Circuit Court for Cecil County
Case No. K-14-1735

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 736

September Term, 2015

HENRY ERIC HAMILTON

v.

STATE OF MARYLAND

Wright,
*Krauser,
Raker, Irma S.
(Senior Judge, specially assigned),

JJ.

Opinion by Raker, J.

Filed: February 14, 2018

*Krauser, J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Appellant Henry Eric Hamilton, pro-se, was convicted by a jury on March 27, 2015, of conspiracy to commit first-degree assault of Harrison Meran-Garcia and sentenced to a term of incarceration of twenty-five years. In this direct appeal, appellant presents twelve questions for our review, which we have combined, rephrased, and reordered as follows:

> 1. Did the circuit court properly determine that appellant could not act as co-counsel at trial?
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> 2. Did the circuit court properly exercise its discretion in precluding testimony of two police officers about the termination of Officer Daniel Darienzo from the Elkton Police Department following his guilty plea for sexual offense against appellant's daughter?
>
> 3. Did the circuit court properly exercise discretion in allowing the testimony of Alexander Meran without his pretrial statements having been transcribed?
>
> 4. Did the circuit court properly exercise its discretion in denying appellant's motion *in limine* to prevent mention of weapons that were not linked by ballistics to the shooting?
>
> 5. Did the circuit court properly exercise its discretion in allowing interpreters in the courtroom during the first three witnesses and in not inquiring whether further remedy was required after learning that the jury found the interpreters' presence distracting?
>
> 6. Did the circuit court properly decline to instruct the jury on self-defense and defense of others?
>
> 7. Did the circuit court properly exercise discretion in responding to jury notes during deliberations?
>
> 8. Did the circuit court properly deny appellant's motion for judgment of acquittal in part?[1]

[1] Appellant presented two additional questions for our review as follows: (footnote continued . . .)

We find no error and shall affirm.

I.

The Grand Jury for Cecil County indicted appellant with first-degree murder of Harrison Meran-Garcia, conspiracy to commit first-degree murder of Mr. Meran-Garcia, second-degree murder of Mr. Meran-Garcia, conspiracy to commit second-degree murder of Mr. Meran-Garcia, armed robbery, conspiracy to commit armed robbery, robbery, conspiracy to commit robbery, first-degree assault of Mr. Meran-Garcia, conspiracy to commit first-degree assault of Mr. Meran-Garcia, conspiracy to commit first-degree murder of Mr. Alexander Meran, conspiracy to commit second-degree murder of Mr. Meran, attempted first-degree murder of Mr. Meran, and attempted second-degree murder of Mr. Meran.

The circuit court granted appellant's motion for judgment of acquittal as to the following charges: first-degree murder of Mr. Meran-Garcia, second-degree murder of Mr. Meran-Garcia, first-degree assault of Mr. Meran-Garcia, armed robbery, conspiracy to

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> "VII. Did the circuit court err in disallowing the other inconsistent pretrial statements of Alexander Meran, (all of which were in Spanish) by requiring counsel to demonstrate where said Spanish statements differed?
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> ***
>
> IX. Did the circuit court err in restricting the closing arguments of appellant as to self defense, by granting the State's motion *in limine* to preclude same?"

We do not address either question in this appeal because appellant did not brief or argue either question in his brief. *See State v. Riven Bark*, 311 Md. 147, 160 (1987) (determining that this Court need not address an issue that appellant failed to argue in the brief).

commit armed robbery, robbery, conspiracy to commit robbery, attempted first-degree murder of Mr. Meran, and attempted second-degree murder of Mr. Meran. On March 27, 2015, the jury returned a verdict of guilty for the offense of conspiracy to commit first-degree assault of Mr. Meran-Garcia. The jury acquitted appellant of the following charges: conspiracy to commit first-degree murder of Mr. Meran-Garcia, conspiracy to commit second-degree murder of Mr. Meran-Garcia, conspiracy to commit first-degree murder of Mr. Meran, and conspiracy to commit second-degree murder of Mr. Meran.

Prior to trial, appellant filed a motion to serve as co-counsel. During the hearing, appellant stated he was satisfied with defense counsel as his panel attorney in the matter, but "with the caveat [that he] wanted to act as co-counsel . . . because there are issues." The State indicated that it did not care whether the court granted the motion, but asked for clarification of the parameters of the motion. In response, the court stated that only one person could speak on behalf of both at any given time, explaining as follows:

> "I mean, [appellant], as [the prosecutor] says, you understand that if I'm going to permit you to serve as co-counsel, I'm going to require either you or [defense counsel] to make an objection, but you can't each take a turn."

Appellant expressed concerns that if he could not object, the objection could be waived. Appellant and the court discussed this issue as follows:

> "THE COURT: Well, then you and [defense counsel] are going to have to discuss the conduct of the proceedings.
>
> [APPELLANT]: Okay.

> THE COURT: And how you're going to communicate questions to him as co-counsel, I believe. But during the conduct of the trial I can't allow [defense counsel] to question someone and then you question someone."

The circuit court granted appellant's motion and allowed appellant to argue a motion to suppress evidence. On March 17, 2015, at a pre-trial hearing, after the circuit court conducted further research on the issue, the court revisited its decision and denied appellant's motion to serve as co-counsel. The court explained that there is no such classification as hybrid representation.

The following evidence was presented at trial: On September 24, 2014, Deputy Jonathan Wright of the Cecil County Sheriff's Office received a call for multiple shots fired in the area of 441 Appleton Road in Elkton and was asked to investigate the nearby area of Swallow Drive. Deputy Wright saw a vehicle in the wood line approximately twenty or thirty feet off the driveway of 17 Swallow Drive, appellant's residence. In the driver's seat of the vehicle was a black male, who had sustained a gunshot wound to the face, exhibited no signs of life, and held a plastic bag containing a white substance. Police set up a secure perimeter around appellant's residence. Police identified the victim as Harrison Meran-Garcia. Forensic pathologist Dr. Elizabeth Severson testified that appellant's cause of death was homicide by multiple gunshot wounds.

On September 24, 2014, Alexander Meran was with his uncle, Mr. Meran-Garcia. They went out to eat, drove to several friends' houses where Mr. Meran-Garcia introduced

Mr. Meran to his friends, and they ended their drive at appellant's residence.[2] They drove up appellant's driveway; appellant came to the door, talked with Mr. Meran-Garcia, and walked to the car where he continued to talk with Mr. Meran-Garcia. Mr. Meran saw appellant return to the house, where he started "sweeping, and that's when the bullets started flying." Mr. Meran did not see anyone at the side of the car and could only see appellant well from his view in Mr. Meran-Garcia's car.[3] Detective David Mallery and Detective Angel Valle of the Cecil County Sheriff's Office went to Christiana Hospital the night of the incident to interview Mr. Meran, who could not speak English, but could communicate with Detective Valle in Spanish. The officers showed Mr. Meran a photo array, and he identified appellant's photograph as the individual who had spoken to Mr. Meran-Garcia prior to the shooting.

