

Circuit Court for Montgomery County  
Case No. C-15-CR-22-000950

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1468

September Term, 2023

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GARRY R. BRISCOE

v.

STATE OF MARYLAND

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Graeff,  
Nazarian,  
Zic,

JJ.

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Opinion by Nazarian, J.

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Filed: April 30, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Garry Briscoe was convicted of illegal possession of a regulated firearm after a jury trial in the Circuit Court for Montgomery County. At his sentencing hearing, the court heard expert testimony opining on Mr. Briscoe’s alleged gang affiliation and watched a video of an armed robbery that Mr. Briscoe purportedly filmed, but stated on the record that it didn’t consider either in setting his sentence. On appeal, he argues that the court abused its discretion by considering this evidence to devise his sentence. He challenges the legality of his conviction on statutory grounds and we affirm.

## **I. BACKGROUND**

On October 26, 2021, the circuit court sentenced Mr. Briscoe to three years, suspending all but 214 days he spent in jail, after he pleaded guilty to possessing a firearm as an addict or habitual user of a controlled dangerous substance (the “2021 offense”). The court placed him on eighteen months of supervised probation. Eight months later, on June 27, 2022, Mr. Briscoe gave Praise Martin a ride home. During the ride, Ms. Martin got out of the car, ran away, and dialed 9-1-1 to report that Mr. Briscoe had choked her and threatened her with a handgun. Police obtained an arrest warrant for him.

On June 30, 2022, undercover police officers saw Mr. Briscoe leave an apartment building and enter the passenger side of a woman’s vehicle. The officers barricaded the car and ordered the occupants to exit. During the arrest, Detective Justin Craver peered into the vehicle and saw a handgun in the center console. When police escorted Mr. Briscoe from the car, he indicated that he was lucky that he hadn’t shot them and that there hadn’t been a shootout. The State charged Mr. Briscoe with first-degree assault, use of a firearm

while committing a crime of violence, and two counts of illegal possession of a firearm. At the close of trial, on March 9, 2023, the jury found Mr. Briscoe not guilty on all counts except for the charge of possessing an illegal firearm on June 30 (the “2022 offense”).

At the sentencing hearing for his conviction and violation of probation, the court recognized Detective Craver as an expert in criminal street gangs and gang investigations and allowed the detective to give an opinion on whether Mr. Briscoe was a member of One Way Hustle/Black Mob (OWH/BM), a neighborhood gang in Germantown. Detective Craver testified that a person must meet at least two of eight criteria set by the State to be validated as a gang member: self-admission, a reliable source, an unreliable/untested source, hand sign symbols, gang attire, association with validated gang members, being arrested with validated gang members, or gang tattoos. He said that his gang assignment district was Silver Spring, an area he knew well, and that he had become responsible for covering Germantown in June 2023 when he had to step in for another officer. He couldn’t tell the court when OWH/BM was created, wasn’t very familiar with the gang or its hand signs, and didn’t know if they had any logos.

The State introduced a gang validation sheet that Detective Craver prepared about Mr. Briscoe in June 2023. The detective explained that validation sheets compile information pulled from database entries made by other gang detectives in the department. The validation sheet suggested that Mr. Briscoe met two of the criteria: (1) association with validated gang members, and (2) using, displaying, or possessing gang hand signs, symbols, logos, graffiti, photos and/or documents. The sheet included a photograph of Mr.

Briscoe with another man whom the detective identified as a validated member of OWH/BM. None of the images on the sheet showed Mr. Briscoe using or displaying hand signs, symbols, or logos, or appearing in front of any graffiti representative of OWH/BM. Detective Craver said that the image meant to support that Mr. Briscoe had displayed a gang symbol was a screenshot from a rap video that another detective had entered into the database. He admitted the video was three years old, that he hadn't seen it in a while, and couldn't say with certainty whether the video showed Mr. Briscoe displaying gang symbols. Although Detective Craver lacked personal knowledge that Mr. Briscoe met two gang validation criteria, he stood by his opinion that Mr. Briscoe belonged to OWH/BM.

