

Circuit Court for Howard County
Case No. C-13-CR-20-000313

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1478

September Term, 2021

JUSTIN BUCHANAN

v.

STATE OF MARYLAND

Nazarian
Friedman
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: October 14, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Justin Buchanan was convicted in the Circuit Court for Howard County of three counts of attempted second degree murder, four counts of first-degree assault, four counts of use of a firearm in the commission of a felony, possession of a firearm by a person having a felony conviction, possession of a regulated firearm, illegal possession of ammunition, carrying a loaded handgun in a vehicle, and various traffic offenses. He presents the following questions for our review:

1. “Did the trial court abuse its discretion in limiting Appellant’s cross-examination of Kevin Kelly regarding his motive to testify?”
2. Was the evidence legally insufficient to support Appellant’s convictions for attempted second degree murder and first-degree assault?
3. Did the trial court abuse its discretion in considering improper victim impact evidence and imposing a sentence that far exceeded the top of the guidelines?”

Finding no error or abuse of discretion, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Howard County, and he was convicted by the jury as set forth above. The circuit court imposed a total term of incarceration of 147 years.¹

¹ The court imposed the following sentences: Count 1 (attempted second-degree murder) – 30 years; Count 2 (attempted second-degree murder) – 30 years, consecutive to count 1;

These criminal charges arise out of a police chase of a black Acura. On May 21, 2020, Officer Grafton of the Baltimore County Police Department was surveilling two subjects in connection with a recent shooting. Officer Grafton witnessed Benjamin Lemon leave an apartment building and enter a black Acura. The officer activated his cruiser lights and sirens to force the Acura to pull over. Officer Grafton described the vehicle as fleeing in a reckless and dangerous manner. When Officer Grafton lost sight of the vehicle, he called for a helicopter to chase the car; other officers joined the pursuit on the Beltway. Officer Smith of the Baltimore City Helicopter Unit provided aerial assistance. Officer Smith recorded the chase from the helicopter camera and narrated the pursuit to the jury during trial.

Several officers were involved in the chase of the Acura. Officer Germaine of the Howard County Police Department was conducting speed enforcement on Maryland Route 100 when he saw a dark Acura pass him. The Acura had damage consistent with the description set forth on the police dispatch. Officer Germaine clocked the Acura speed at 107 miles per hour. Officer Deachilla, a tactical flight officer, observed the Acura and

Count 4 (first-degree assault) – 30 years, consecutive to count 2; Count 7 (first-degree assault) – 25 years, consecutive to count 4; Count 12 (use of firearm, crime of violence) – 20 years, consecutive, the first five years without parole, consecutive to count 7; Count 13 (use of firearm, crime of violence) – 5 years, concurrent to count 12; Count 14 (use of firearm, crime of violence) – 5 years, concurrent to count 12; Count 15 (use of firearm, crime of violence) – 5 years, concurrent to count 12; Count 18 (possession of ammunition) – 1 year, consecutive to count 16; Count 19 (handgun in vehicle) – 3 years, concurrent to count 12; Count 20 (failure to stop after accident) – 60 days, consecutive to Count 18; Count 21 (failure to stop after accident) – 60 days, concurrent to count 20; and Count 24 (eluding police) – 1 year, consecutive to count 21.

started tracking it from the helicopter. He testified that he saw someone exit the Acura with a gun after it had stopped. Officer Marino testified that he witnessed the Acura, with significant damage to the front, come towards him head on. He and another police car gave chase. The driver of the Acura crashed into a fence line. Officer Marino ran up on foot and began to command the driver to show his hands and exit the vehicle. Officer Redman joined Officer Marino at the scene, heard gunshots and saw glass breaking. He testified that although he could not see the direction of the bullets, they were coming out of the vehicle from the driver's side window. Officer Marino testified also that he witnessed three shots fired and that the bullets were coming out of the front driver's side window, towards the direction of the police.