The night of the incident, between 10:00 and 11:00 p.m., someone tried to enter the home of Karen and Robert Spry, who lived close to appellant's residence, through their sliding back door. The individual triggered the Sprys' motion-activated spotlight on their garage, which allowed Ms. Spry to get a "pretty good" look at the intruder. She ran upstairs

[2] Mr. Meran-Garcia's recovered cell phone contained a series of text messages exchanged with appellant arranging to meet that night.

[3] On cross-examination, Mr. Meran testified that the police came to the hospital after he was shot and interviewed him three times. He told police various versions of the shooting, including: appellant was sweeping when they first drove up, appellant walked away and then the shots happened, and he observed a second white male dressed in black clothes who began shooting. Mr. Meran initially told police that several people came out of the woods shooting. He clarified that he did not know how many people were shooting because the only person he could see well was appellant and appellant was not shooting.

to tell her husband, called 911, and testified that when police arrived, she saw the same person who tried to enter her home go up her driveway to the police car.

Anastasia Maivelett testified that in September 2014 she had known appellant's son, Hank, for five years and occasionally they spent the night together. On September 24, she got off work at 7:00 p.m. and went to check on Hank's dogs at the La Quinta Hotel.[4] At Hank's request, she returned a few hours later to check on the dogs again, and ended up spending the night with the dogs.

After getting off work around 11:30 p.m., Kimberlie Perez, appellant's fiancée, met appellant and his son at a restaurant off the marina where appellant docked his boat. Appellant asked her to take Hank to his house to get his car, but they saw police as they neared the property. Hank told her to drive back to the marina, and appellant took them in his boat to the Chesapeake Inn in Chesapeake City.

At approximately 1:00 a.m., Hank contacted Ms. Maivelett and asked her to pick him up in Chesapeake City. When Ms. Maivelett arrived, she observed appellant trying to back his boat into the dock. Hank took some bags off the boat, which Ms. Perez stated that she recognized as bags that Hank used to store guns, and placed them in Ms. Maivelett's trunk. Ms. Maivelett drove them to a La Quinta Inn, which was full, and consequently they drove to a Days Inn where Hank reserved a room. At the hotel, appellant told Ms. Perez that "there was just a bunch of shooting and there was glass breaking . . . [a]nd basically he said all hell broke loose." Appellant said he did not shoot anyone, but when asked about

[4] At the time, Hank lived at the La Quinta Hotel.

his son, he responded that he was "not going to turn in [his] son." Ms. Perez stayed with appellant until Hank returned with Ms. Maivelett. Hank told Ms. Perez and appellant that they had to leave and he drove them both back to the La Quinta Inn.

Hank and Ms. Maivelett returned to pick up Ms. Perez and appellant from the La Quinta Inn, and later, after dropping appellant by the side of the road, Ms. Perez drove back to appellant's home. There she spoke to the police and told them that she had made an agreement with appellant to sleep on his boat because there was mold in the house. Since then, she had not seen appellant. The next morning, appellant went to Hank and Ms. Maivelett's hotel room. All three traveled to Hank's stepfather's house, where Hank took the guns from Ms. Maivelett's trunk and placed them in his stepfather's garage.

A couple days later, after speaking with appellant on the phone, Ms. Perez drove with her sister to meet appellant at a side road in Delaware. She drove him to her sister's house, but he stayed outside. The next morning, Ms. Perez asked appellant if he would turn himself in, to which appellant responded that he did not want to because he did not want to turn in his son. Ms. Perez went to the police station and appellant was gone when she returned.

While investigating the scene, Detective William Swell found a trash can on the porch with broken glass and a shovel inside. He also found a projectile in the wall just inside appellant's front door, but investigators ruled out the possibility that the projectile was linked to the present incident under appeal. The Cecil County Sheriff's Office executed a search warrant on Hank's stepfather's house. In the basement, officers found a

black bag containing three guns (State's Exhibits 19-A–C): a 223 caliber Marlin Firearm, a 223 caliber Smith and Wesson, and a 22 caliber Smith and Wesson. The parties stipulated that the two Smith and Wesson firearms, State's Exhibits 19-B and 19-C, belonged to Hank. Police recovered ten cartridge casings in front of parked cars at appellant's residence, which were identified as having been fired from the Smith & Wesson semiautomatic rifle (State's exhibit 19-C) belonging to Hank. The bullets recovered from Mr. Meran-Garcia could not be identified or eliminated as having been fired from the same firearm because of damage.

After appellant was arrested on September 30, Detective Mallery interviewed him. The State played the audiotape of that interview for the jury. Appellant stated that the driver of the car, Mr. Meran-Garcia, was a drug dealer known to him as "Fernando," who had been to his house multiple times in the past, and who he had arranged to meet that day. In the interview, appellant explained that the evening of the shooting had gone awry and he did not want implicate anyone else, but he did not have a gun and *had not fired a single shot.* He thought the shots came from inside the vehicle towards the outside and vice versa, and said that, "I don't know who reached for what. Who did what first, I don't know. My back was to the vehicle when all this shit went down and that's the God honest truth." He believed "there was a misperception by someone. That, when the two misperceptions met . . . one fired first, the other fired second, I don't know who." Appellant elected not to testify at trial.

During trial, interpreters were stationed behind the defense table in the audience to provide interpretation services to Spanish speaking associates and family members of Mr. Meran-Garcia.[5] Appellant objected on three occasions to the presence of these interpreters as a distraction to the jury hearing testimony. After the third objection by defense counsel, the court, after conferring with counsel, posed the following question to the jury: "Does the presence or the activities of the interpreters limit your ability in any way to listen to the testimony and evidence offered in the courtroom?" The Court permitted the jury to retire to deliberate on the question, and upon returning the jury responded, "Yes, it's distracting." In response, the court arranged for the victim's family to remain in the library, and moved the interpreter to the law library with access to proceedings via CourtSmart. The court asked if there was "anything further" from defense, to which defense counsel responded, "No, your Honor, nothing from the defense."

