael was to "[h]ave no contact with [sic] direct or indirect with victims in [Case No. 61] or [Case No. 2057]."

On April 25, 2022, Michael was convicted of carrying a dangerous weapon with intent to injure. This incident occurred while Michael was serving his sentences relating to Case Nos. 61 and 2057 at the Maryland Correctional Training Center in Hagerstown,

Maryland. On January 24, 2023, the State filed a request to violate Michael's probation, or in the alternative, revoke the probation extended to him in Case No. 61. The court held hearings on April 24, 2023 and September 18, 2023, and deferred ruling whether Michael violated his probation and sentencing to a later date.

The Final Revocation of Probation Hearing

The court held its final hearing regarding the revocation of Michael's probation on December 11, 2023. The family of Morrow, the individual murdered in Case No. 2057, was present in the courtroom. Counsel for Michael requested that Michael be unshackled for the proceedings. The court declined Michael's request.[2] The court determined that Michael violated his probation and moved forward to disposition. At this point, Michael interjected, stating "I'm not moving forward, Your Honor," and his counsel asked for a postponement. Defense counsel indicated to Michael that he should wait for counsel to finish speaking and then Michael could speak on his behalf. Counsel expressed that Michael was frustrated because he was due to be released on probation the following month. Michael then asked for a postponement since he was waiting to receive transcripts from a case in which a judge had dismissed the State's motion to revoke probation because

[2] The State raised no objection. Counsel for the State stated: " Your Honor, I have some, a couple procedural questions. Do you want me to wait until Mr. Michael is unshackled?" The court responded in the affirmative. After the State began its questions, counsel for Michael stated: "I'm sorry. My client's still shackled." The court inquired: "Is there a security concern we're unaware of? If there is, that's fine. All right. I'm seeing a head nodding yes, and in light of that, he will remain handcuffed. Thank you." It appears from the record that the courtroom deputies declined to unshackle Michael. The record does not reflect the particular security concern that required Michael to remain handcuffed.

the defendant's probation had not yet begun. Following this statement, Michael addressed the presence of Morrow's family in the courtroom:

> [MICHAEL]: But I did want to say this, though: when I was sentenced to my 14 years, I was told to stay a hundred feet away from this, these people, this family behind me, right? I'm not supposed to be near them. They're not supposed to be near me. They're showing up in court and making threats that my grandma can actually attest to that they said last time we was here when it seemed like you were ruling in my favor, and they wanted to say, oh, well, I guess it's time to get revenge then. So she heard that.
>
> UNIDENTIFIED FEMALE: Lying. Lies.
>
> [MICHAEL]: Which one of you all spit in my sister's face?
>
> UNIDENTIFIED FEMALE: That never happened.
>
> [DEFENSE COUNSEL]: We can't --
>
> [MICHAEL]: One of you all --
>
> [DEFENSE COUNSEL]: We can't --
>
> (Simultaneous speaking.)
>
> [MICHAEL]: Why are you all showing up to my court date when I'm not supposed to be a hundred feet from these people?

Addressing Michael's concerns, the court noted that the courtroom was an exception to his order to stay away from the victims and their families. Michael continued:

> [MICHAEL]: How does that make sense?
>
> THE COURT: . . . But there's no prohibition from --
>
> [MICHAEL]: How does that make sense?
>
> [DEFENSE COUNSEL]: Relax.

THE COURT: -- them being here today.

[MICHAEL]: No. I'm not (inaudible).

The court declined Michael's request to postpone the proceedings. The court attempted to move forward with the proceedings to determine Michael's sentence and the following ensued:

[THE STATE]: . . . . So the backup time --

[MICHAEL]: I'm not going through this shit.

[THE STATE]: -- the backup time is in --

[MICHAEL]: (Inaudible). He's dead. He's already dead.

[THE STATE]: -- the [Case No. 61] case.

[DEFENSE COUNSEL]: Try to remain calm. I know you have a lot to say.