The State also introduced a 2019 video of an armed robbery that Mr. Briscoe allegedly had filmed (the “robbery video”).<sup>1</sup> Defense counsel objected to its relevance, reliability, and authenticity. The circuit court decided to watch the video and ascribe whatever weight it deemed proper:

The Court can really consider anything when fashioning a sentence that is meant to punish, deter, rehabilitate . . . . So, the Court will view it and give it the appropriate weight, if any. Perhaps no weight. Perhaps some weight. But the Court is certainly going to look at it.

The State also identified three aggravating factors that, in its view, bore on Mr. Briscoe's sentence. The prosecution asked the court to reconsider evidence admitted during trial of Mr. Briscoe's phone calls to Ms. Martin from jail stating that his treatment of her

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<sup>1</sup> The prosecution and the defense reported to the court that Mr. Briscoe had been indicted in connection with the robbery and his case was pending trial.

and attempts to have her recant, say the gun belonged to her, and not come to court illustrated his true character. Next, the prosecution highlighted that Mr. Briscoe committed the 2022 offense while on probation for the 2021 offense, for which he had been sentenced only eight months before. The prosecution emphasized also that the 2021 offense involved possession of an AR-15, a military weapon, with a high-capacity magazine. Mr. Briscoe elected not to speak at the hearing.

The circuit court sentenced Mr. Briscoe to five years for the 2022 offense, suspending all but three years, with credit for 425 days of incarceration. The court sentenced Mr. Briscoe to two years for his violation of probation, to run consecutively to his firearms sentence, and placed him on five years of supervised probation after release. The court relied on Mr. Briscoe's conduct after being sentenced in 2021 and his continued possession of firearms in setting his sentence:

And let me tell you why you're getting the time that you're getting. Guns are out of control. You're part of the problem. You were given an opportunity [in the 2021 offense]. You said you were going to get your [commercial driver's license] . . . . You didn't. Eight months later you went back out. And you were caught yet again with another gun. And then, you said to the officers, oh we're lucky there wasn't a shootout. Because you know, there could have been. What? You're part of the problem. And so, you don't, you don't leave the Court any choice but to punish you for that.

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This sentence is, because for whatever reason, you haven't gotten the message regarding guns, regarding illegal behavior. And so, now, you're going to pay the price for that. And I'll note that, obviously, you were only convicted of the one count. But the Court did sit through the entire trial. And one thing that was chilling to the Court during that trial was listening to you on the jail calls. Going from seemingly normal to completely

crazed, threatening Ms. Martin that she needs to get it straight . . . . And that to the Court was a window into your mindset. And that’s concerning. So, you’re placed on five years of supervised probation, standard conditions of probation will apply.

The court also identified the grounds on which it did not rely to construct Mr. Briscoe’s sentence, specifically, gang affiliation and the robbery video:

Now with respect to gang affiliation, the Court isn’t willing to make that finding based on the information the Court had today, so. And even if the Court did make that finding, I don’t know that it would change at all the outcome. But the Court won’t make a finding with respect to the gang affiliation.

As for the video that the State just showed, that will be evidence in your next case, presumably. And a jury will make a decision based on that evidence. The Court’s not making a decision, or really considering that video in terms of your sentence here today.

Mr. Briscoe noted his appeal on September 27, 2023.

## II. DISCUSSION

Mr. Briscoe raises two issues on appeal: (1) whether the circuit court abused its discretion during his sentencing hearing; and (2) whether his conviction under Md. Code (2003, 2022 Repl. Vol.), § 5-133(b)(1) of the Public Safety Article (“PS”) was legal. We hold that the sentencing court exercised its discretion properly and that Mr. Briscoe’s conviction was legal under the statute and the circumstances.

Our review of a sentence is limited to three general considerations: whether (1) the sentence exceeds statutory limits, (2) the judge was “‘motivated by ill-will, prejudice[,] or other impermissible considerations,’” or (3) “the sentence constitutes cruel and unusual punishment” or “violates any other constitutional provision.” *Lopez v. State*, 458 Md. 164,

179 (2018) (*quoting Gary v. State*, 341 Md. 513, 516 (1996)). Considering a sentencing court’s broad latitude to craft a sentence, we review its evidentiary rulings under an abuse of discretion standard. *Id.* at 180 (*citing Gordon v. State*, 431 Md. 527, 533 (2013)). Under that standard, an abuse occurs when “the decision to admit . . . evidence is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Id.* (*quoting Sumpter v. Sumpter*, 436 Md. 74, 85 (2013)).