Appellant sought to exclude certain evidence and testimony. Appellant's counsel sought to exclude Mr. Meran's testimony, expressing concerns that he had an audio recording only, and not a transcript, of the interviews between Mr. Meran and police at the hospital. Defense counsel, the State, and the Court discussed whether a transcript was required, stating as follows:

> "[THE STATE]: We gave him the recordings. We have no obligation to make a transcript for him. If we had made one for ourselves, we would have as a courtesy given it to defense.

[5] The prosecutor explained the interpretation process as follows: the interpreter wears a wired microphone, whispers into it, and the people receiving the interpretive services wear a receiver set.

> We never made one for ourselves. He's had the recordings for months and months.
>
> THE COURT: How long would you say he's had those?
>
> [THE STATE]: Probably since he got in the case.
>
> [DEFENSE COUNSEL]: That's correct. I have been in the case for approximately a month and a half.
>
> THE COURT: Okay. Thank you. Anything further, [defense counsel]?
>
> [DEFENSE COUNSEL]: Yes, Your Honor. Also, this is also more of a post-conviction type note, because this is a panel public defender case, I went to Mr. Northrop, the head of the local public defenders office, last week and asked him if I could retain the services of a Spanish interpreter to interpret those transcripts, both into Spanish and into English. He checked with his supervisor—actually Miss Lane, who was going to do it for me, she told me it was a very time-consuming job and cost would be approximately $3,000. The public defenders office balked at that. They would not pay for it. So I just want that noted on the record."

The circuit court denied the motion and permitted Mr. Meran to testify.

During Mr. Meran's testimony, to impeach the witness, appellant's counsel requested to play the two audio recordings of the hospital interviews. At a bench conference, the State argued that playing the entirety of the two recordings would be improper, explaining that the proper way to cross examine and to impeach a witness is to present a particular statement to the witness. Defense counsel argued that he should be able to use any prerecorded statement provided by the State, and it would be probative for the jury to hear the entire statement. The circuit court agreed with the State that defense

counsel had to challenge each of the statements and then play only the relevant portion of the recording that differed from Mr. Meran's testimony. Defense counsel did not play the tape, but continued his cross-examination of Mr. Meran.

Appellant moved to exclude from evidence the three guns the police seized from Hank's stepfather's residence. The police seized a handgun from appellant's residence, which defense counsel conceded was admissible, and they seized three "long guns," two of which belonged to Hank, from Hank's stepfather's address. The police submitted all four guns for firearms analysis. The casings the police found at the crime scene matched one of Hank's long guns. The circuit court denied appellant's motion *in limine* and admitted the three long guns. The court heard testimony from an expert in pathology who performed the autopsy of Mr. Meran-Garcia and a crime scene technician. During the testimony of Detective Erin Nehlia, the State moved to admit all three long guns into evidence, to which appellant had "[n]o objection." During firearms examiner Jessie Campbell's testimony, however, defense counsel objected to Ms. Campbell demonstrating the rifle to the jury, arguing as follows:

> "I'm going to object to the publication of the rifle. Quite [f]rankly, I think the rifle, say guns in general, have been handled enough in front of the jury. It wasn't clear the rifle—Ms. Peterson pulled the rifles out. I think the jury has seen the rifles. They have obviously been provided pictures. I just think it's overkill and prejudicial to publish the rifle at this point in time."

The court allowed the witness to show the firearm to the jury, but required the witness "to demonstrate it briefly and put it back in the container in which it belongs."

The State, in a motion *in limine*, sought to prevent appellant from calling Officer Daniel Darienzo and Lieutenant Larry Waldridge of the Elkton Police Department as witnesses. Months before the alleged offenses, Officer Darienzo pled guilty to sexual offenses against appellant's daughter and Lieutenant Waldridge was a witness in the Darienzo case. The State argued that Officer Darienzo served in a different police department, and as such, "[t]hat incident, that whole investigation, it was a different police department, it has no relevance in this case." Defense counsel explained the relevance of the two officers' testimony as follows:

> "[DEFENSE COUNSEL]: Your Honor, while I would admit that the acts that Officer Darienzo was charged with had nothing to do with this matter, one of the alleged victims Officer Darienzo was charged with was [appellant]'s daughter. [Appellant] through the course of the trial and immediately following the plea in that matter in which Officer Darienzo received probation before judgment and basically unsupervised probation, after that [appellant] was very displeased by the verdict and I believe showed that displeasure in the courthouse among many Elkton police officers, and we feel that this prosecution in some way is certainly driven by the fact regarding his behavior in that matter. So I think that, again, while it doesn't have anything substantive to do with this case, I think it certainly is relevant to this matter.
>
> THE COURT: [Defense counsel], anything else you wish to tell me with regard to how you believe this prosecution is in some way driven by this particular incident?
>
> [DEFENSE COUNSEL]: Your Honor, I realize certainly in front of the jury that these types of issues are not admissible, but there was a conversation I had with [Assistant State's Attorney] approximately three weeks ago where he told me he was inclined to nol pros the matter, and now all of the sudden here we sit on the eve of trial. So I think there's absolutely

> something going on that's driving this case other than the merits.
>
> THE COURT: Anything else, [defense counsel]?
>
> [DEFENSE COUNSEL]: No, Your honor."

The court granted the motion, explaining as follows:

> "With regard to this matter, certainly I can't restrict [appellant] from calling this Daniel Darienzo or Lt. Waldridge, however, there shall be no testimony relating to these issues that have been addressed in the State's motion *in limine*. This individual Daniel Darienzo was charged with various sex offenses that had involved [appellant's] daughter, so no testimony related to those matters. I don't find that there's any relevance."

The circuit court granted appellant's motion for judgment of acquittal on first-degree murder of Mr. Meran-Garcia, second-degree murder of Mr. Meran-Garcia, armed robbery, conspiracy to commit armed robbery, conspiracy to commit robbery, first-degree assault of Mr. Meran-Garcia, attempted first-degree murder of Mr. Meran, and attempted second-degree murder of Mr. Meran.

At the close of all of the evidence, appellant requested that the court instruct the jury as to self-defense and defense of others. Defense counsel referred to appellant's statement to the police that Hank may have been the shooter, and that Hank, believing he saw a gun, may have acted in defense of himself or appellant. After hearing from the State and a response from defense counsel, the circuit court ruled as follows:

> "With regard to the two requested instructions, defense of others and self-defense, I find that the issues haven't been properly generated by the evidence that has been presented to

> give those two instructions, so I will not give those two instructions."

The following day, when the court reviewed the instructions it intended to give, excluding defense of others or self-defense, defense counsel stated that, "[d]efense is satisfied, your Honor." After the court instructed the jury, in response to the court's inquiry as to whether he had any objections to the instructions as given, defense counsel stated, "[n]one from the defense." The State moved to exclude any reference to self-defense in closing argument to the jury. The circuit court instructed appellant that he may reference "statements made by your client in his statement to the police" in regards to the shooting, but otherwise he would "need to be limited" in referencing any claims of self-defense.

