Circuit Court for Baltimore City
Case No.: 122104014

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2164

September Term, 2022

EMMANUEL AKUM

v.

STATE OF MARYLAND

Reed,
Friedman,
Zic,

JJ.

Opinion by Reed, J.

Filed: April 25, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Emmanuel Akum, was indicted in the Circuit Court for Baltimore City and charged with armed carjacking and related counts. Following a bench trial, the State entered a nolle prosequi to the count charging illegal possession of a firearm. The court then found Appellant guilty on all the remaining counts. Appellant was sentenced to concurrent sentences of twenty-five (25) years for armed carjacking, five (5) years for use of a handgun in a felony, and one (1) year for theft. On this timely appeal, Appellant asks this Court to address the following questions:

1. Was Mr. Akum's jury trial waiver voluntary?

2. Must this Court construe Mr. Akum's sentence for carjacking as a twenty-year sentence, where the trial court's imposition of sentence was ambiguous?

3. Was the evidence sufficient to sustain Mr. Akum's convictions?

For the following reasons, we shall affirm.

BACKGROUND

This case involves an armed carjacking that took place between 7:00 and 8:00 p.m. on January 14, 2022. The State's sole witness, Brian Cook, testified that he placed an advertisement to sell his black 2008 Honda Accord on a website called, "Offer Up." An individual, later identified as Appellant, contacted Cook and the two arranged to meet in front of Cook's mother's house, located at 234 South Loudon Avenue, Baltimore, Maryland.

Appellant arrived in a red car, being driven by another unidentified individual. Cook and Appellant met and, after a brief walkaround, Appellant asked to take the Honda for a test drive. Cook agreed and went with Appellant for a test drive around the block. When

the test drive was over, the two men got out of the car, Appellant stated, "I like this," and then he pulled out a gun. Appellant told Cook to "Git back," took the title out of his hands, and then drove off in Cook's car. Cook testified the gun was black and he believed it was a .9 millimeter.

Immediately after he drove away in Cook's car, Cook texted Appellant, as he still had his cell phone number. He told Appellant if he brought the car back he would not call the police. Instead, Appellant texted back that "You know what, ten to you head then. Ten shots in your head since you want some police stuff." At some point, Appellant also texted "since you threatening me, I'm gonna make sure my clip full for you." Cook then called the police and reported the crime.[1]

Frustrated with the pace of the police investigation, Cook decided to search the "Offer Up" website, the same one where he originally listed his car for sale. Based on his research, Cook found Appellant's name and his Instagram account. Cook testified: "And once I seen his picture, I – I'm not gonna forget you, you put the gun on me. So I knew it was him, so I stopped communicating with him from that point." Cook identified the photograph in court and testified that it was the same one he sent to the police.

Cook provided more specific details concerning how he found Appellant's information on the internet. After the incident, Cook returned to the "Offer Up" website and found his vehicle for sale at a location in Hyattsville. The car was being sold by a

[1] Cook addressed Appellant directly in court and said "I asked you not to do that to me, so you didn't. I told you to bring my car back, Bro." Cook identified copies of the text messages in court.

different named individual, but Cook testified that person was identified as Appellant's "friend" on Facebook and Instagram. Cook found a photograph of Appellant after researching that person's friends. After providing this information to the police, Cook's car was recovered, but was a "complete loss" and was in "terrible condition."

Thereafter, and as part of the police investigation, Cook was shown a photo array of suspects. Although the array was not admitted at trial, a video recording of Cook viewing the array at his mother's kitchen table was admitted over objection.[2] Cook testified that he made an identification from that photo array. Asked if that person was in the courtroom, Cook affirmatively identified Appellant in court, testifying: "Sitting over there. I don't know his name."

On cross-examination, Cook agreed that he "got a good look" at the person who showed up to buy his car during the test drive stating, "I'm in a car with a stranger. Yes, I was looking at him." Cook testified that person was not wearing a mask and that he could see the front of his face. Cook further testified, apparently referring to Appellant, that "this man got in the car with me. I seen him."