[THE STATE]: There is no backup time in the accessory after the fact case.

THE COURT: Okay.

[THE STATE]: But they were pled to at the same time.

THE COURT: Right.

[THE STATE]: And so we would ask the Court if the Court would allow the victims from that case to address the court in sentencing, even though technically, you don't have any backup time to give from that case.

THE COURT: Sure.

[DEFENSE COUNSEL]: I would certainly object to that, Your Honor. I think that the statute is very clear. First off, there's absolutely no statute authority that says that a victim or

> victim's representative is allowed to talk at a violation of probation. That is within the discretion of the judge.
>
> But what the statute does say is that a victim is somebody that's attached to the specific case, and that's not what we have here. These individuals are not attached to this case. They're not the victim's representative of this case, and they should not be allowed to speak on how their life has been impacted by this revocation of probation.

The court considered Michael's objection and allowed Morrow's father ("Mr. Morrow") to give victim impact testimony, stating:

> THE COURT: All right. I -- the Court rules in its discretion that they are entitled to address the Court. Obviously, it was pled at the same time, and I find that whether there's backup time pending or not, it's inextricably interwoven with the cases which the backup time does manifest. And that the Court of Appeals, now the Supreme Court of Maryland, has said time and time again that the victims' right statute is to be interpreted liberally by the Court with broad discretion in Court in terms of how to interpret and apply it.
>
> And I find in this case that they are interwoven both legally and substantively. So for those reasons, if they wish to address the court, they're entitled to.

Mr. Morrow proceeded to address the court. During the majority of Mr. Morrow's victim impact testimony, Michael did not interject. Following Mr. Morrow's statement, however, that "[o]n a crime spree, the defendant in this (inaudible) shot and killed our Matt," Michael began to get upset and interjected:

> [MICHAEL]: I didn't do it.
>
> [MR. MORROW]: While he lay dying on the street --
>
> [MICHAEL]: Didn't have nothing against that man.

[MR. MORROW]: -- they were caught on a surveillance camera --

[MICHAEL]: Didn't have nothing against that man.

[MR. MORROW]: -- (inaudible) of just another day. They had the mindset and the demeanor of we don't talk, we walk. And comments like we've been beating the system since they were nine; that was said.

* * *

Today, we should all agree that no matter what piece of paper a man brings to court with him, no matter what (inaudible) or attended, but within the confinement of four prison walls with armed guards all around, he still had the mindset because of the disagreement (inaudible).

It just goes to show you what we're dealing with.

[DEFENSE COUNSEL]: Your Honor, may we approach?

[MR. MORROW]: (Inaudible) what people will do.

[DEFENSE COUNSEL]: I would note an objection.

THE COURT: It's noted. Preserved.

[DEFENSE COUNSEL]: Thank you.

THE COURT: You're welcome.

[MR. MORROW]: . . . . So today, Your Honor, we would ask that you would think of your loved ones, protect the people around us, and we would ask that you would do everything in your power to keep this man off the streets for as long as you can.

THE COURT: Thank you for your input, sir.

The State then proceeded to address the court to discuss how much of Michael's suspended sentence to impose:

> [THE STATE]: Thank you, Your Honor. So just to make sure we're all on the same page, the current sentence in [Case No. 61] was, were three separate sentences for reckless endangerment.
>
> Each was five, suspend all but three years; so a total of fifteen, suspending all but nine. That's the case, again, that you have the backup time to work with.
>
> THE COURT: Right.
>
> [THE STATE]: There's also, in the case we just discussed, the one ending in 2057, is a five-year consecutive sentence. The start date for the first of those is November 2nd of 2013, so that's roughly ten years in.
>
> As the Court's aware now from the Rule 4 [probation] violation that there is an added one year and one day consecutive sentence for the assault, which I believe brings us to a total sentence of 21 years, 1 day, suspending all but 15 years and 1 day. The backup time is still six years, though.
>
> Obviously, the State is asking for consecutive time. I have a printout of his DOC [Department of Corrections] record if the Court wants to see it. And it is correct that he is set to be released on January 12, 2024.
>
> Looking at his DOC record, he has nine events that led to infractions of what they call the one-hundred level, which are the most serious.
>
> UNIDENTIFIED MALE: (Inaudible) for being a drug addict.
>
> [MICHAEL]: I'm not letting him keep bringing this bull shit in here. Fuck this. Get the fuck out this court room, yo. Listen, (inaudible). You gone be fucked up. I promise you that, Bitch. Why? Why, Bitch? I got you. When I get out, I got you. I promise you. You fucked up. Shut the fuck up, Bitch.