During jury deliberation, jurors asked eleven questions of the court.[6] The circuit court included a written copy of the jury instructions in its combined response to the first

[6] The first ten notes read as follows:

> "Why was camera there videoing defendant's driveway? Who owns it and services it?
>
> What are the measurements between house, parked vehicles, outbuildings and position of Hank Hamilton and shell casings?
>
> Please clarify victim moving. He said he climbed out of the window. Police said door passenger was open. Did evidence prove door was closed prior to shooting? And opened after crash in woods?
>
> Does evidence on bullets recovered prove or disprove a second gun was involved? Bullet forensic said some were from defendant's son's gun and some were not.
>
> What is street value of drugs recovered?

ten questions. The circuit court later received an eleventh note from the jury, which read, "Is intent to self-defense the same as intent to assault?" The court responded by sending the jury the Maryland Pattern Jury Instruction on intent. Appellant's counsel objected, based on a request by appellant individually, as follows:

> "[DEFENSE COUNSEL]: I think I'm going to object to it going back.
>
> THE COURT: I'm sorry?
>
> [DEFENSE COUNSEL]: I'm going to object to it going back to—that instruction going back. I just think we need to send them back a note that basically says they have been provided the applicable law.
>
> [THE STATE]: However, in response to an earlier question about conspiracy we sent back in writing what they were read. I would ask that be sent back since it's the same situation.
>
> [DEFENSE COUNSEL]: They have the instruction. I have no objection to it going back then.
> THE COURT: The instruction is the same instruction that was read to them.

> Why were dogs at a hotel? Why did defendant retain a hotel?
>
> Why was whatever happened to break glass on porch? Bullets fired into house or window et cetera, door? Not gone into detail for case?
>
> Please give us a paper with clear ruler for conspiracy and degree.
>
> What are initials on defense attorney's red and black tie?
>
> Is having a contingency plan considered conspiracy?"

> [DEFENSE COUNSEL]: I have no objection to it going back then. All it's doing is refreshing their recollection about the instruction.
>
> ***
>
> [DEFENSE COUNSEL]: Your Honor, at my client's request, I'm noting an objection to basically the continued evaluation of the jury's notes. The fact they've been deliberating for over seven hours—while I am not asking for it at this point, I think we are very close to an Allen charge."

The court then noted it was sending two pages back to the jury: the note and the Maryland Pattern Criminal Jury Instruction. Defense counsel objected again, arguing as follows:

> "[DEFENSE COUNSEL]: Your Honor, at my client's request I am noting an objection that I think the continued notes from the jury and continued responses to those notes are invading the province of the jury, and I would note this is the second time they have asked for a specific pattern jury instruction to be repeated and/or sent back to them.
>
> THE COURT: Well, typically I note that I would send those in writing back to them. Because they were not an extensive number I chose not to; but certainly it would be normal for me to send copies of all of them to them.
>
> ***
>
> [DEFENSE COUNSEL]: Again, at my client's request I will note objection specifically—what his objection is, is that the jury is not getting answers to their questions; they're simply getting jury instructions sent back, which are not specifically answering their question. Again, I am making that objection at the urging of my client.
>
> THE COURT: Thank you. Do you want to return to trial table? Then we'll wait for return of the note."

Following this exchange, the jury returned its verdict.

This timely appeal followed.

II.

Before this Court, appellant argues that the circuit court erred in reversing its ruling to grant his petition to act as co-counsel, explaining that the circuit court prevented him from preserving objections for appellate review. He maintains that it was within the court's discretion to grant his request and the State did not object when the court granted the request initially.

Appellant argues that the circuit court's decisions related to the testimony of three individuals was error, claiming that the circuit court erred and abused its discretion in granting the State's motion *in limine* to exclude Officer Darienzo's and Lieutenant Waldridge's testimony. He claims that their testimony was relevant because he intended to demonstrate that the investigation suffered from local police animosity after Officer Darienzo pled guilty to sexual offenses where appellant's daughter was the victim. Appellant sought to exclude the testimony of Mr. Meran because the public defender's office refused to pay to translate transcripts of three interviews conducted by the police from Spanish to English. Appellant claims Trooper Corals and Detective Valle fabricated what the witness said during these interviews, and thus accurate transcripts were necessary to cross-examine the witnesses properly.

Further, appellant asserts that the circuit court erred or abused its discretion when it denied his motion *in limine* to exclude multiple assault weapons. Appellant explains that

admitting into evidence and publishing the three assault style weapons ("long guns") recovered from Hank's stepfather's residence, two of which belonged to Hank, which were not ballistically linked to the case, was prejudicial because it presented appellant as someone who possessed multiple assault style weapons.

Appellant maintains that the circuit court denied him due process in three instances. First, appellant claims that the circuit court violated his due process rights by not having the testimony of the first three witnesses repeated or transcribed after the jury responded that it found interpreters in the courtroom distracting. Second, appellant asserts that there was sufficient evidence to instruct the jury on self-defense. Appellant reasons that a court must give a jury instruction if the defense is fairly supported by *some evidence*, and based on appellant's testimony, both appellant and Hank believed that there was a threat from Mr. Meran-Garcia and his nephew. Third, appellant claims that the circuit court denied him due process when it responded to the jury's question "Is intent to self-defense the same as intent to assault?" by sending back the general pattern instruction on "intent" without addressing the question as to self-defense. Appellant argues that the circuit court's decision was prejudicial because after providing a general intent instruction, the jury returned a verdict within sixteen minutes.

Finally, appellant argues that the circuit court erred in not granting his motion for judgment of acquittal as to the conspiracy counts. Specifically, appellant asserts that the subdivision of the conspiracy claim into separate charges, when the State had not established evidence of separate instances of conspiracy, violates double jeopardy because

he was acquitted of six of those charges including: conspiracy to commit first-degree murder of Mr. Meran-Garcia, conspiracy to commit second-degree murder of Mr. Meran-Garcia, conspiracy to commit robbery, conspiracy to commit first-degree assault of Mr. Meran-Garcia, conspiracy to commit first-degree murder of Mr. Meran, and conspiracy to commit second-degree murder of Mr. Meran.

The State counters that Maryland law does not permit hybrid representation. According to the State, because the court and prosecutor did not recognize the right to self-representation and the right to counsel as "disjunctive rights" initially, the court could not later rule that appellant could not assert both rights at the same time. The circuit court acted within its discretion when it recognized that its initial ruling, granting appellant's request to act as co-counsel, was incorrect, and subsequently reversed its ruling while allowing appellant to have increased participation in the proceedings.