At this point more officers had arrived on the scene. Officer Kummerlowe was working traffic enforcement when he found himself "head on with the vehicle in question which then went right by him." He heard over his police radio that the Acura had been in a collision, and he headed over to the scene. He saw that the Acura had crashed into a fence and that "the back windshield of the suspect vehicle just started blowing up with gunfire." Someone screamed at him to "get down." He then saw two males in the Acura, the front passenger with red on his clothing, which the officer thought to be blood.

Officer Kashner had been monitoring the police radio channels and heard the helicopter calling out the Acura's location. As he headed to the car's location, the Acura came into his lane causing him to swerve to avoid a head-on collision. The Acura struck Officer Kashner's vehicle from behind and it kept traveling, eventually crashing. The

officer ordered the individuals who got out of the Acura to lay on the ground and put their hands out. He witnessed gunshots and debris coming out of the driver's side window.

Officer Warnick encountered the Acura as it was coming up the street and he witnessed the car crash into the fence. As he approached the passenger side of the Acura, shots were fired from the inside the vehicle. The officer narrated the event captured on his police body camera.

Officer Bala testified that as he approached the Acura, he “heard two loud gunshots and [he] observed the glass breaking from the driver's side window. The glass was breaking outwards and [he] saw two small holes appear. At that point [he] registered that [they] were being shot at.”

Corporal Browne arrived on the scene and witnessed two males lying on the ground. One of these men was Benjamin Lemon, the other was the third passenger, Kevin Kelly. Corporal Browne saw a third male, the appellant, sitting in the driver seat. Appellant refused Corporal Browne's order to show his hands and exit the vehicle. Officer Bala testified that he saw appellant emerge from the driver side of the Acura and then reenter the car as the standoff continued. The standoff ended only when tactical officers from the Howard County Police Department arrived, were able to erect a perimeter and negotiate a surrender with appellant.

Appellant was transported to shock trauma where a projectile was recovered from his mouth during surgery. Officers executed a search warrant on the Acura. The State conducted DNA swabs of the weapon found at the scene and conducted buccal swabs of

appellant, Lemon and Kelly. The State was unable to identify the shooter from both the body camera and helicopter video. The State's serology expert performed tests to ascertain the presence of blood. The swabs tested positive for the presence of blood on the gun's exterior grip, exterior slide, exterior trigger, interior trigger, exterior magazine base, and the interior magazine.

The State's DNA expert, Kristiana Kuehnert, testified that the DNA from the gun's interior trigger area and behind the trigger was consistent with two DNA profiles, one major male contributor and a minor contributor. The DNA profile of the major contributor matched that of appellant, and it was not consistent with the DNA of Kelly or Lemon. The remaining swabs matched the profile of appellant, Justin Buchanan. The DNA taken from the blood samples found on the front driver area, the rear driver area, and the front and rear passenger area, all matched the DNA profile of appellant, Justin Buchanan. Kristiana Kuehnert testified that the probability of the DNA profile belonging to an unrelated individual was at least one in 6.2 nonillion.

The State's forensic firearms expert examined six 9mm Luger pistols (police firearms), and the suspect's firearm, a 45-auto caliber Glock semiautomatic pistol. The expert determined that one bullet had been fired from appellant's pistol and another from the police guns. Additionally, six cartridge cases and one projectile matched the suspect's weapon.

At trial, Kevin Kelly was a witness for the State. Kelly was the front-seat passenger in the Acura. The State had charged Kelly with attempted murder and related offenses

arising out of the incident on May 21, 2020. Kelly entered into a plea agreement with the State, where he agreed to plead guilty to a gun charge and to testify against appellant at trial. After Kelly had concluded his direct examination, defense counsel informed the trial court that he intended to cross-exam Kelly about a different criminal case in the Circuit Court for Anne Arundel County---an unrelated armed robbery that had been placed on the stet docket which was “still within three years, the statutory period in which it can be reopened.” Counsel wanted to tell the jury that the type of case that had been placed on the stet docket was for the offense of armed robbery because, in his view, Kelly had great incentive to lie because the steted case could be reopened---and it was a very serious case. The trial court permitted counsel to bring out before the jury that the Anne Arundel case had been placed on the stet docket but did not permit counsel to elicit the nature of the charges in that steted case.