Michael was immediately removed from the courtroom following this statement. His sister and grandmother were also removed from the gallery. The following ensued:

[THE STATE]: I would ask the Court how you want us to proceed at this point.

THE COURT: The defendant has forfeited his right to be present for the remainder of the sentencing. So proceeding; just continue right on.

[THE STATE]: All right. Thank you.

[DEFENSE COUNSEL]: I'm sorry. May we approach?

THE COURT: You may.

(Bench conference follows:)

[DEFENSE COUNSEL]: I'd make an objection (inaudible). I understand (inaudible) right to determine whether or not (inaudible) forfeited. I would have no objection to that. I think that I would like to put a couple things on the record.

Obviously, Mr. Michael is very emotional right now. Obviously, he's very concerned about what's happening in this case. I will tell you that the last time I was here, which was (inaudible), the two individuals that were just escorted out of the courtroom, one being his grandmother and one being his sister, did come to me afterwards and tell me that there's been a threat (inaudible) the victim's family. So I think that was in the back of Mr. Michael's head as well.

So at this point, I understand that I have to (inaudible). I'd ask for a postponement (inaudible) too, to allow everything to kind of cool down and come back and, perhaps, give Mr. Michael the ability to (inaudible).

THE COURT: Got you. No, I appreciate that. I think that what's clear to the Court is a couple things. That -- and I'm not saying this to be (inaudible) towards defense counsel.

Defense counsel has been advocating zealously for Mr. Michael in, for an extended period of time, including briefing very ably the legal issues before the Court, explaining to Mr. Michael what he was doing. And even at those early intervals, Mr. Michael wanted to sort of hurtle over, and even as he did

today, point to what might be happening in other courtrooms which, over the advice of counsel, I think forgot to sort of be where his feet are, so to speak. And I certainly didn't hold that against him then; I don't [now].

I say that because, notwithstanding, all the arguments that you're preserving for him, he just has routinely demonstrated his either unwillingness or inability, however you want to characterize it, to sort of take advice of counsel and focus on what's happening in front of him. He seems very prone to distraction, number one.

And number two, the one thing this court can't engage in is sort of making rulings based on things that theoretically happened in the hallways or outside the courthouse, and that sort of thing.

And then the third thing that really motivates and militates in favor of keeping going forward is we're living in a world of significant security concerns. It's really a big focus. My -- even last week meeting was with stakeholders in that regard. And I don't think anyone wins by protracting this issue further for further postponement because that's sort of what creates, even in the community, more chattering and speculation among folks.

So for all those reasons -- well, and then the fourth reason is, you know, I heard him to say -- granted, I understand the context in which it arose, but that he is going to be retributive towards them after he completes his sentence, whatever it is.

That's not factoring into my sentence today, but that's -- I say that because I'm not sure how much of the record, if any, picked that up. And then used some other really, I'll just say vulgar epithets when he was trying to be issued out of the court involving -- well, I don't need to repeat what they were.

But so for all those reasons, I understand the objection going forward. But I think in the aggregate, not just what happened just in the last ten minutes, but in the aggregate, he's forfeited his right to be present.