Concerning appellant's argument regarding the testimony of the three individuals, the State claims that the circuit court exercised its discretion properly. First, the State argues that the circuit court properly precluded the testimony of Officer Darienzo and Lieutenant Waldridge concerning the termination of Officer Darienzo following his guilty plea to a sexual offense charge involving appellant's daughter. The State argues that the evidence is not relevant, and even if it was relevant, the probative value of the officers' testimony was outweighed by possible prejudice caused by confusion of the issues. Second, the State maintains that the trial court exercised its discretion properly in allowing the testimony of Mr. Meran without his pretrial statements having been interpreted from

Spanish to English. The State was not obligated to obtain a last minute transcript of Mr. Meran's statements for defense counsel because there was no allegation of a discovery violation and the State provided recordings of the interviews well ahead of time. Further, the allegation that Mr. Meran made statements in Spanish that Detective Valle mistranslated into English for Detective Mallery was not raised below, and therefore not preserved for our review.

The State argues that appellant did not preserve his argument that allowing into evidence the three "assault style" weapons, which were not linked by ballistics to the shooting, prejudicially portrayed him as a person who would possess such an arsenal. Even if preserved, the State argues that appellant's claim fails on its merits because the probative value of admitting the long guns was not outweighed by any potential for unfair prejudice. Specifically, the State argues that the jury likes to know that the police did a thorough and consistent investigation.

In regards to appellant's due process arguments, the State claims first that: (1) the issue of allowing interpreters into the courtroom and not inquiring whether further remedy was required after learning that the jury found the interpreters' presence distracting was not preserved for this Court's review, and (2) even if preserved, the court properly exercised its discretion in allowing interpreters to be in the courtroom and not inquiring as to possible further remedies because the distraction was only slight. Second, the State argues that: (1) appellant did not preserve his claim that the circuit court erred in denying appellant's requested jury instructions on self-defense and defense of others, and (2) if

preserved, there was not enough evidence in the present case to provide a self-defense instruction. And third, the State asserts that the circuit court properly exercised its discretion in responding to jury notes during deliberations. The State maintains that it was reasonable for the court to re-instruct the jury on general intent because the court had determined that the issue of self-defense had not been generated in this case. Any possible error in instructing the jury was harmless beyond a reasonable doubt.

Finally, the State asserts that appellant did not preserve his argument concerning the circuit court's denial of the motion for judgment of acquittal because: (1) appellant did not renew his motion for judgment of acquittal at the close of *all* of the evidence, and (2) grounds for the motion of judgment of acquittal made below differs from his arguments before this Court on appeal. If preserved, appellant's motion for judgment of acquittal was properly denied in part because there are no other conspiracy convictions to be vacated or other sentences to be merged, and therefore, appellant is not entitled to relief.

III.

We first address appellant's argument that the circuit court erred in reversing its ruling to grant appellant's request to act as co-counsel. We hold that the circuit court determined properly that appellant could not act as co-counsel at trial.

There are only "two types of representation constitutionally guaranteed—representation by counsel and representation *pro se*—and they are mutually exclusive." *Parren v. State*, 309 Md. 260, 265 (1987); *see also United States v. Halbert*, 640 F.2d 1000,

1009 (9th Cir. 1991) (finding that "[a] criminal defendant does not have an absolute right to both self-representation *and* the assistance of counsel"). The right to counsel and the right to self-representation cannot be asserted simultaneously, as the two rights are disjunctive. *Parren*, 309 Md. at 264. This Court has defined hybrid representation as "participation in a criminal trial by a defendant as his 'own co-counsel.'" *Id.*; *see also Callahan v. State*, 30 Md. App. 628, 633, *cert. denied*, 278 Md. 718 (1976).

Although the Court of Appeals has noticed the term "hybrid representation," it has expressly rejected recognition of hybrid representation as a third classification of the right to counsel. *Parren*, 309 Md. at 264–65 (finding that there is no "right bestowed upon a defendant who has not effectively waived his entitlement to the assistance of counsel to share the responsibilities for the management of the trial with his attorney"); *see also United States v. Hill*, 526 F.2d 1019, 1025 (10th Cir. 1975), *cert. denied*, 425 U.S. 940 (1976) (stating that "[t]he Sixth Amendment does not give any indication that hybrid representation is a right of constitutional dimensions"). A defendant who has ineffectively waived the assistance of counsel can participate in the trial, but said participation is subject to "the discretion of the presiding judge under his general power to control the conduct of the trial." *Parren*, 309 Md. at 265. Defendant's participation should "never reach[] the level of 'representation nor does the participant attain the status of "co-counsel."'" *Id.* When a defendant is represented by counsel, said counsel is in charge of the defense and has general control over trial strategy. *Id.*

Here, appellant never requested to dismiss his counsel and to appear *pro se*. Appellant was represented by counsel, and although he may participate at trial, he is not entitled to act as co-counsel. The circuit court, acting within its discretion to control the conduct of the trial, allowed recesses to afford defense counsel the opportunity to confer with appellant when he wished to offer his assistance. We conclude, agreeing with the State, that the fact that the court and prosecutor did not recognize initially that the two rights are disjunctive, does not transform them into conjunctive rights. Accordingly, we hold that the circuit court did not abuse its discretion when it determined that appellant could not serve as co-counsel.

IV.

Next, we address appellant's arguments surrounding the court's decision to admit or exclude the testimony of various individuals.

Our review of the trial court's decision to admit evidence is a two-step analysis. Evidence must be relevant, which Maryland Rule 5-401 defines as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Conyers v. State*, 354 Md. 132, 176, *cert. denied*, 528 U.S. 910 (1999). Whether the evidence is relevant is a conclusion of law which we review *de novo*. *Smith v. State*, 218 Md. App. 689, 704 (2014). We then look to whether the court "'abused its discretion by admitting relevant evidence which should have been excluded' as unfairly prejudicial." *Id.* (internal

citation omitted). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. A ruling on relevance is "quintessentially within the wide discretion of the trial judge." *Best v. State*, 79 Md. App. 241, 259, *cert. denied*, 317 Md. 70 (1989). As such, absent an abuse of discretion (or an error of law), a trial court's decision to admit relevant evidence will not be reversed. *White v. State*, 324 Md. 626, 637 (1991).