On further cross-examination, Cook agreed that Appellant had a scar and tattoos but that he told police his assailant did not. He agreed the man was wearing a hoodie, but countered that he saw the front of his face. He did not remember the color of the man's hair, but believed he had a "faded haircut." He also agreed that the photographs of

[2] Following Appellant's objection, the State informed the court that it was unable to find the photo array. The court permitted the State to play the video simply to show the "procedure that was followed[.]"

Appellant showed him with facial hair in a style called a "chin strap." On redirect examination, Cook testified that he was with this person for approximately ten minutes. [3]

After the State nol prossed the illegal possession of a firearm count, and after hearing argument, both on Appellant's motion for judgment of acquittal and closing arguments, the court found Appellant guilty on the remaining charges. The court first found there was evidence that Cook's vehicle was taken from him. Accepting that, the court stated the determinative issue was "who committed the acts that led to the loss of the vehicle." The court found as follows:

> That there was contact between Mr. Cook and whoever took the vehicle is clearly demonstrated by State's Exhibit 3, the text messages change – chain.
>
> In addition, Mr. Cook testified he also spoke with the individual with that number that was used for the text messages. That still does not identify who that person is.
>
> The car was not returned, and Mr. Cook attempted to track down and necessarily sought to identity who had the car and where it was.
>
> The defense suggests that he knew of the name of two individuals, either of whom would be the likely culprit, and neither was Mr. Akum.
>
> In researching those individuals, and like the others affiliated with them, Mr. Cook discovered the photo which is State's Exhibit 1. **That photo is without question a picture of the defendant who Mr. Cook identifies as the person who relieved him of the car on January 14, 2022.**

(Emphasis added).

[3] The parties stipulated that Appellant had three prior impeachable offenses, including theft from Cook County, Illinois in 2010, uttering false document from Anne Arundel County in 2002, and possession with intent to distribute in Baltimore City in 2017.

The court addressed Appellant's claim that Cook somehow was biased because he was angry at the person who took his vehicle, stating "there's nothing in the testimony which suggests he sought to find someone to blame other than the perpetrator." The court then turned to Appellant's contention that, he argued, undermined Cook's identification:

> The defense asserted three major factors that render Cook's identification of Akum as the suspect questionable; first that he had beard, second, that he had tattoos, and third that he had colorant in part of his hair.
>
> As to the last of those, the colorant, there's no evidence the defendant's hair was any color other than what Cook described. Even if it were colorant, the Court is satisfied that in the darkness and with a hood covering part of his head, someone would not necessarily have seen nor taken note of any other color.
>
> There are no pictures contemporaneous with the events to demonstrate the defendant had a beard. If he did, in the lighting that night and with a hood up, it could have easily have not been visible given the type of beard that is contended that it was.
>
> The tattoos shown in court on the arms and hands are again not shown to have been present that night, but the hoodie he wore would have covered his arms. And Mr. Akum's complexion and the color of his tattoos would easily have not been very visible to a casual observer.
>
> In fact, under the lighting in the courtroom, the Court could not see the tattoos on Mr. Akum's hands. And further, clearly his shirt sleeves covered those tattoos that are on his arms, just as would have the hoodie the might [sic] of the event.
>
> That it was serendipitous that Cook found the picture of the defendant on the internet does not make the identification any less valid.

After finding that there was no issue concerning Cook's identification of the weapon used as a .9 millimeter handgun, the court concluded by finding Appellant guilty of the remaining counts in the indictment. We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends the court erred in accepting his waiver of his right to a jury trial because the waiver was involuntary. Specifically, Appellant argues that, because he was in "tears and shaking," there was a suggestion that he was under duress during the proceeding. For that reason, Appellant continues, the court's limited inquiry concerning whether he was threatened, pressured, or promised anything to waive his right was insufficient and requires reversal. The State disagrees and responds that "[t]he judge was in the best position to observe and interpret [Appellant's] demeanor and to determine the truthfulness of [Appellant's] response." We agree.