**A. Because The Circuit Court Conducted Its Sentencing Inquiry And Considered Information Properly, The Court Did Not Abuse Its Discretion.**

Mr. Briscoe argues that improper considerations—evidence of his alleged gang affiliation and the robbery video—motivated the sentence the circuit court imposed on him. The State counters that the sentencing court didn’t rely on the gang validation evidence or the robbery video to set Mr. Briscoe’s sentence, that any errors in allowing the evidence were harmless, and that any inference that either factored into his sentence is unreasonable. We agree with the State.

A sentencing court’s inquiry into circumstances relevant to aggravating or mitigating factors “is not limited by the strict rules of evidence . . . .” *Purnell v. State*, 241 Md. 582, 585 (1966). Even so, the court may not consider evidence that “‘possesses such a low degree of reliability that it raises a substantial possibility that [the sentence] may be influenced by inaccurate or false information.’” *Henry v. State*, 273 Md. 131, 147 (1974) (*quoting Henry v. State*, 20 Md. App. 296, 314 (1974) (Davidson, J., dissenting)). A court

can't, for example, consider “bald accusations of criminal conduct” at sentencing. *Id.* (quoting *Henry*, 20 Md. App. at 314 (Davidson, J., dissenting)).

In this case, the court recognized Detective Craver as an expert in criminal street gangs as part of its inquiry into whether the aggravating circumstance of gang affiliation should factor into Mr. Briscoe's sentence. The court recognized the detective as an expert based on his general expertise in criminal street gangs, as reflected by his resume, nine-and-a-half years of experience working in gang investigations, knowledge of the validation criteria, and role as an instructor on this subject matter for other law enforcement units. From defense counsel's cross-examination, the court learned that Detective Craver had been assigned newly to the Germantown district to fill in for a colleague who had been promoted, that he was unfamiliar with OWH/BM, and that his opinion about Mr. Briscoe's gang affiliation wasn't based on personal knowledge that Mr. Briscoe met at least two validation criteria. Detective Craver's testimony was not reliable enough to mitigate the risk that Mr. Briscoe's sentence might be influenced by inaccurate or false information, and had the court relied on it, there could well have been an issue here. But the sentencing court decided *not* to rely on Detective Craver's testimony when determining Mr. Briscoe's sentence, and rightly so.

Similarly, the court viewed the robbery video as part of assessing whether Mr. Briscoe's pending criminal matter should serve as an aggravating factor. Again, the court was authorized to explore this issue. *See Purnell*, 241 Md. at 585 (rejecting the position that “opprobrious conduct not amounting to a crime may be considered in sentencing, but



more offensive action cannot, merely because it amounted to a crime of which the convict may, or may not, thereafter be convicted”); *see also Smith v. State*, 308 Md. 162, 166 (1986) (“[M]odern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.” (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949))). The court can and should consider the full range of relevant information at sentencing, including the defendant’s “reputation, prior offenses, health, habits, mental and moral propensities, and social background.” *Cruz-Quintanilla v. State*, 455 Md. 35, 40 (2017) (quoting *Jackson v. State*, 364 Md. 192, 199 (2001)). Taking in a range of information helps the sentencing court “individualize the sentence to fit the offender and not merely the crime.” *Id.* at 40–41 (cleaned up). And where “[a] sentence should be premised upon both the facts and circumstances of the crime itself and the background of the individual convicted of committing the crime,” sentencing judges may consider “uncharged or untried offenses.” *Smith*, 308 Md. at 166, 172.<sup>2</sup>

The sentencing court decided ultimately not to consider the robbery video, leaving it to the jury in Mr. Briscoe’s next criminal case to “make a decision based on that

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<sup>2</sup> Mr. Briscoe attempts to argue as well that the sentencing court’s consideration of the robbery video and his calls to Ms. Martin violated his due process rights. Because he did not make these objections at his sentencing hearing, though, his claim is waived. *See Towers v. Dir., Patuxent Inst.*, 16 Md. App. 678, 682–83 (1973) (rule requiring objection to admissibility of evidence at the time evidence is offered applies equally to sentencing stage of trial); *Reiger v. State*, 170 Md. App. 693, 700 (2006) (objection at time of sentencing is required to prevent waiver of impermissible considerations claim).

evidence.” But it would have been permissible for the court to consider it because the robbery video—which purports to show Mr. Briscoe filming an armed robbery and was seized during a federal investigation of his brother—amounts to more than a “bald accusation of criminal conduct.” *See Henry*, 273 Md. at 147 (*quoting Henry*, 20 Md. App. at 314 (Davidson, J., dissenting)). Since judges are not bound by the same evidentiary standards at sentencing as they are at trial, *Smith*, 308 Md. at 166, the robbery video does not need to be authenticated. In any event, the court didn’t consider it, and we decline to hold that its decision to view but not consider the video went beyond the fringe of what is minimally acceptable.