As noted, the jury convicted appellant of attempted murder, first-degree assault, and related firearms offenses. At sentencing, the State asked the court to consider the victim impact statements submitted by Baltimore County Police Officers Marina, Redman, Bala and Ross, the victims of appellant’s criminal conduct. The victim impact statement referenced the murder, two years earlier, of Police Officer Amy Caprio in Baltimore County.² Appellant did not object to any portion of the victim impact statement and the court imposed the total term of incarceration of 147 years.

² The victim impact statement included the following recitation about Officer Amy Caprio: “On May 21st, 2020, we were working our respective assignments throughout Baltimore County. May 21st is a very significant day in Baltimore County as

This timely appeal followed.

II.

Appellant presents three issues for our review: two concern the trial court's discretion regarding witness testimony, and one concerns the sufficiency the of evidence for second-degree attempted murder and first-degree assault.

Appellant argues that the trial court abused its discretion by limiting his cross-examination of Kevin Kelly, a State witness. Mr. Kelly was one of the two passengers in the Acura with appellant. Mr. Kelly was charged after the incident with attempted murder. Several months later he entered into a plea agreement with the State. Appellant wished to ask Mr. Kelly on cross-examination details about the nature of the charges placed on the stet docket in Anne Arundel County, maintaining that the gravity of the charge, *i.e.*, armed robbery, provided greater incentive for Kelly to cooperate with the State and to fabricate. Appellant argues that by restricting the defense from presenting the nature of the steted charges, his right to cross-examination was unduly restricted, in violation of his rights under the United States Constitution and the Maryland Declaration of Rights.

we lost Officer Amy Caprio on May 21st, 2018. Officer Caprio was killed by a repeat offender who in the months prior to her death was charged with numerous felonies but was still allowed to roam around continuing to terrorize the general public and ultimately murder Officer Caprio. It's a case where the legal system failed the police officers and a life was lost. The tragedy that took place on May 2018, still weighs heavily with all members of the Baltimore County Police Department as well as their families. Every officer and their families felt the loss in one way or another.”

Appellant's second argument is that the State's evidence was insufficient to support the judgments of convictions for attempted second degree murder and first-degree assault. Appellant argues that to prove the crime of attempted second-degree murder, the State must prove that the defendant harbored a specific intent to kill, not merely an intent to commit grievous bodily harm, citing *State v. Earp*, 319 Md. 156, 162 (1990). Appellant argues that the evidence was insufficient to prove intent to kill officers Bala, Ross, and Marino, in that the officers could not see the shooter, the shooter made no verbal threats and none of the officers were struck by the shooter's bullets.

Finally, appellant argues that the trial court abused its discretion by considering an improper victim impact statement and imposing a sentence which exceeded the guidelines. The sentencing guidelines were nine to ninety-eight years. Appellant contends that the trial court was swayed to exceed the guidelines by the improper admission of a joint victim impact statement from the four police officers that included references to the death of an officer unrelated to these events. In appellant's view, the statement was particularly egregious because it included a distinct matter that had no bearing on the prosecution.

The State's response is twofold. First, that the trial court soundly exercised its discretion in controlling the defense cross-examination of Mr. Kelly about the Anne Arundel stetter case. The State maintains that the trial court permitted appellant the opportunity to reach the constitutional "threshold of inquiry" stemming from any subjective expectation of a benefit from the State. Second, if there be error, that error was harmless beyond a reasonable doubt.

As to appellant's sufficiency of the evidence argument, the State raises as a preliminary matter, that appellant's claims are not preserved for our review because he did not raise these arguments in his motion for judgment of acquittal in the circuit court. On the merits, the State argues that if this Court considers the sufficiency argument, the evidence was sufficient for the attempted second-degree murder and the first-degree assault convictions. It was clear to appellant that he was surrounded by police officers during the chase, and clear that he was firing at them from the inside of the Acura. The State's argument applies equally to the first-degree assault convictions.