An accused's right to a trial by jury is guaranteed by the Sixth Amendment to the United States Constitution. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968); *Boulden v. State*, 414 Md. 284, 294 (2010). Similar protection is given criminal defendants under Articles 5(a)(1) and 21 of the Maryland Declaration of Rights. *Owens v. State*, 399 Md. 388, 405-06 (2007), *cert. denied*, 552 U.S. 1144 (2008). Because the right to a jury trial is "absolute," *Robinson v. State*, 410 Md. 91, 107 (2009), the right can only be waived if the trial court is "satisfied that there has been an intentional relinquishment or abandonment" of that right. *Powell v. State*, 394 Md. 632, 639 (2006) (quotation marks and citation omitted), *cert. denied*, 549 U.S. 1222 (2007). Whether an accused has made an intelligent and knowing waiver of the right to a jury trial depends on the facts and circumstance of each case. *Walker v. State*, 406 Md. 369, 380 (2008) (quotation marks and citations omitted).

A criminal defendant may nonetheless choose to waive his or her right and proceed with a bench trial. *Boulden v. State*, 414 Md. 284, 294 (2010). According to the Supreme Court of the United States, a waiver constitutes "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Maryland Rule 4-246 governs the waiver of the right to a jury trial in circuit court and provides in relevant part:

> (a) **Generally**. In the circuit court, a defendant having a right to trial by jury shall be tried by a jury unless the right is waived pursuant to section (b) of this Rule. The State does not have the right to elect a trial by jury.
>
> (b) **Procedure for Acceptance of Waiver**. A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the waiver is made knowingly and voluntarily.

"Such a waiver is valid and effective only if made on the record in open court and if the trial judge determines, after an examination of the defendant on the record and in open court, that it was made 'knowingly and voluntarily.'" *Nalls v. State*, 437 Md. 674, 685 (2014). The court need not require explicit inquiry into voluntariness of the waiver, absent any triggering facts. *Aguilera v. State*, 193 Md. App. 426, 442 (2010). However, the court must "satisfy itself that the waiver is not a product of duress or coercion and further that the defendant has some knowledge of the jury trial right before being allowed to waive it." *State v. Bell*, 351 Md. 709, 725 (1998) (emphasis omitted). Although there is no "specific litany" in which the court must engage, the record must show that the

defendant has "some knowledge of the jury trial right before being allowed to waive it." *Abeokuto v. State*, 391 Md. 289, 318-20 (2006).

Here, when the case against Appellant was called for trial, all indications in the transcript suggested that Appellant wanted a jury trial. After the State put a plea offer on the record, which was summarily rejected by Appellant, the court and the parties were informed that prospective jurors would arrive in the courtroom in approximately fifteen (15) minutes. At that point, the State requested that Appellant "be fully advised about the differences between a jury trial and a bench trial[.]" Defense Counsel and the court advised Appellant as follows:

> [DEFENSE COUNSEL]: Mr. Akum, are you under the influence of any drugs or alcohol today?
>
> THE DEFENDANT: No.
>
> [DEFENSE COUNSEL]: Have you ever been under the care of a mental health professional?
>
> THE DEFENDANT: No.
>
> [DEFENSE COUNSEL]: How far'd [sic] you do in school?
>
> THE DEFENDANT: I completed 11th grade.
>
> THE COURT: Can you read, write and understand the English Language?
>
> THE DEFENDANT: Yes.
>
> [DEFENSE COUNSEL]: Can you hear and understand everything going on in the courtroom today?
>
> THE DEFENDANT: Yes, sir.

[DEFENSE COUNSEL]: You have the choice between having a trial with just [the Honorable John Addison Howard] or with a jury, 12 of you [sic] peers.

If you elect to have a trial with Judge Howard, the only way you can be convicted is if the State could convince Judge Howard of your guilt beyond a reasonable doubt at the end of their case – at the end of the case. I'm sorry.