Concerning appellant's argument that the circuit court erred or abused its discretion in granting the State's motion *in limine* to exclude Officer Darienzo's and Lieutenant Waldridge's testimony, we hold that the court acted well within its discretion. Although impeaching a witness by demonstrating bias during cross-examination is proper, we nonetheless defer to the trial judge's determination of facts. *See Myers v. State*, 395 Md. 261, 274 (2006) (stating "ordinarily, we will defer to the factual findings of the suppression hearing judge."). Here, the circuit court determined that testimony of a police officer, charged with sex offenses that had involved appellant's daughter, was not relevant to the case at bar. Bias is nearly always relevant, but appellant failed to present any evidence that the alleged bias was relevant to the State bringing this prosecution, particularly where the prior event took place within a different police department. The trial judge was in the best position to determine relevance and did not abuse her discretion.

Further, we conclude that the trial court determined correctly the relevance of Mr. Meran's testimony, and then exercised properly its discretion when it admitted Mr. Meran's testimony. Mr. Meran, as one of the victims of the shooting, spoke directly to the incident. Specifically, appellant testified that he saw appellant return to the house, where he started "sweeping, and that's when the bullets started flying." Further, Mr. Meran identified appellant's photograph as the individual who spoke to Mr. Meran-Garcia prior to the shooting. Mr. Meran's testimony made the existence of appellant's involvement more probable than not, and as such was relevant.

While not directly referencing the prejudicial nature of Mr. Meran's testimony, appellant argues that it would be difficult to cross-examine him without a transcript, translating from English to Spanish, the recordings of his pretrial statements to police. Appellant emphasizes that Mr. Meran changed his story multiple times, and therefore, it was difficult to cross-examine him without a transcript for reference. On appeal, appellant argues that a transcript was necessary because the officers either lied about or misinterpreted Mr. Meran's testimony from the pretrial interviews. Appellant requested initially that this Court order the Cecil County Sheriff's Office to provide the digital and video recorded interviews to the Court, and for the Court to compare the audio to the existing transcripts to confirm the witness's statements. He stressed the importance of proper translations because the alleged conspiracy involved the claim that appellant "sweeping" the front porch was a signal to begin shooting. Appellant later obtained the requested translations and filed a motion to correct the record with the translated

transcripts. Appellant claims that the accurate transcripts of his interviews with police reveal that the witness did not see appellant "sweeping," and therefore he could have used the transcripts to impeach his testimony during cross-examination.

The circuit court was not obligated to obtain a last minute transcript of Mr. Meran's statements for defense counsel. Defense counsel acknowledged that he had copies of the recordings for approximately a month and a half prior to trial and he never alleged a discovery violation. A review of the bench conference reveals that appellant did not argue below any allegations of mistranslation or fabrication of Mr. Meran's interview by Detective Valle. Any claim that the State refused improperly to transcribe the interviews is not preserved for our review. *See* Md. Rule 8-131(a).[7] We hold that the circuit court was well within its discretion in determining the conduct of the trial by not ordering a transcript, and then admitting Mr. Meran's testimony.[8]

V.

We next address appellant's argument that the circuit court abused its discretion when it allowed three assault style rifles to be admitted into evidence and then later

[7] We note, as appellant acknowledges in his reply brief, it is not the function of this Court to obtain Mr. Meran's recorded statements from the Cecil County Sheriff's Office and compare it to a translation that appellant has obtained.

[8] We do not consider the translation of Mr. Meran's interview with Detectives Mallery and Valle obtained recently by appellant. The trial court did not consider this document, made no findings with respect to this late-filed assertion, and the document was never before the Court at a stage to give appellee an opportunity to address it. It is not properly before this Court on appeal.

permitted the State to display one of the rifles before the jury. We hold that appellant did not preserve this issue for our review.

Rule 4-323(a) provides as follows:

> "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for the objection become apparent. Otherwise, the objection is waived."

As a general rule, "when a court rules in an *in limine* proceeding that evidence is admissible, Rule 4-323(a) requires that the party opposed to admission object at the time the evidence is actually offered in order to preserve the issue for appellate review." *Washington v. State*, 191 Md. App. 48, 89 (2010). This is known as the "contemporaneous objection" requirement.

The Court of Appeals recognized an exception to the general rule requiring a contemporaneous objection in *Watson v. State*, 311 Md. 370 (1988). In *Watson*, the trial judge denied defendant's motion *in limine* asking the court to rule that his 1982 Virginia attempted rape conviction and a prior theft conviction could not be used for impeachment. *Id.* at 372–73 n.1. At trial, defendant testified on his own behalf and the prosecutor impeached defendant on cross-examination through the use of his prior convictions. *Id.* The Court of Appeals held that, despite defendant's failure to object during cross-examination, defendant's objection to the trial court's ruling on the motion *in limine* was sufficient to preserve his objection to the use of his attempted rape conviction for impeachment. *Id*. The Court of Appeals explained that the trial judge had reiterated his

ruling immediately before the State's cross-examination of defendant, and requiring defendant to object would have been futile and "exalt[ed] form over substance." *Id.*

This exception, however, is a narrow one. *Washington v. State*, 191 Md. App. 48, 89–90 (2010). In *Reed v. State*, 353 Md. 628 (1999), the Court of Appeals explained that the exception established in *Watson* was limited to the specific circumstances of that case where the trial court "reiterated its pretrial ruling . . . while the relevant witness was actually testifying, and shortly before the challenged evidence was admitted . . . ." *See id.* at 636 n. 4; *see also Clemons v. State*, 392 Md. 339, 363 (2006) (finding that "based on the proximity of Clemons's objection and the trial judge's ruling regarding the admissibility of scientific evidence, we find no reasonable basis for distinguishing the present case from that before us in *Watson* . . .," and thus, defendant preserved the issue of the admissibility of the expert's testimony for appellate review); *Norton v. State*, 217 Md. App. 388, 396–97 (2014), *aff'd*, 443 Md. 517 (2015) (deciding "in light of the close temporal proximity between the trial court's ruling on the motion *in limine* and [witness's] testimony" that appellant's objection to an expert witness, despite a failure by appellant's counsel to later object, was preserved for review).

In the case *sub judice*, compared to *Watson*, *Clemons*, and *Norton*, there was not the same temporal proximity between the circuit court's ruling on the motion *in limine* and the circuit court's decision to admit the evidence. The circuit court denied the motion *in limine* to exclude the three assault weapons and then heard the testimony from multiple individuals unrelated to the assault weapons, dealt with various procedural issues, and had

multiple recesses between the testimonies of these witnesses. When the assault weapons were admitted, defense counsel stated that he had "no objection." Defense counsel's affirmative representation of "no objection" is a clear forfeiture of any objection to the admission of this evidence. As such, the contemporaneous objection exception established in *Watson* does not apply.[9] We agree with the State and hold that appellant did not preserve this issue for appeal.