As to appellant's sentencing argument, the State raises preservation, arguing that at the sentencing proceeding, appellant did not object to the victim impact statement. Addressing the merits, the State argues that it is clear from judge's explanation of his sentence, that any reference to police shootings extraneous to this case played no role in the sentence. Regarding the term of the sentence, the sentence was within the broad discretion of the trial court and within the statutory limits. The State argues that the sentencing guidelines are just that---guidelines---which the court has discretion to exceed. According to the State, the nature of appellant's actions justified exceeding the guidelines.

III. The Sixth Amendment and Article 21

We turn first to appellant's argument that the trial court abused its discretion by restricting his counsel from questioning Mr. Kelly about the nature of the steted charges in Anne Arundel County. We hold that the trial court did not abuse its discretion in limiting

appellant’s cross-examination of Mr. Kelly and declining to allow appellant to explore the nature of the steted charges.

We review the trial court’s ruling for abuse of discretion. *Pantazes v. State*, 376 Md. 661, 681 (2003). We will not disturb the exercise of that discretion in the absence of clear abuse. *Manchame-Guerra v. State*, 457 Md. 300, 311 (2018). To constitute an abuse of discretion, the decision “has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Evans v. State*, 396 Md. 256, 277 (2006).

In determining whether the trial judge abused his or her discretion in imposing limitations upon cross-examination, we look to see if the limitation inhibited the ability of the defendant to receive a fair trial. In our review, we consider both the defendant’s constitutional right of confrontation and the discretionary authority of the trial judge to control the mode and order of interrogating witnesses and the presentation of evidence. *Manchame-Guerra*, 457 Md. at 311.

The Sixth Amendment to the United States Constitution provides, in pertinent part, that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. Included within the right of confrontation is the opportunity to cross-examine witnesses about matters related to bias, interests, or motives to testify falsely. *Peterson v. State*, 444 Md. 105, 122 (2015); *Martinez v. State*, 416 Md. 418, 428 (2010). Article 21 of the Maryland Declaration of

Rights³ guarantees a criminal defendant the right to confront adverse witnesses.⁴ *Taylor v. State*, 226 Md. App. 317, 332-33 (2016). Until directed otherwise by the Court of Appeals, we interpret the confrontation right of cross-examination to elicit bias of a witness under Article 21 and the Sixth Amendment as coextensive.

Two Maryland rules are pertinent to our inquiry. Rule 5-616 provides, in pertinent part, that “[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed . . . (4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding” Rule 5-611 authorizes the trial judge to “exercise reasonable control over the mode and order of interrogating witnesses” and provides in pertinent part as follows:

“The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of

³ Article 21 of the Maryland Declaration of Rights sets forth six rights that protect those accused of crimes, stating as follows:

“Rights of accused; indictment; counsel; confrontation; speedy trial; impartial and unanimous jury. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.”

⁴ Until *Leidig v State*, 475 Md. 181 (2021), Maryland courts interpreted the Sixth Amendment right of confrontation and the right of confrontation under Article 21 of the Maryland Declaration of Rights in *pari materia*, or what has sometimes been referred to as “in lockstep.” *Derr v. State*, 434 Md. 88, 103 (2013) (Derr II). In *Leidig*, the Court of Appeal made a sharp (reasoned) turn and held that in determining what makes a scientific report testimonial, “it is necessary and appropriate to adopt our own standard under Article 21 of what makes a scientific report ‘testimonial’” *Id.* at 229.

time, and (3) protect witnesses from harassment or undue embarrassment.”