The only way you can be – if we elect to have a – do you understand that first?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: Okay. If we elect to have a jury trial, you and the State all take part in selecting 12 jurors. They would all be drawn into the courtroom as part of a larger core that was selected at random from the motor and voter roles of Baltimore City.

The only way that those 12 people could convict you is if all 12 of them unanimously found you guilty, or were convinced of your guilt beyond a reasonable doubt like I say at the end of the case.

All 12 would have to decide unanimously to find you not guilty. Anything in between those would be a hung jury, and the State could proceed as they so chose. Do you understand that?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: Is it your election today to have a trial with a jury or a bench trial with Judge Howard?

THE DEFENDANT: A bench trial with Judge Howard.

Defense Counsel then asked for a moment to confer with Appellant. After doing so, the inquiry continued:

[DEFENSE COUNSEL]: Mr. Akum, do you elect to have a bench trial with Judge Howard or a jury trial?

THE DEFENDANT: Bench trial.

[DEFENSE COUNSEL]: Okay.

THE COURT: All right. Well, cancel the jury.

[DEFENSE COUNSEL]: Could I ask a couple more questions? I'm sorry. Just – Mr. Akum is in tears and shaking, so I want to make sure.

Mr. Akum –

THE COURT: We've already gotten the same –

[DEFENSE COUNSEL]: I just want to make sure nobody's threatened, or pressured him, or promised him anything.

THE COURT: Has anybody threatened, promised or suggested in any way that you would suffer any penalty if you elected a bench trial as opposed to a jury trial?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay.

[DEFENSE COUNSEL]: Thank, Your Honor.

THE COURT: The Court's satisfied.

THE CLERK: It's a bench trial.

THE COURT: It's a bench trial.

The issue is whether Appellant's waiver was made voluntarily. Our Supreme Court has explained:

> Maryland courts have consistently required that for an action to be voluntary, it should be both an exercise of "unconstrained free will" and be "intentional." The Committee Note concerning Rule 4-246 suggests that a knowing waiver ensures a defendant's understanding of his right to a jury trial, and a voluntary waiver is one made under a defendant's free will, uncoerced, and uninfluenced by drugs or alcohol.

Nalls, 437 Md. at 689 (cleaned up).

Absent a factual trigger mandating a voluntariness inquiry, the question for this Court is whether "the trial judge could fairly find," based on the defendant's demeanor,

that the defendant acted voluntarily in waiving his right to a jury trial. *Aguilera*, 193 Md. App. at 442–43 ("[I]n the absence of a trigger, the court is permitted to make its voluntariness determination based on the defendant's demeanor, without asking any specific questions about voluntariness"). *Accord State v. Hall*, 321 Md. 178, 182-83 (1990). As with the knowledge requirement, a waiver's voluntariness is judged based on the totality of the circumstances as observed by the trial judge. *Kang v. State*, 393 Md. 97, 108 (2006). The trial judge is in the best position to determine whether the defendant's demeanor may indicate a reason to specifically ask about the waiver's voluntariness. *Id*.

Both parties direct our attention to *Martinez v. State*, 309 Md. 124 (1987). Our Supreme Court summarized that case as follows:

> In *Martinez, supra*, we found that the transcript of the waiver hearing did not support the court's finding that the defendant waived voluntarily his right to a jury trial. *Martinez*, 309 Md. at 134-35, 522 A.2d at 955. The relevant portion of the waiver hearing transcript revealed that the defendant was taking Lithium, a medicine prescribed to treat schizophrenia, paranoia, and possibly other psychiatric or psychological conditions; the defendant did not feel that he was "presently suffering from any physical illness;" and stated that he understood that he was entitled to a jury trial. *Martinez*, 309 Md. at 127-28, 522 A.2d at 951-52. When asked by the court, "Are you voluntarily waiving that right [to a jury trial]?," the defendant replied, "I am a little bit nervous." *Martinez*, 309 Md. at 128, 522 A.2d at 952. After further questions about whether the defendant understood the jury selection process and guilt beyond a reasonable doubt standard, **the trial judge asked, "Has any person, either inside or outside of this courthouse, made you any promise, or has anyone threatened you in any way in order to have you give up your right to a jury trial?". *Martinez*, 309 Md. at 129, 522 A.2d at 952. The defendant answered, "Yes." *Id*.** The trial court accepted the jury waiver. **We found this last question "particularly relevant," concluding that the record did not disclose a knowledgeable and voluntary waiver of a jury trial, and ordered a new trial.** *Martinez*, 309 Md. at 135-36, 522 A.2d at 955-56 ("It is one thing to say that a trial court need not recite a specific litany relating to the voluntariness of an election. But it is quite another thing to say that, if the court decides to ask such a question, it is free to ignore the answer.").