> I will say, also, there were clearly additional -- he's the first inmate I've had -- and I've had some very serious allegations, guys with horrible records, and I can't remember the last time DOC hasn't agreed to not [sic] unhandcuff someone. I think the last time I remember is someone had a shank they discovered on the way over here, and obviously today, that was a concern.
>
> Again, none of those things am I holding against Mr. Michael, but if -- I'm creating a record as well. I think it's incredibly important to keep proceeding today and stick a fork in this. But any objection is preserved.
>
> [DEFENSE COUNSEL]: Thank you.
>
> [THE STATE]: Thank you.
>
> * * *
>
> THE COURT: All right. As I indicated at the bench, we're proceeding today. The Court deems that Mr. Michael has forfeited his right to be present for the remainder of the hearing. And so I'll ask both sides just to sort of gather their thoughts and we'll keep on moving.

Following this discussion, the court heard from the State and defense counsel regarding sentencing. The State noted that Michael had nine infractions while incarcerated, three of which were for possession of a weapon and/or assault, and the remainder of which were drug related. The State further noted that although it had intended to ask for three years, due to Michael's behavior during the proceedings, it would ask for the full back-up time. Defense counsel requested that Michael still be released in January 2024 as planned. The court noted that it "has a discretion of six years of backup time. The Court is sentencing him to a flat sentence of six years," and revoked Michael's probation, sentencing him to the suspended two-year terms on each of the reckless endangerment

counts, for an ultimate sentence of six years. Michael filed an application for leave to appeal, which this Court granted. This appeal followed.

STANDARD OF REVIEW

We review for abuse of discretion a trial court's decision to remove a criminal defendant from trial proceedings. *See Collins v. State*, 376 Md. 359, 376 (2003) ("Before trying a defendant in absentia, the trial court must . . . exercise sound discretion in determining whether to proceed with the trial of an absent criminal defendant." (quoting *Pinkney v. State*, 350 Md. 201, 213 (1998)). With few exceptions, a criminal defendant "is entitled to be physically present in person at a preliminary hearing and every stage of the trial" including sentencing. Md. Rule 4-231(b). "Although the Rule does not state explicitly that the defendant has the right to be present at sentencing, 'every stage of the trial' includes sentencing." *Tweedy v. State*, 380 Md. 475, 491-92 (2004). Similarly, a defendant has the right to be present at a revocation of probation hearing. *See Chase v. State*, 309 Md. 224, 233 (1987) (noting that the defendant "was entitled to be present, as a part of the minimal due process applicable to probation revocation proceedings"). Thus, we additionally review for abuse of discretion a court's decision to remove a criminal defendant from a revocation of probation and sentencing hearing.

"A sentencing judge is vested with virtually boundless discretion in devising an appropriate sentence." *Lopez v. State*, 458 Md. 164, 180 (2018) (internal quotations and citations omitted). Applying this standard of review to the sentencing court's decision to admit victim impact testimony, "'the permissible scope of victim impact testimony instead lies within the sound discretion of the presiding judge, *as limited by* Md. Code (1957, 1996

Repl. Vol.), Art. 27, § 413(c)(1)(v) [the former victim impact evidence statutes].'" *Id.* (quoting *Ball v. State*, 347 Md. 156, 197 (1997)). "Therefore, a sentencing judge will abuse his or her discretion by admitting victim impact evidence when the decision to admit such evidence is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Lopez*, 458 Md. at 180 (quoting *Sumpter v. Sumpter*, 436 Md. 74, 85 (2013)). "In addition, a sentencing judge will err as a matter of law when he or she admits victim impact evidence that violates any of the victim impact statutes: CP §§ 11-402 & 11-403." *Id*. at 181.