Even if preserved, appellant's claim would fail on the merits. Defense counsel conceded that the handgun found at appellant's residence and Hank's long gun that had been linked to the crime were admissible. Defense counsel, however, argued that the introduction of the other two long guns would be prejudicial and not relevant because the State did not allege that the weapons belonged to appellant or were used in the crimes at issue. Appellant and Hank transported the guns aboard appellant's boat, and then Hank placed them in Ms. Maivelett's car to take them to Hank's stepfather's residence. The circuit court acted within its discretion in determining that the two additional long guns were relevant because they related to the issue of whether Hank and appellant had conspired and prepared to ambush the victims. Further, the court ameliorated any potential

[9] We note that appellant did object properly to the showing of State's Exhibit 19-C, the firearm linked to the crime, to the jury. We find any potential error to be harmless because only one firearm was presented to the jury, and only briefly. Further, photographic evidence of all the weapons was admitted without objection. Thus, there is no reasonable possibility that the outcome of the trial would have been different because the jury had other means to view the long gun.

for unfair prejudice when it instructed the jury that two of the long guns (State's Exhibits 19-B and 19-C) belonged to Hank.

In any case, even assuming error *arguendo* in admitting the additional weapons, it was harmless beyond a reasonable doubt because the court admitted photographic evidence of all the weapons without objection.

VI.

We examine next appellant's argument that he was denied due process when the circuit court: (1) declined to have the testimony of the first three witnesses repeated or transcribed after the jury admitted that it found the presence of interpreters in the courtroom to be distracting, (2) declined to give a self-defense instruction, and (3) responded to the jury's question "Is intent to self-defense the same as intent to assault?" by providing the jury with a general pattern instruction on "intent."

A. Interpreters

Appellant argues that the court erred by allowing interpreters for family members of Mr. Meran-Garcia to distract the jury during the first three witnesses' testimony, and then compounded the problem by not having the testimony repeated or transcribed after the court learned from the jury that the jury had been distracted by the interpreters in the court room. We hold that the court did not err in allowing interpreters to be present during

trial, and any issue surrounding the court's decision to not have testimony repeated or transcribed is not preserved for our review.

Appellant cites to no authority on point, but argues generally that the "trial judge has wide discretion in the conduct of a trial and that the exercise of that discretion will not be disturbed unless it has been clearly abused." *State v. Hawkins*, 326 Md. 270, 277 (1992) (internal citation omitted).

Further, the right of victims is well preserved within Maryland jurisprudence. As the Court of Appeals has explained:

> "The Maryland Constitution confers on victims of crimes the right to be treated with 'dignity, respect, and sensitivity' by agents of the State and to be notified and to participate in criminal proceedings, as may be permitted by implementing legislation. Maryland Declaration of Rights, Article 47. The General Assembly has implemented this 'strong public policy' by enacting several statutes that create 'a class of specific, but narrow, rights for victims.' *Hoile v. State*, 404 Md. 591, 605 (2008). In particular, the Legislature has set forth certain guidelines for the treatment and notification of a victim. Maryland Code, Criminal Procedure Article ('CP'), § 11-1002(b)."

Attorney Grievance Comm'n v. Smith, 442 Md. 14, 18–19 (2015). Md. Code Ann., Crim. Pro. Art. ("C.P."), § 11-102(a) provides that "[i]f practicable, a victim or victim's representative . . . has the right to attend any proceeding in which the right to appear has been granted to a defendant." Under C.P. § 11-104(a)(5), a victim's representative specifically includes "a family member or guardian of a victim who is . . . (ii) deceased."

We find nothing in our review of the record that would lead us to conclude that the court abused its discretion in allowing the interpreters to be in the courtroom for the first three witnesses. Prior to the beginning of the trial, defense counsel objected to the potential distraction caused by the interpreters. The State explained to the court that other than a very low whisper, translation would not cause any noise. Once trial began, when defense counsel objected to interpreters a second time, arguing "it is extremely disturbing to have people chattering behind defense table[,]" the court addressed the situation by asking the interpreters to remain in one spot. When defense counsel objected a third time, and after learning that the jury found the interpreters distracting, the court arranged for the interpreters to watch the proceedings from a remote location via CourtSmart. Given that the victim's family members have a right, if practicable, to attend a proceeding, and the trial judge has wide discretion in the conduct of a trial, the court acted well within its discretion by making proper efforts to resolve any distraction the interpreters posed to the jury. *See State v. Hawkins*, 326 Md. at 277. The court did not err in permitting the family members to be in the courtroom with interpreters, and then when the interpreters constituted a distraction, remedying the situation.

Concerning appellant's claim that the court erred by not inquiring into a further remedy after learning the jury found the interpreters' presence distracting, we hold that appellant failed to preserve this issue for our review. In order to preserve an issue, a party must "clearly make[] the judge aware of the course of action he or she desires the court to take and the reasons for such course of action . . . ." *In re Ryan S.*, 369 Md. 26, 35 (2002).

When asked if he had any response to the jury's answer that it found the interpreters distracting, defense counsel stated, "[n]o response from the defense, your Honor." After being informed of the alternative arrangements the court made by having the interpreters watch the proceedings from a remote location via CourtSmart, defense counsel stated that there was "nothing from the defense." Therefore, defense counsel, by failing to object, did not make clear to the court the remedy he desired the court to take to resolve the distraction caused by the interpreters, and therefore did not preserve this issue for our review. *See* Md. Rule 8-131(a).

B. Self-Defense Instruction

Appellant claims he was denied due process of law when the circuit court refused to instruct the jury on self-defense and defense of others when there was sufficient evidence generated to give both instructions.

Md. Rule 4-325(e) requires a contemporaneous objection to preserve a jury instruction error for appellate review, stating as follows:

> "No party may assign as error the . . . failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection . . . ."

See also Hunt v. State, 345 Md. 122, 150 (1997) ("[W]e have consistently held that the failure to challenge a jury instruction in accord with Md. Rule 4-325(e) will act as a bar to any subsequent assignment of error thereto.").

The purpose of Rule 4-325(e) "is to give the trial court an opportunity to correct an inadequate instruction." *Bowman v. State*, 337 Md. 65, 69 (1994) (internal citation omitted). Strict compliance with Rule 4-325(e), however, is not required if there was "substantial compliance" with the requirements of the rule. *Id.* In *Gore v. State*, 309 Md. 203 (1987), we laid out the conditions necessary to comply substantially with Rule 4-325(e) as follows:

> "[T]here must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless."