Abeokuto, 391 Md. at 319-20 (emphasis added).

We are persuaded that *Martinez* is distinguishable. Unlike that case, there was no evidence whatsoever that Appellant had been threatened, coerced, or promised anything in exchange for the jury trial waiver. Moreover, and assuming *arguendo* that defense counsel's observation that Appellant was "in tears and shaking" triggered further inquiry, that requirement was satisfied when the trial court inquired whether anyone had "threatened, promised, or suggested in any way that you would suffer any penalty if you elected a bench trial as opposed to a jury trial[.]" *See generally*, Md. Rule 4-246 (b) (Committee Note) (emphasizing that no specific litany is required in determining whether there was been "an intentional relinquishment of a known right" and that "[w]hat questions must be asked will depend on the circumstances of the particular case"). In addition, there is no claim that Appellant was not properly advised of his rights to trial by jury. As such, we hold that the trial court ensured that Appellant voluntarily made his decision to waive his right to a jury trial.

II.

Appellant next asserts his sentence for armed carjacking was ambiguous and, because it is not clear whether the court imposed a twenty-five (25) or twenty (20) year sentence, this Court should resolve the ambiguity in his favor and direct the circuit court to correct the commitment record to reflect the lesser sentence. The State responds that there was no ambiguity because the transcript, the commitment record, and the docket

entries all show that Appellant was sentenced to twenty-five (25) years' incarceration for armed carjacking.

At the end of the trial, prior to the disposition hearing, the State asked for the following:

> In light of the defendant's record, in light of the fact that the guidelines for the top count which is armed carjacking is 20 to 30 years, the State is asking for Count 1, 30 years suspend all but 20 years with five years of supervised probation to run consecutive with Count 5, five years without, and the theft of 1500 to under 25,000 to be fully suspended and to run concurrent with Count 1.[4]

At sentencing, the State modified this request and asked "that this Court impose 25 years for Count 1, which would be the armed carjacking, as well as consecutively 10 years on the handgun use in a crime of violence, which is Count 5." The defense responded by asking the court to impose the original plea offer of twenty (20) years with five concurrent for the two convictions because, according to counsel, a higher sentence would be "punitive for him just merely exercising his rights" to a trial. After hearing these suggestions, the court-imposed sentence as follows:

> All right. Would you please stand, Mr. Akum?
>
> [Defense Counsel], obviously I have no reason to doubt the voracity of what you've recited. Mr. Akum has essentially, it would appear, have been living a life in which his parents and the system – and I reference the

[4] There was no request for a pre-sentence investigation, nor are there any sentencing guidelines in the record on appeal. *See generally*, Md. Code (1999, 2017 Repl. Vol.) § 6-112 of the Correctional Services Article (concerning presentence investigation); Md. Rule 4-341 (same); Md. Code (2001, 2018 Repl. Vol.) §§ 6-208, 6-211, 6-216 of the Criminal Procedure Article (concerning sentencing guidelines).

fact that he's never done time, although he's had a number of convictions, including for possession with intent to distribute and various other things.[5]

But he did not, in spite of the kindness of those courts in which those convictions occurred, in spite of the kindness of those judges, he didn't understand, for some reason, that what he was doing was wrong and what he risked ultimately.