DISCUSSION

I. The trial court did not err in removing Michael from the courtroom and proceeding with the hearing in his absence.

Michael contends on appeal that the court erred when it removed him from the courtroom during the December 11, 2023 revocation of probation hearing. Michael argues that his removal from the courtroom and the court's failure to inform him that he could return upon a promise of good behavior constitute reversible error. The State contends that we should not address Michael's claim as it is not preserved. The State does not address the merits of Michael's claim, other than to state: "the circuit court's determination was proper because it was based on recent personal observations of extreme behavior, it gave both parties an opportunity to address the issue, and gave detailed reasons for its decision." Assuming without deciding that Michael's claim is preserved, we address the merits of Michael's contention.

"The Sixth Amendment guarantees a defendant the right to be present at every stage of his trial, but a defendant 'who engages in conduct that justifies exclusion from the courtroom' waives that right." *Shiflett v. State*, 229 Md. App. 645, 670 (2016) (quoting Md. Rule 4-231(c)(1)-(2)); *see also Pinkney*, 350 Md. at 215 (noting that a defendant may "waive the right [to be present], or forfeit it through misconduct, in a number of situations."). In *Illinois v. Allen*, the United States Supreme Court held that when confronted with a disruptive defendant, a trial court may "(1) bind and gag [the defendant], thereby keeping him present; (2) cite [the defendant] for contempt; or (3) take [the defendant] out of the courtroom until he promises to conduct himself properly." 397 U.S. 337, 344 (1970). Despite the trial court's "broad discretion to control the conduct in his or her courtroom, trial in absentia should be the extraordinary case, undertaken only after the exercise of a careful discretion by the trial court." *Biglari v. State*, 156 Md. App. 657, 674 (2004) (cleaned up) (internal quotations and citations omitted).

Although revocation of probation proceedings are civil in nature, rather than criminal, and "do[] not require the full panoply of rights and safeguards associated with a criminal trial," a defendant retains the right to be present. *Chase*, 309 Md. at 235-36, 233. As noted, this right is not absolute. A defendant may be removed from proceedings for "conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Allen*, 397 U.S. at 343.

When a defendant is removed for disrupting proceedings, the trial court is required to "give a defendant the opportunity to return upon a promise to behave appropriately." *Cousins v. State*, 231 Md. App. 417, 449 (2017). Michael points to *Biglari* and *Cousins*

in support of his contentions, noting that specific procedures must be followed when removing a defendant. In *Biglari*, this Court held that although the court did not err in removing the pro se defendant during trial for failure to comply with court rules, the trial court committed reversible error when the defendant "was not afforded the opportunity to return to the courtroom upon a promise to behave properly." 156 Md. App. at 674. In *Cousins*, this Court held that the trial court did not err when, following the removal of a disruptive pro se defendant, the court placed a deputy in the cell with the defendant and repeatedly inquired whether the defendant would like to return to the trial. 231 Md. App. 449-50.

We find it notable, however, that both *Biglari* and *Cousins* concerned pro se defendants. As Michael states in his brief, "a defendant's constitutional right to be present is no less violated where the defendant is represented by counsel." We, of course, agree. Nonetheless, we note that the cases cited by Michael are distinguishable. Once a pro se defendant is removed from proceedings, no one remains to represent the defendant's interests. The fact finder is only offered the version of events presented by the State. Conversely, such a concern may be safeguarded, in part, by the remaining presence of defense counsel. Unlike *Biglari* and *Cousins*, Michael's counsel remained and presented closing arguments on his behalf. The court was still presented with Michael's point of view through his counsel, who the court specifically noted "had been advocating zealously for Mr. Michael in, for an extended period of time."

Furthermore, both *Biglari* and *Cousins* concern inappropriate procedural behaviors and outbursts by defendants that happened before or during trial. Cousins was removed

prior to jury selection, and the entire trial proceeded in his absence. 231 Md. App. at 446–47. Biglari was removed during presentation of his case and was absent for jury instructions and closing arguments. 156 Md. App. at 665. Thus, the defendants in those cases were unable to fully present their cases to the fact finder. Conversely, Michael was removed from a revocation of probation and sentencing hearing in front of a judge, not a trial in front of a jury. The only proceedings left to occur following Michael's removal were the sentencing recommendations by both the State and defense, and the court's imposition of Michael's sentence.[3] Michael continued to be represented by counsel. To that end, all proceedings, with the exception of the imposition of the sentence, had been made prior to Michael's removal. Indeed, the State had already indicated that there was backup time of up to six years for the court to impose, thus, Michael was aware that his sentence could be an additional six years.