The right to cross-examination is not boundless nor unrestricted. *Pantazes*, 376 Md. at 680. “[T]rial courts may limit the scope of cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.” *Peterson*, 444 Md. at 122-23 (quoting *Martinez*, 416 Md. at 428); *see also* Md. Rule 5-611. A trial court may impose reasonable limitations on cross-examination, but only after defense counsel has reached the constitutionally required threshold level of inquiry. *Smallwood v. State*, 320 Md. 300, 307 (1990). “[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” To satisfy the Constitution, a trial court must allow a defendant a “threshold level of inquiry” that “expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.” *Id.* at 122. Limitation of cross-examination should not occur, however, until after the defendant has reached his or her “constitutionally required level of inquiry.” *Brown v. State*, 74 Md. App 414 (1988).

Some courts have articulated a two-step process in determining whether a defendant has been afforded his or her constitutional right to demonstrate bias of a witness. *See e.g., State v. Levell*, 282 P.3d 576 (Haw. 2012). First, the court addresses whether the jury had sufficient information from which to make an informed appraisal of witness’s motive and

bias. Once this first step, the “threshold level of inquiry” has been satisfied, the court may then exercise its discretion to exclude evidence under Md. Rule 5-611. Notably, the second step is not triggered until the defendant is afforded the threshold level of inquiry under the confrontation clause. *Manchame-Guerra*, 457 Md. at 309 (stating that “Only when the constitutional threshold has been met may trial courts limit the scope of cross-examination”).

Not all trial errors which violate the Constitution are *per se* reversible and erroneous limitations on the right to cross-examination are subject to harmless error analysis. *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986); *Bruce v. State*, 318 Md. 706, 728 (1990). The harmless error test is well established in Maryland, and it is most often quoted from *Dorsey v. State*:

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

276 Md. 638, 659 (1976) (footnote omitted).

We hold that the trial judge did not abuse his discretion in limiting the cross-examination of the witness. The court exercised its discretion properly under Rule 5-611(a) in maintaining reasonable control over the presentation of evidence after appellant had satisfied the constitutional threshold for cross-examination to elicit potential bias of the

witness. Although the nature of the steted charges was arguably relevant to the issue of bias, the trial court permitted defense counsel to inform the jury that the witness received benefit from the State. And the jury was informed that additional charges had been place on the stet docket.⁵ Viewed in context, the court permitted defense counsel to reach the constitutional level of inquiry.

Although the State is adamant there was no error in the restriction of the cross-examination, the State maintains that if error there be, it was harmless beyond a reasonable doubt. We agree. Defense counsel permitted to cross-examine Mr. Kelly extensively about the shooting incident, Mr. Kelly's statements to the police about the incident and his plea

⁵ Following a bench conference related to the stet cross-examination, defense counsel asked Mr. Kelly the following questions before the jury:

“Q[uestion]. So, Mr. Kelly on February 7, 2020, you received a stet on that matter, correct?

A[nswer]. Yes.

Q[uestion]. And one of those conditions is to obey all law, correct?

A[nswer]. Yes.

Q[uestion]. So, if the arrest on May 21, 2020, that would violate that condition and if you were convicted of any crime including the handgun charge, you could be exposed to the reopening that stet, isn't that true?

A[nswer]. I guess.

Q[uestion]. So, we can probably agree that would be another benefit you're receiving today, because you don't have to worry about that?

A[nswer]. That was dropped, as I was (indiscernible).

deal with the State. The out-of-court inquiry of Mr. Kelly regarding the steted case reveals that Mr. Kelly had a limited understanding of the nature of a stet and its impact on his future. Considering all the evidence presented by the State, we would find that assuming error *arguendo*, any error was harmless beyond a reasonable doubt.

IV. Sufficiency of the Evidence

Turning to appellant’s second argument, that the State’s evidence is insufficient to prove second-degree attempted murder and first-degree assault, we address first the State’s argument that the issue was not preserved for our review. Rule 4-324(a) provides that a criminal defendant who moves for judgment of acquittal must state with particularity all the reasons why the motion should be granted “and is not entitled to appellate review of reasons stated for the first time on appeal.” *Starr v. State*, 405 Md. 293, 302 (2008). Appellant argues that although he did not use the magic word, intent, it was obvious to the court that he was arguing that appellant lacked the specific intent to kill the officers. He focused on where the officers were located, and that the officer did not fear for his safety, all to show that the shooter lacked the intent to kill. We agree with appellant that the issue is preserved for our review, and we shall address the merits.