He ends up with a handgun, and in a – essentially I will call it a "scam" to con someone out of their car, and then attempts to sell it on the internet, which ultimately led in part to his being identified, and arrested, and charged with this offense.

Armed car – armed carjacking is a frightening experience for anyone. And using a gun as the weapon in the armed carjacking is certainly something I think everyone knows you should not do, one use a gun to take other people's property.

And I'm not unsympathetic to the difficulties of Mr. Akum's plight – plight. In spite of that, he's committed, as has occurs, an escalating series of crimes leading up to him being before me for sentencing.

The – **I do not think that the State's request for a 25-year sentence for armed carjacking is inappropriate**. **And I therefore do impose 25 years**.

The Court, for the use of a handgun in a felony crime of violence will impose a sentence of five years concurrent with the 20-year sentence. That five years will be served without parole.

(Emphasis added).[6]

[5] As indicated, during trial the parties stipulated that Appellant had previously been convicted of theft, uttering false document, and possession with intent to distribute. There was no pre-sentence investigation in this case and we are unable to find any further details about Appellant's prior criminal record in the record on appeal.

[6] After some further remarks, Defense Counsel reminded the court that it had not imposed sentence on the theft conviction. The court apologized and imposed one year concurrent to the other sentences.

Before we address the merits, and although not raised by either party, it is clear that neither party made any comment concerning the court's misstatement when sentencing on the handgun count, nor was any objection raised. For these reasons, this appellate issue is not preserved. *See Bryant v. State*, 436 Md. 653, 660-61 (2014) ("It is well settled that challenges to sentencing determinations are generally waived if not raised during the sentencing proceeding").

However, lack of preservation does not preclude appellate review of a substantively flawed sentence because it is settled that an inherently illegal sentence may be corrected at any time, even absent an objection at sentencing. *See* Maryland Rule 4-345(a) ("The court may correct an illegal sentence at any time"); *Bryant*, 436 Md. at 662 (observing that failure to object at sentencing does not preclude appellate review of an illegal sentence). To be clear, "[t]his exception is a limited one, and only applies to sentences that are 'inherently' illegal." *Id*. (citing *Chaney v. State*, 397 Md. 460, 466 (2007)).

Unfortunately, neither party even addresses whether the issue presented in this case, *i.e.*, that the court's remarks created an ambiguity in sentencing, is cognizable as an "inherently illegal" sentence. *See generally, Tshiwala v. State*, 424 Md. 612, 619 (2012) (noting that "where the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for the purposes of Rule 4-345(a)"); *State v. Wilkins*, 393 Md. 269, 284 (2006) (noting that to be subject to correction at any time, the illegality must "inhere in the sentence, not in the judge's actions"); *accord Bryant*, 436 Md. at 662-63. Although an argument could be made that the alleged ambiguity was not inherent to Appellant's sentence on the armed

carjacking, we shall assume *arguendo* that the issue is properly before us. *See Payne & Bond v. State*, 211 Md. App. 220, 231 n. 6 (2013) (noting that State did not raise a possible waiver argument and then continuing to address the merits of an issue), *vacated sub nom. on other grounds*, *State v. Payne*, 440 Md. 680 (2014); *Whittington v. State*, 147 Md. App. 496, 513 n. 3 (2002) (assuming the merits of an issue were properly presented where the State failed to raise preservation), *cert. denied*, 373 Md. 408, *cert. denied*, 540 U.S. 851 (2003); *see also Tallant v. State*, 254 Md. App. 665, 689 (2022) ("Maryland courts have the discretion to decline to address issues that have not been adequately briefed by a party").

Turning to the merits, because of the broad latitude afforded judges at sentencing, appellate courts will only review a sentence on three grounds: "(1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence is within statutory limits." *Bishop v. State*, 218 Md. App. 472, 508 (2014) (citation omitted); *accord Abdul-Maleek v. State*, 426 Md. 59, 71 (2012). Notably, the sentence of twenty-five (25) years is within the statutory limit for armed carjacking. *See* Md. Code (2002, 2021 Repl. Vol.), § 3-405 (d) of the Criminal Law ("Crim. Law") Article (penalty for armed carjacking is imprisonment not exceeding 30 years). There is no claim that the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations, nor is there a claim that the sentence constituted cruel and unusual punishment. Thus, the only grounds for appellate review would be if the sentence violated "other constitutional requirements."