Notably, Michael made several outbursts throughout the proceedings. First, he interrupted after the court adjudged him guilty of a probation violation, stating: "I'm not moving forward, Your Honor," indicating unwillingness to comply with the final stage of the proceedings. Michael then spoke over his counsel to interject that he was waiting for transcripts of other proceedings that he thought would assist in his case. Michael then got into a brief verbal altercation with Morrow's family, expressing frustration with their

[3] In *Biglari*, the Court specifically noted that "a defendant should be given the opportunity to return whenever a particular phase of the proceedings has concluded . . . and a new phase is about to begin." 156 Md. App. at 674 n.7. Michael's proceeding was effectively in the final stage. Indeed, the State was making its sentencing recommendation when he was removed.

appearance in court when he had an order to stay away from the family. The State attempted to move forward, at which point Michael interjected "I'm not going through this shit." When the court allowed Mr. Morrow to present his victim impact testimony, Michael made two comments, both of which the transcript designates as "(Inaudible)." Michael then interrupted Mr. Morrow's testimony, stating "I didn't do it," and "Didn't have nothing against that man." Finally, when the State's began addressing the court to recommend a disposition, following a comment from an individual from Morrow's family, Michael again became disruptive, threatening Morrow's family, stating:

> I'm not letting him keep bringing this bull shit in here. Fuck this. Get the fuck out this court room, yo. Listen, (inaudible). You gone be fucked up. I promise you that, Bitch. Why? Why, Bitch? I got you. When I get out, I got you. I promise you. You fucked up. Shut the fuck up, Bitch.

Only after this remark was Michael removed. Michael's continued disruptions and use of "vulgar, insulting, inappropriate, and angry language" was conduct that "left the court with little choice but to remove him." *Cousins*, 231 Md. at 448.

To be sure, removing a defendant from proceedings is a significant action, which should only be done as a last resort. Nevertheless, based on our review of this record, the court did not err in removing Michael from these proceedings. Under these circumstances, the court did not abuse its discretion in removing Michael from his revocation of probation hearing and concluding the proceedings in his absence.

II. The trial court did not err in permitting Mr. Morrow's victim impact testimony.

Michael next contends that the trial court erred when it permitted Mr. Morrow to present victim impact testimony at the probation revocation hearing. Mr. Morrow was the victim's representative for Morrow, whose murder was related to Michael's guilty plea to accessory after the fact in Case No. 2057. Michael contends that because his sentence in Case No. 2057 was not subject to probation (and the probation revocation hearing was only related to the five-year probation sentence imposed in Case No. 61), the court erred by permitting Mr. Morrow to give victim impact testimony in a case unrelated to the victim, Morrow.

The State contends that the court properly noted that Case Nos. 2057 and 61 were "inextricably interwoven" since the crimes committed were similar in nature and Michael pleaded guilty in both cases on the same day. The State, citing the sentencing court's vast discretion when determining the appropriate sentence for a defendant, maintains that the court did not abuse this discretion when permitting Mr. Morrow to offer victim impact testimony. We agree.

The court's consideration of victim impact statements is governed by Md. Code, Crim. Pro. ("CP") §§ 11-402 and 403. In particular, "§ 11-402 establishes a crime victim's right to present, and the sentencing court's obligation to consider, a victim impact statement; and § 11-403 establishes the victim's right to address the court before the court imposes a sentence or other disposition." *Antoine v. State*, 245 Md. App. 521, 531 (2020). Effectively, CP § 11-402 governs "written victim impact statements" and CP § 11-403

governs "victim impact testimony" given orally at sentencing. *Lopez*, 458 Md. at 169. A "victim's representative" is defined in pertinent part as "(1) a member of the victim's immediate family; or (2) another family member, the personal representative, or guardian of the victim if the victim is: (i) deceased . . ." CP § 11-401.