The standard of review for sufficiency of the evidence 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1972). The State charged appellant with attempted second-

degree murder. The crime of attempt requires that the defendant possessed a specific intent to commit the particular offense. *State v. Earp*, 319 Md. 156, 162 (1990). For attempted second-degree murder, the required intent is “a specific intent to murder.” *Id.* at 159. In addition, “where an attempted murder is charged, the State must show a specific intent to kill -- an intent to commit grievous bodily harm will not suffice.” *Id.* at 164.

In *Earp*, the Court of Appeals explained the requisite specific intent further, quoting LaFave & Scott, Handbook on Criminal Law, § 59 (1972) as follows:

“Some crimes, such as murder, are defined in terms of acts causing a particular result plus some mental state which need not be an intent to bring about that result. Thus, if A, B, and C have each taken the life of another, A acting with intent to kill, B with an intent to do serious bodily injury, and C with a reckless disregard of human life, all three are guilty of murder because the crime of murder is defined in such a way that any one of these mental states will suffice. However, if the victims do not die from their injuries, then only A is guilty of attempted murder; on a charge of attempted murder it is not sufficient to show that the defendant intended to do serious bodily harm or that he acted in reckless disregard for human life. Again, this is because intent is needed for the crime of attempt, so that attempted murder requires an intent to bring about that result described by the crime of murder (i.e., the death of another).

Id. at 165. In addition, the Court explained that an intent to kill may be shown through circumstantial evidence. *Id.* at 167; *State v. Raines*, 362 Md. 582. Intent can be inferred from defendant’s actions, or the probable consequences of his actions. The Court explained as follows:

“The required intent to kill, may, of course, be proved by circumstantial evidence -- that is, the trier of fact may infer the existence of the required intent from the surrounding circumstances.

Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence. An intent to kill may, under proper circumstances, be inferred from the use of a deadly weapon directed at a vital part of the human body. Thus, while the inflicting of grievous bodily harm may be sufficient to permit the trier of fact to infer an intent to kill, unless that inference is actually drawn, the required mens rea has not been found.

In summary, there is a difference between the intent that will suffice to prove a consummated murder, and that which is required when death does not result. The required intent in the crimes of assault with intent to murder and attempted murder is the specific intent to murder, i.e., the specific intent to kill under circumstances that would not legally justify or excuse the killing or mitigate it to manslaughter. The requisite intent to kill may, under appropriate circumstances, be inferred.

Earp, at 167.

Appellant's conduct on May 21st gives rise to the inference that he harbored a specific intent to kill. The event began with his disregard for the police command to stop the car. It continued as he led the police on a reckless high-speed chase, at times going the wrong way on the highway. Finally, it culminated in his firing a deadly weapon at the officers after his vehicle was immobilized. At this point there was no chance of escape, and appellant's firing a deadly weapon, under those circumstances, at officers Bala, Marino, and Ross, leads to a reasonable inference that he intended to kill them.

MD Code, Criminal Law, § 3-202 defines two modalities for assault in the first degree. *See Marlin v. State*, 192 Md. App. 134 (2010). First, causing or attempting to cause serious physical injury to another. The second is committing an assault with a firearm. Appellant's conduct --- firing through the glass is sufficient for first-degree assault under

both prongs of the statute, *i.e.*, intent to cause serious physical injury to another, and use of a firearm.

V. Sentencing

Appellant’s third argument, that the trial court was swayed by an inappropriate victim statement during sentencing is not preserved for our review. Appellant never objected to the victim impact statement. Assuming *arguendo* that the issue is preserved, we would find that the trial court did not abuse its discretion in imposing the sentence.