This Court has stated, although in a case concerning a claim that a sentencing statute was ambiguous as opposed to comments by a judge at sentencing, that:

> The Due Process Clause of the Fourteenth Amendment provides that no person shall be deprived "of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. All court proceedings, including sentencing, "are to be tested by fundamental fairness – the touchstone of due process." *State v. Bryan*, 284 Md. 152, 159 n.6, 395 A.2d 475 (1978). "It is a settled principle in Maryland criminal law that fundamental fairness dictates that the defendant understand clearly what debt he must pay to society for his transgressions." [*Alston v. State*, 433 Md. 275 292 (2013)] (quoting *Robinson v. Lee*, 317 Md. 371, 379-80, 564 A.2d 395 (1989)).

Johnson v. State, 240 Md. App. 200, 209 (2019), *aff'd*, 467 Md. 362 (2020).

The sentencing court has a duty to impose a sentence that permits the defendant to "understand clearly what debt he must pay to society for his transgressions." *Robinson v. Lee*, 317 Md. at 379-80. Further, "[s]entencing is a definite and objective matter, and it is for that reason that the only sentences known to the law are those which appear in the public records of the courts." *Costello v. State*, 240 Md. 164, 168 (1965). To fulfill its obligation, the court need only "spell out with reasonable specificity the punishment to be imposed." *Id*. at 380. In analyzing whether there is ambiguity in a sentence, we look to three sources of information: (1) the transcript of the sentencing proceedings; (2) the docket entry; and (3) the order for commitment or probation. *See Dutton v. State*, 160 Md. App. 180, 193 (2004) (citation omitted). We review the transcript of the proceedings in conjunction with the docket entries and commitment orders to determine the terms of the sentence. *See Dutton*, 160 Md. App. at 191-92.

Looking to the transcript, when the court-imposed sentence on the armed carjacking count, it stated that the State's recommendation for a twenty-five (25) year sentence was

not "inappropriate" and then imposed 25 years. That sentence was unambiguous. Any arguable ambiguity occurred when the court sentenced on the handgun count and imposed a non-parolable sentence of "five years concurrent with the 20-year sentence." [Id.] Appellant argues the latter remark created an ambiguity with respect to the sentence for armed carjacking. We are not persuaded. The court's remark simply concerned whether the sentence for the handgun conviction was to be concurrent or consecutive to the sentence for armed carjacking. The court's remark "concurrent with the 20-year sentence" did not alter the sentence for carjacking; instead, it appears to have been either a transcription error or a slip of the tongue by the judge. See *Paige v. State*, 222 Md. App. 190, 199 (2015) ("Almost anyone can make a slip of the tongue, and judges are not immune from such errors") (quoting *Reed v. State*, 225 Md. 566, 570 (1961)).

Our conclusion is supported by the commitment record and the docket entries, both of which provide that Appellant was sentenced to twenty-five (25) years for armed carjacking. Furthermore, the transcript clearly establishes that no one raised any issue with the judge's remarks or suggested an ambiguity during the proceeding. Thus, even to the extent that this claim is cognizable absent an objection as an illegal sentence under Rule 4-345, we conclude there is no ambiguity in Appellant's sentence.

III.

Finally, Appellant argues the evidence was insufficient to sustain his convictions because "it is based on a single witness whose identification was not credible and lacked corroboration." The State disagrees, as do we.