CP § 11-402 provides, in pertinent part:

> (d) The court shall consider the victim impact statement in determining the appropriate sentence or disposition and in entering a judgment of restitution for the victim under § 11-603 of this title.
>
> (e) A victim impact statement for a crime or delinquent act shall:
>
> (1) identify the victim;
>
> (2) itemize any economic loss suffered by the victim;
>
> (3) identify any physical injury suffered by the victim and describe the seriousness and any permanent effects of the injury;
>
> (4) describe any change in the victim's personal welfare or familial relationships;
>
> (5) identify any request for psychological services initiated by the victim or the victim's family;
>
> (6) identify any request by the victim to prohibit the defendant or child respondent from having contact with the victim as a condition of probation, parole, mandatory supervision, work release, or any other judicial or administrative release of the defendant or child respondent, including a request for electronic monitoring or electronic monitoring with victim stay-away alert technology; and
>
> (7) contain any other information related to the impact on the victim or the victim's family that the court requires.

(f) If the victim is deceased, under a mental, physical, or legal disability, or otherwise unable to provide the information required under this section, the information may be obtained from the victim's representative.

CP § 11-403 provides:

(a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered.

(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.

(c)(1) If the victim or the victim's representative is allowed to address the court, the defendant or child respondent may cross-examine the victim or the victim's representative.

(2) The cross-examination is limited to the factual statements made to the court.

(d)(1) A victim or the victim's representative has the right not to address the court at the sentencing or disposition hearing.

(2) A person may not attempt to coerce a victim or the victim's representative to address the court at the sentencing or disposition hearing.

(e)(1) If the victim or the victim's representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in circuit court or juvenile court, the prosecuting attorney shall state on the record

> that proceeding without the appearance of the victim or the victim's representative is justified because:
>
> > (i) the victim or victim's representative was contacted by the prosecuting attorney and waived the right to attend the hearing;
> >
> > (ii) efforts were made to contact the victim or the victim's representative and, to the best knowledge and belief of the prosecuting attorney, the victim or victim's representative cannot be located; or
> >
> > (iii) the victim or victim's representative has not filed a notification request form under § 11-104 of this title.
>
> (2) If the court is not satisfied by the statement that proceeding without the appearance of the victim or the victim's representative is justified, or, if no statement is made, the court may postpone the hearing.
>
> (f) A victim or victim's representative who has been denied a right provided under this section may file an application for leave to appeal in the manner provided under § 11-103 of this title.

"[T]he victim impact statutes do not limit the sentencing court from considering additional victim impact evidence. . . . [A]ny victim impact evidence beyond the minimum required by statute is within the sentencing judge's discretion to consider." *Lopez*, 458 Md. at 184. "[T]he permissible content list under § 11-402(e) 'may provide guidance as to appropriate matters for victim impact witnesses to address orally at sentencing, [but] it should not be viewed as establishing the outer limits of that testimony such that any deviation warrants automatic reversal of the sentence imposed.'" *Id*. at 186 (quoting *Ball*, 347 Md. at 197). As such, the determination of the permissible scope of victim impact

testimony that may be offered orally at sentencing is within the "virtually boundless discretion" of the sentencing court. *See id*. at 180.

