Circuit Court for Montgomery County
Case No. C-15-CR-23-001198

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 840

September Term, 2024

MICHAEL LEON BOYD

v.

STATE OF MARYLAND

Arthur,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 22, 2026

*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).

Michael Leon Boyd, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of two counts each of first-degree assault and use of a handgun in a crime of violence.[1] Appellant presents three questions on appeal, which we have slightly rephrased for clarity[2]:

I. Did the circuit court err in accepting the jury's partial verdict because it did not inquire into whether the jury intended its verdict to be final?

II. Did the circuit court abuse its discretion in admitting certain surveillance video footage and photographs because they were not properly authenticated?

III. Was the evidence legally sufficient to sustain appellant's convictions?

For the reasons that follow, we shall affirm the judgments.

[1] The court sentenced appellant to fifty-five active years of imprisonment – twenty-five years, with a mandatory minimum of ten years, for first-degree assault; twenty-five years, all but the mandatory ten year minimum suspended, for the other first-degree assault; and twenty years, all but the mandatory ten year minimum suspended, on each use of a handgun conviction. His sentences were to be served consecutively.

[2] Appellant phrased his questions as follows:

1. Whether the [c]ircuit [c]ourt abused its discretion by taking a partial verdict where there was no inquiry as to whether the jury intended that its decision be final?

2. Whether the [c]ircuit [c]ourt abused its discretion when it admitted surveillance camera video footage, as well as photographic stills derived from these videos, where the video was not trustworthy and appellant did not have an opportunity to challenge its trustworthiness?

3. Whether there was insufficient evidence to convince a rational trier of fact that appellant was guilty beyond a reasonable doubt of any crime where he was merely present at the scene?

FACTS

Shortly after midnight on July 13, 2023, a man ran into a group of people fighting at the rear of the Sole D'Italia restaurant located at the corner of Bel Pre and Layhill Road in Montgomery County. The man brandished a handgun at those present and opened fire. Several people suffered gunshot wounds, including appellant.[3] The State called twelve witnesses, the majority of whom were law enforcement or medical emergency personnel. Video evidence of the events leading up to the shooting and the shooting were admitted into evidence. The State's theory of prosecution was that the man was appellant; the theory of defense was mistaken identity. Appellant called no witnesses. At the conclusion of the case, as stated above, the jury convicted appellant of two counts each of first-degree assault and use of a handgun in a crime of violence. These counts involved victims Kiaira Wilkerson and Christopher Harris. The jury was unable to reach a verdict on the remaining eight counts, four counts each for first-degree assault and use of a handgun in a crime of violence, involving four other victims: Pamela Wall; Nadora Wilkerson-East; Dellric Haqq; and Ernest Wilkerson.[4] The State subsequently nolle prossed those eight counts. We shall provide additional facts in the discussion below.

[3] Nadora Wilkerson-East and her sister Kiaira Wilkerson had gunshot wounds to their legs; Dellric Haqq had a gunshot wound to his left hand; and Pamela Wall had a gunshot to her back. Christopher Harris and Ernest Wilkerson were present during the shooting.

[4] The spelling of victim Haqq's first name and Wall's last name were different in the transcript.

DISCUSSION

I.

Appellant argues on appeal that the circuit court erred in entering a partial verdict when it was unclear whether the jury's verdict was final. The State responds that appellant has not preserved this argument for our review because he did not raise it below, and even if he did, his argument is without merit because there was no evidence that the jury's verdict was not final.

Facts surrounding partial verdict

On the morning of the third day of trial, after the court had instructed the jury and the parties gave closing arguments, the jury retired to deliberate. The jury was dismissed that evening and returned the next morning to continue its deliberations. Around 11:30 a.m., the jury sent the court a note, asking: "What is the protocol if we are unable to unanimously agree as to each of the counts?" The court read the note to the parties and during their ensuing discussion, proposed responding: "Each count must be considered separately and your verdict for each count must be unanimous." The court asked the parties if they disagreed with that response, and both the State and appellant responded, "No, Your Honor." The court wrote its response on the jury's note and had it sent back to the jury.

Around 5:00 p.m., the jury sent another note to the court, stating: "We are at an impasse[e] as to all counts. How would you like us to proceed? Also – what if jurors are unable to continue tomorrow due to schedule conflicts?" The court again read the note to the parties and summarized that the jury had been deliberating for over eleven hours and

had already been advised about their duty to deliberate; that each count must be considered separately; and their verdict for each count must be unanimous.