Maryland Rule 8-131(c) provides the standard for appellate review:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"It is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to determine '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.'" *Koushall v. State*, 479 Md. 124, 148 (2022) (quoting *State v. Manion*, 442 Md. 419, 430 (2015)) (further citation omitted), *reconsideration denied* (Apr. 25, 2022); *Accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The appellate court "does not retry the case." *Koushall*, 479 Md. at 148 (citing *Dawson v. State*, 329 Md. 275 (1993)). Instead, "[o]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Koushall*, 479 Md. at 148-49 (citations omitted). Moreover:

> "[W]e are mindful of the respective roles of the [appellate] court and the [trier of fact]; **it is the [trier of fact's] task, not the court's**, to measure the weight of the evidence and to judge the credibility of witnesses." The appellate court gives deference to "a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation[.]" "**We do not second-guess the [trier of fact's] determination where there are competing rational inferences available**." It is simply not the province of the appellate court to determine "whether the [trier of fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." **Such deference is accorded, in part, because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first-hand, including the demeanor-based evidence of the witnesses, which weighs on their credibility.**

State v. Manion, 442 Md. at 431 (cleaned up, emphasis added).

Stated another way, "'when evaluating the sufficiency of the evidence in a non-jury trial, the judgment of the trial court will not be set aside on the evidence unless clearly erroneous[.]'" *State v. Manion*, 442 Md. at 431 (quoting *State v. Raines*, 326 Md. 582, 589 (1992)). "Factual findings 'cannot be held to be clearly erroneous' if 'there is any competent evidence to support' them." *Middleton v. State*, 238 Md. App. 295, 304 (2018) (citations omitted). However, "[t]he deference shown to the trial court's factual findings under the clearly erroneous standard does not, of course, apply to legal conclusions." *Id*. (citation omitted). We review a trial court's legal conclusions to determine whether they are 'legally correct.'" *Id*.

The only disputed issue for us to consider is whether there was sufficient evidence of Appellant's criminal agency in the underlying crimes. The State's sole witness, Brian Cook, was unequivocal in his testimony identifying Appellant as the man who robbed him of his Honda Accord at gunpoint. Cook and Appellant met near the home of Cook's mother for a purported sale of the vehicle. Appellant walked around the Honda and took a test drive, which Cook testified lasted approximately ten minutes. While Appellant wore a hoodie, his face was uncovered and Cook saw the front of his face clearly. After the armed carjacking, Cook texted Appellant and spoke to him via the number associated with the cellphone that was provided to facilitate the transaction. Cook subsequently found his Honda listed for sale on the same online website, "Offer Up", where he previously listed the vehicle. Cook's investigation of that sale eventually led him to social media

photographs of Appellant, which he provided to the police and which were used as a basis of additional identification. In sum, Cook's identification could not have been any clearer.

It is well settled that the testimony of a single eyewitness, if credited by the trier of fact, is sufficient to support a conviction. *See Branch v. State*, 305 Md. 177, 184 (1986) ("The issue of credibility, of course, is one for the trier of fact"); *see also Small v. State*, 235 Md. App. 648, 704-06 (2018) (holding that the identification testimony of a single eyewitness was sufficient to sustain the defendant's convictions where the witness expressed familiarity with the defendant, provided a description of the defendant's physical features, and subsequently identified the defendant in court), *aff'd* 464 Md. 68 (2019). And, in contrast to Appellant's argument that the identification was based on just one witness, this Court repeatedly has made clear that "[c]redibility does not depend on numbers of witnesses." *Hourie v. State*, 53 Md. App. 62, 73-74 (1982) (quoting 7 Wigmore, *Evidence* §§ 2030-2043, at 342-48 (Chadbourn rev. 1978), emphasis omitted), *aff'd*, 298 Md. 50 (1983). Finally, and in response to Appellant's challenges to Cook's credibility in his brief [Brief of Appellant at 17-18], "a witness's credibility goes to the weight of the evidence, not its sufficiency." *Owens v. State*, 170 Md. App. 35, 103 (2006), *aff'd*, 399 Md. 388 (2007), *cert. denied*, 552 U.S. 1144 (2008). In short, Cook's identification testimony was more than sufficient for the fact finder in this case, *i.e.*, the court, to find Appellant guilty of the charged offenses.

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