Notwithstanding the court’s statements to the contrary, Mr. Briscoe argues that the sentencing court in fact considered the gang validation testimony and the robbery video after all. He contends that, despite its words, the circuit court’s willingness to hear the evidence would lead a reasonable person to believe that it relied on the detective’s testimony and the robbery video to construct his sentence.

When determining whether the sentencing judge was biased by impermissible considerations, this Court analyzes the entire context of the sentencing proceeding. *Sharp v. State*, 446 Md. 669, 689 (2016) (*citing Abdul-Maleek v. State*, 426 Md. 59, 73 (2012)). “If a judge’s comments during sentencing could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused [their] discretion.” *Jackson*, 364 Md. at 207 (*quoting State v. Pattno*, 579 N.W.2d 503, 509 (Neb. 1998)). For instance, it is improper for a judge to base its sentence

on consideration of “where people live, have lived, or where they were raised.” *Id.* at 201. And in *Mainor v. State*, 475 Md. 487 (2021), the Court held that a judge’s dismissive comments about a defendant’s mother’s absence on the last day of trial, which the judge then converted into a sentencing proceeding over defendant’s objection, could lead a reasonable person to infer the judge’s partiality and ill-will towards the defendant during the same-day sentencing. *Id.* at 518.

Importantly, the act of hearing evidence does not mean the court relied on it, let alone create the appearance that the court relied on it. In *Jackson v. State*, 230 Md. App. 450 (2016), this Court held that a sentencing judge’s willingness to hear evidence about the defendant’s acquittal of a separate crime did not, by itself, indicate reliance on the acquittal to fashion a biased sentence:

[A]fter examining the totality of the sentencing proceeding, we are not persuaded that the trial court considered [Jackson’s] acquittal for murder at all. The court never mentioned the acquittal in its remarks . . . . We simply cannot find error based on the court’s remark of “I’ll hear it,” which permitted the prosecutor to proffer evidence of [Jackson’s] acquittal for murder . . . . Accordingly, we are not convinced that a reasonable person would infer that the sentencing court was motivated by an impermissible consideration.

*Id.* at 471–72; *see also State v. Fuller*, 308 Md. 547, 554–55 (1987) (admission of hearsay evidence about a stetted case was harmless error where judge said that his finding of a probation violation had been based solely on defendant’s conviction in another case).

Here, the sentencing judge’s view of the 2021 and 2022 offenses seemed to drive the court’s reasoning. The judge was frustrated, and openly so, that Mr. Briscoe had

violated his probation by possessing a firearm after being convicted for firearm possession only eight months earlier and receiving leniency from that court. The judge’s consideration of these offenses was appropriate given the objectives of sentencing, which are “punishment, deterrence, and rehabilitation.” *Cruz-Quintanilla*, 455 Md. at 40 (*quoting Smith*, 308 Md. at 166). The judge also considered Mr. Briscoe’s character, as revealed by his calls to Ms. Martin, because his treatment of her spoke directly to his moral propensities. *See id.* (*quoting Jackson*, 364 Md. at 199); *see also Lambert v. State*, 209 Md. App. 600, 605 (2013) (a sentencing court can rely on “perceptions derived from the evidence presented at the trial” (*quoting Poe v. State*, 341 Md. 523, 532 (1996))). The record reveals that these considerations stood independently of the gang validation testimony and the robbery video. And like *Jackson*, where we did not read the words “I’ll hear it” to mean actual reliance on the evidence by the sentencing judge, 230 Md. App. at 471–72, we conclude that no reliance occurred here and that the sentencing judge’s considerations were permissible.