Id. at 209.

In *Bennett v. State*, 230 Md. 562 (1963), Bennett submitted to the court requests for instructions in writing and written instructions to the jury were prepared and discussed in chambers by both parties before the court instructed the jury. *Id.* at 568. The court denied defendant's requested instruction, and defense counsel objected and excepted to the refusal of the court to read it to the jury. *Id.* Defense counsel, however, did not renew its objection after the trial court instructed the jury. The Court of Appeals held that the issue was preserved, finding that it was "clear that the trial court was fully aware of the particular instruction the defendant desired the court to give" and that "there was . . . no reason to repeat in the court room what had already been said and recorded by the reporter in chambers." *Id.* at 568–69.

In the case *sub judice*, defense counsel requested a jury instruction for self-defense and defense of others. Defense counsel did not comply with Rule 4-325(e) by failing to object promptly after the jury instructions, in fact stating that he had no objections. Here, defense counsel was not merely silent after the court instructed the jury with no self-defense or defense of others instruction. Counsel affirmatively stated that he was satisfied. Unlike *Bennett*, where defendant objected in chambers, defense counsel did not object at any point to the trial judge's denial of his request to instruct the jury on defense. Given defendant's failure to substantially comply with Rule 4-325(e), we conclude that the issue of whether the circuit court declined properly to instruct the jury on self-defense and defense of others is not preserved for our review.

Even if preserved, we would hold that the circuit court did not err. Appellant never conceded that he fired a gun nor did he offer any testimony to show he fired in self-defense or defense of others. Moreover, in appellant's statement to police, he asserted that he did not have a gun nor did he fire a single shot. The trial court did not err in finding that self-defense and defense of others was not generated by the evidence.

C. Jury's Notes

Appellant argues that the circuit court denied him due process in the way that it responded to jury notes during deliberations. Appellant objected to the court's response to the eleventh note from the jury, which asked: "Is intent to self-defense the same as intent to assault?" The court responded to the note with the Maryland Pattern Criminal Jury

Instruction on intent. Defense counsel, at appellant's request, noted an objection that the circuit court abused its discretion by not addressing directly the jury's question regarding the difference between intent to self-defense and intent to assault.

"The main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *Chambers v. State*, 337 Md. 44, 48 (1994). Rule 4-325 addresses jury instructions:

> "(a) When given. The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and **may supplement them at a later time when appropriate**. In its discretion the court may also give opening and interim instructions."

"Whether to give a jury supplemental instructions in a criminal cause is within the discretion of the trial judge." *Lovell v. State*, 347 Md. 623, 657 (1997). If the jury makes explicit its difficulties, however, a trial court "must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the query when the question involves an issue central to the case." *State v. Baby*, 404 Md. 220, 263 (2008). By contrast, as the Court of Appeals explained in *Cruz v. State*, 407 Md. 202 (2009):

> "[A] supplemental instruction is not appropriate under Md. Rule 4-325 if given in response to a question that has 'absolutely nothing to do with the case as presented to that jury[.]' The jury should be limited in its deliberations to the issues and evidence as presented to it and should not be given answers to inquires which reach outside of the case as presented at trial."

Id. at 211 (internal quotations and citations omitted).

The question before us is whether the "jury's question made explicit its difficulty with an issue central to the case such that the trial court was required to respond to the questions in a manner that directly addressed the difficulty." *Baby*, 404 Md. at 263. Here the jury's question was "Is intent to self-defense the same as intent to assault?" The court had determined that self-defense had not been generated in this case, and the jury was not instructed as to self-defense. In his statement to police, appellant stated that he did not have a gun nor did he shoot anyone. Any claim to self-defense or defense of others is inapplicable to appellant. As indicated *supra*, the issue of self-defense was not generated by the evidence, and a supplemental instruction on self-defense would not have been appropriate because it had nothing to do with the case as presented to the jury. The court acted well within its discretion in providing the general instruction on intent. We find no error.

VII.

Finally, we address appellant's contention that the circuit court erred in denying his motion for judgment of acquittal as to the charges of conspiracy because the prosecution was essentially "subdividing" one conspiracy into seven within the same case, thus violating double jeopardy. We hold that this claim is unpreserved for our review.

Rule 4-324(a) requires that a defendant make the motion for judgment of acquittal "at the close of the evidence offered by the State," and, in a jury trial, at the "close of all the evidence." *See Williams v. State*, 131 Md. App. 1, 6, *cert. denied*, 359 Md. 335 (2000)

(stating that Md. Rule 4-324 has "been construed *to preclude appellate courts* of this state *from entertaining a review of the sufficiency of the evidence,* in a criminal case tried before a jury, where defendant failed to move for judgment of acquittal at the close of all the evidence") (internal citation and quotation omitted).

At the conclusion of the State's case, defense counsel moved for judgment of acquittal on all counts. The court granted the judgment of acquittal on multiple grounds, but denied the motion as to the remaining conspiracy counts: conspiracy to commit first-degree murder of Mr. Meran-Garcia, conspiracy to commit second-degree murder of Mr. Meran-Garcia, conspiracy to commit first-degree assault of Mr. Meran-Garcia, conspiracy to commit first-degree murder of Mr. Meran, and conspiracy to commit second-degree murder of Mr. Meran. The State moved to reconsider the co-conspirator liability, and requested time to brief the issue overnight. The court permitted the State to brief the matter overnight. The defense put on two witnesses, and the following day the court considered the State's motion. At the close of all evidence, appellant failed to move for judgment of acquittal.

In addition, appellant presents a different argument to this Court than the argument he made below. This he cannot do. Rule 4-324(a) requires that, in moving for a judgment of acquittal, "[t]he defendant shall state with particularity all the reasons why the motion should be granted." "The issue of sufficiency of the evidence is not preserved when appellant's motion for judgment of acquittal is on a ground different than that set forth on appeal." *Anthony v. State*, 117 Md. App. 119, 126, *cert. denied*, 348 Md. 205 (1997). In

regards to the conspiracy counts, appellant argued that there was no evidence of a meeting of the minds or even any specific identification of appellant's alleged co-conspirators. On appeal appellant argues double jeopardy, a new argument entirely unrelated to his argument below. As appellant failed to renew his motion for judgment of acquittal, and further argues on a ground different than that set out below, we find that this issue is not preserved for our review.

Even if preserved, we would find that appellant's argument fails on the merits. The State acknowledged that the conspiracies would have merged for the purposes of sentencing had the jury convicted appellant of more than one conspiracy. But appellant was convicted only of one count of conspiracy. There is nothing to merge or vacate, and this argument is without merit.

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS WAIVED.