Appellant argues that the sentence imposed was excessive and disproportionate, although notably he does not make a constitutional argument. The court imposed a cumulative sentence of 147 years. The sentencing guidelines provided for 9 to 98 years, but the State asked the court to impose a sentence of 213 years and 2 months, with the first 25 years to be served without the possibility of parole. The court provided a lengthy explanation for the sentence imposed, without any reference to the unrelated Officer Amy Caprio. After reciting the salient facts of the events, the court explained, in part, as follows:

“[P]olice officers wear a shield. It doesn’t protect them. It makes them a target. They swear to protect. Sometimes they’re appreciated, sometimes they’re not. But one thing they are everyday is a human being. Each and every one of them has somebody else in this world who finds them to be important. Each and every one of them has somebody in the world that they look forward to seeing. They may have children. They may have spouses. Work is work. Some jobs are riskier than others. And they accept that. It’s danger to the public. It’s danger to the officers at its highest level. Highest level. And in that sense, it needs to be responded to in an appropriate sentence.

Imposing the maximum sentence in each and every count or thereabouts and running it consecutive is a message that's punitive in a reactionary way in my estimation. That being said, the sentence needs to reflect not only the seriousness of the event but also the effect it's had on the officers. Again, if you've never been shot at, if you've never had a bullet coming your way and had reason to believe it's coming your way intentionally, you cannot appreciate the continuing emotional difficulties. And I'll use that word difficulties because it works differently with different people that presents. And the jury found that three, arguably four, officers suffered that and there needs to be an appropriate response to that and a response that tracks the seriousness of it.

It is an aggregate sentence of a hundred and forty-seven years. It's a terrible sentence but I---I just don't understand how else to adequately reflect what has happened to these officers and it will protect the public moving forward.

There's the possibility of release but the sentence is designed such that the possibility would make him old enough that he would not---he would have to work extra hard to be a danger at that point in his life."

Appellant argues that the sentence was excessive and disproportionate. There are three recognized grounds to challenge a sentence in Maryland: (1) that it is a Constitutional violation; (2) that the judge was motivated by impermissible considerations; and (3) that the sentence exceeded the statutory limits. *Teasley v. State*, 298 Md. 364, 370 (1984). No constitutional challenge is before us. The sentence imposed by the trial court did not exceed the permissible statutory limits. And the fact that the sentence exceeded the sentencing guidelines is of no consequence here. Sentencing guidelines are recommendations which may be exceeded within the discretion of the trial judge. *Id.* at

371. This Court noted recently the impact of the sentencing guidelines in Maryland, explaining as follows:

“This Court repeatedly has held that trial judges are not bound by the sentencing guidelines promulgated by the judiciary in imposing sentences in criminal cases. *See Saenz*, 95 Md. App. at 252 (“A sentence outside the guidelines is not indicative that the guidelines were not considered but only that they were rejected. A rejection of guidelines is contemplated by the guidelines themselves”); *Timney v. State*, 80 Md. App. 356, 368-69, 563 A.2d 1121 (1989) (no error for judge to sentence above the guidelines). Sentencing guidelines in Maryland are not mandatory, and any deviation from them is not a basis for vacating the sentence or requiring a new sentencing hearing. *Teasley v. State*, 298 Md. 364, 370, 470 A.2d 337 (1984); *accord Jennings*, 339 Md. at 680 n.1 (citation omitted); *Saenz*, 95 Md. App. at 251.

Here, there is no evidence in this record that the trial judge was motivated by impermissible considerations. Even if the victim impact statement referenced an unrelated event with an unrelated officer, there is absolutely no evidence that the sentencing judge considered the reference. The court made clear the basis for the sentence. The court imposed less than the statutory maximum allowable for all the offenses. The victim impact statement was not an impermissible consideration, and the judge had the discretion to exceed the guidelines. There was no abuse of discretion.

**JUDGMENTS OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**