**B. Because An Exemption Under PS § 5-133.3 Did Not Apply To Mr. Briscoe And The 2021 Offense Was A Disqualifying Crime Under PS § 5-133(b)(1), His Conviction And Sentence For The 2022 Offense Were Lawful.**

*Lastly*, Mr. Briscoe argues that the 2021 offense did not constitute a “disqualifying crime” under PS § 5-133 because the statute carves out an exemption from the firearms restriction for persons convicted for that offense. We hold that the 2021 offense is a disqualifying crime under the plain language of PS § 5-133 and that Mr. Briscoe’s conviction for the 2022 offense was lawful.

PS § 5-133(b) carves out an exemption from its firearms disqualifications in § 5-133.3. *See* PS § 5-133(b) (“Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if . . .”). One of the criminal offenses potentially eligible for this exemption is PS § 5-133(b)(7), which provides that “a person may not possess a regulated firearm if the person . . . is addicted to a controlled dangerous substance or is a habitual user . . . .” The exemption allows a person with a firearms conviction under § 5-133(b)(7) to have a firearm if they aren’t subject to another firearms restriction and if they receive approval from the Maryland Department of Health in response to an application for relief. *See* PS § 5-133.3(b)–(d).

Mr. Briscoe asserts that on October 26, 2021 he pleaded guilty to violating § 5-133(b)(7), but this assertion is inaccurate. On further review of the record, we learned that Mr. Briscoe was convicted for violating PS § 5-133(b)(5), the statutory provision that, in October 2021, prohibited an addict or habitual user from possessing a regulated firearm. This distinction caught our attention because the exemption from firearms disqualification did not cover Mr. Briscoe or any other person convicted under § 5-133(b)(5) in October 2021. *See* 2013 Md. Laws, Chap. 427 (Firearm Safety Act of 2013, allowing relief from firearms disqualification for certain categories of persons but not those addicted to, or a habitual user of, a controlled dangerous substance); PS §§ 5-133(b), 5-133.3(b). Effective October 10, 2023, the General Assembly renumbered the offense to PS § 5-133(b)(7), making it eligible for the exemption. *See* 2023 Md. Laws, Chap. 651; PS § 5-133(b)(7) (2003, 2022 Rep. Vol., 2024 Cum. Supp.). But when Mr. Briscoe was arrested for the 2022

offense on June 30, 2022 and convicted for it on March 9, 2023, the General Assembly hadn't changed the law yet and the exemption wasn't available to him.<sup>3</sup>

Knowingly possessing a regulated firearm in violation of PS § 5-133(b) is a misdemeanor subject to imprisonment of up to five years, if convicted. PS § 5-144(b); *see also Jones v. State*, 420 Md. 437, 456, 456 n.10 (2011) (holding that PS § 5-143, now renumbered as § 5-144, is the penalty provision for violating PS § 5-133(b)). On March 9, 2023, a jury found Mr. Briscoe guilty of illegally possessing a firearm in violation of PS § 5-133(b)(1). That statute proscribes the possession of a regulated firearm by any person who “has been convicted of a disqualifying crime.” PS § 5-133(b)(1). A “disqualifying crime” includes “a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.” PS § 5-101(g)(3). The 2021 offense is a misdemeanor that carries a statutory penalty of up to five years when convicted, making it a “disqualifying crime” under § 5-133(b)(1). PS §§ 5-133(b)(5), 5-144(b); *see also McCloud v. Dep’t of State Police*, 200 Md. App. 725, 730–31 (2011) (D.C. conviction was comparable to Maryland misdemeanor offense carrying a maximum penalty of three years imprisonment and counted as a “disqualifying crime”); *Collins v. Garland*, 699 F.Supp.3d 409, 415 (D. Md. 2023) (conviction for misdemeanor punishable by no more than four years carries a statutory penalty of more than two years and was a “disqualifying crime”

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<sup>3</sup> We limit our analysis to the question before us on appeal—whether the exemption applied to Mr. Briscoe at the time of the 2022 offense, such that his conviction and sentence for that crime are unlawful. We express no views on whether Mr. Briscoe can seek relief from the firearms disqualification under PS § 5-133.3(b) after he has served his sentence.

under PS § 5-133(b)(1)).

Therefore, we hold that Mr. Briscoe's conviction was lawful under PS § 5-133(b) and affirm the circuit court's sentence.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**