In order to achieve the objectives of "punishment, deterrence and rehabilitation," the sentencing court "has a very broad latitude, confined only by unwarranted and impermissible information, to consider whatever [it] has learned about the defendant and the crime." *Johnson v. State*, 274 Md. 536, 540 (1975). "[I]n considering what is the proper sentence for the convicted individual standing before [it], the [court] saddled with the responsibility can take into account a wide, largely unlimited, range of factors." *Id*. at 542. *See also id*. ("[T]o aid the sentencing judge in fairly and intelligently exercising the discretion vested in him, the procedural policy of the State encourages him to consider information concerning the convicted person's reputation, past offenses, health, habits, mental and moral propensities, social background and any other matters that a judge ought to have before him in determining the sentence that should be imposed.") (quoting with approval *Bartholomey v. State*, 267 Md. 175, 193 (1972)). As such, we must consider whether the court abused its discretion in considering Mr. Morrow's victim impact testimony.

Because our discussion involves the interpretation of the victim impact statutes, we review the sentencing court's decision to admit Mr. Morrow's victim impact testimony *de novo*. *See Ball*, 347 Md. at 197. Michael implores us to ascribe specific meaning to the statutes' uses of "the victim" and "a victim." Michael argues that the repeated use of "the victim" and "the victim's representative" means that the victim must be of the specific crime for which a defendant is being sentenced, and in his case, only victims from Case

No. 61 should be permitted to offer victim impact testimony at the probation revocation hearing. In Michael's view, victims and victim's representatives of crimes committed by a defendant would only be permitted to offer victim impact testimony at the sentencing hearing for the specific crime. The State argues that the use of "the" versus "a" is to "put the focus on the person or persons who submitted a statement or sought to provide testimony." The State urges that we do not adopt Michael's interpretation that "because the challenged testimony is not explicitly permitted by [CP § 11-402], then it is forbidden."

Victims of crimes and victim's representatives may have an interest in the sentence served by the perpetrator of the crime against them, even if that sentence is for a separate crime. Barring these victims and victim's representatives from testifying in certain proceedings would tend to undermine the purpose of the victims' rights statutes, to "provide[ ] the mechanism to place at the judge's disposal all the facts regarding impact of the crime on the victim," and "to provide the victim access to the sentencing process by ensuring that at least in one way the effects of the crime on the victim will be presented to and considered by the sentencing judge." *Lopez*, 458 Md. at 175 (quoting *Reid v. State*, 302 Md. 811, 816-17 (1985)). We read nothing in the victims' rights statutes to necessitate the conclusion that the victim's representative from a case closely connected to, but not the same as the case being sentenced at that time, is barred from offering victim impact testimony. Because our interpretation of CP § 11-402 and 403 leads us to the determination that a victim or victim's representative of one crime committed by a perpetrator may offer victim impact testimony during the sentencing of a different crime committed by the same

perpetrator, we must address whether the court abused its discretion in permitting Mr. Morrow to testify.

The court is not required to admit victim impact testimony from every possible interested party; rather, the court may exercise its discretion, consistent with CP §§ 11-402 and 403, in determining whether an individual purporting to be a victim or a victim's representative is entitled to offer victim impact testimony. As the circuit court judge properly noted, and the State emphasizes on appeal, Case No. 2057 was "inextricably interwoven" with Case No. 61, "both legally and substantively." The probation order required that Michael "[h]ave no contact with [sic] direct or indirect with victims in [Case No. 61] or [Case No. 2057]." Due to the close nature of the cases, the court exercised its discretion to entertain Mr. Morrow's impact testimony in order to get a full picture to assist in sentencing. The court's decision to admit Mr. Morrow's testimony was not "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable," such that its actions necessitate reversal. *Lopez*, 458 Md. at 180. Accordingly, we affirm the sentencing court's decision to permit Mr. Morrow to offer victim impact testimony at the sentencing hearing in Case No. 61.

CONCLUSION

We hold that the court did not err in removing Michael from the courtroom following multiple outbursts at his revocation of probation hearing. We further hold that the court did not err in permitting Mr. Morrow to testify at the revocation of probation hearing although the crime for which the probation had been awarded was not related to the murder case for which he served as a victim's representative. We, therefore, affirm.

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