The court then asked for suggestions, and the State responded:

> [THE STATE]: Your Honor, one thing that we were discussing when we looked at the [note] – I realize it says impasse as to all counts, but we were wondering if they have reached a unanimous verdict on any of the counts. Based on the way the[y] worded it, and based on the question that was asked earlier, I think there's a possibility they could be. If we could get some finality on some counts tonight after they've spent so much time deliberating, because [the note] doesn't say we are – we're not unanimous.
>
> THE COURT: That's why they used the word "impasse."
>
> [THE STATE]: Right. So I think impasse – the way that I'm reading it, or believe it's vague is that we're at impasse as to unanimity on all counts.

When the court proposed replying: "[H]ave you reached a unanimous verdict on any of the counts," the following colloquy followed:

> [DEFENSE COUNSEL]: Your Honor, just reading the note, it appears, just looking at [the] note on its face, they are at an impasse o[n] all counts, so I don't know if asking them whether or not they have a verdict on any count – I mean, they used the word "all" so I'll just –
>
> THE COURT: It does say that, but I don't see any harm in asking one question. Have you reached a verdict – a unanimous verdict on any of the counts?
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: And the answer to that should be yes or no.
>
> [DEFENSE COUNSEL]: Yes, Your Honor.
>
> THE COURT: And we do not want to know what it is. We don't want to know what count it is. It's just a yes or no. So I'll put that.

The court sent the jury a note, stating: "Have you reached a unanimous verdict on any of the counts?"

The jury responded in the affirmative to the court's note. After advising the parties of the jury's response, the court told the parties: "So I am prepared to say, do you believe that further deliberations will assist you in reaching a verdict on the remaining counts? Anybody opposed to that?" Both the State and appellant responded, "No." After asking for clarification around its proposed statement, the court added the word "unanimous" before the word "verdict." No objection was raised to the amendment. The court then sent the jury a note, asking: "Do you believe that further deliberations will assist you in reaching a unanimous verdict on the remaining counts?"

The jury responded, "No," to the court's note. After advising the parties of the jury's response, the court told the parties that it would send a note to the jury asking them to "please complete the verdict sheet for those counts for which you have reached a unanimous verdict [and] let the bailiff know when you're done." When the court asked the parties whether they agreed with the court's actions, both the State and appellant answered in the affirmative. The court sent the note to the jury, and thereafter, the jury advised that it had reached a verdict. The jury returned a verdict sheet of guilty as to four of the twelve counts and "did not reach a decision" as to the remaining eight counts. The jury was then polled and hearkened without objection from either the State or appellant.

Preservation

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Md. Rule 4-323(c), governing objections to a trial court's rulings or orders, provides that objections are sufficiently preserved for appellate review if "a party, at the

time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Therefore, if a party "acquiesces in a court's ruling, there is no basis for appeal from that ruling." *Simms v. State*, 240 Md. App. 606, 617 (2019). *See also Gilliam v. State*, 331 Md. 651, 691 (1993) (stating that because appellant "did not object to the course of action proposed by the prosecution and taken by the court, and apparently indicated his agreement with it, he cannot now be heard to complain that the trial court's action was wrong"), *cert. denied*, 510 U.S. 1077 (1994); *Grandison v. State*, 305 Md. 685, 765 ("By dropping the subject and never again raising it, [appellant] waived his right to appellate review[.]"), *cert. denied*, 479 U.S. 873 (1986).

Appellant argues that the circuit court erred in taking a partial verdict because it was unclear whether the jury intended its verdict to be final. Specifically, appellant argues that the circuit court erred when, prior to advising the jury to complete the verdict sheet, it failed to inquire whether the jury meant for their decision to be final. Appellant argues that he did not acquiesce in the court's failure – he argues that during his colloquy with the court around asking the jury if they had reached unanimity on any of the counts, he had acquiesced in the court's statement that there was "no harm" in asking the question, not whether the jury had reached a final verdict.

We disagree and think our recent decision in *Simms* is on point. In that case, Simms was tried for attempted first- and second-degree murder and other counts related to the shooting of his children's mother. *Simms*, 240 Md. App. at 611-13. During deliberation, the jury sent the court two notes about its (in)ability to come to a consensus on all charges.

Id. at 613, 616. The court stated that it would not declare a mistrial or accept a partial verdict. *Id*. at 618. After each note, the court, with agreement from the parties, instructed the jury to continue deliberating. *Id*. at 615, 617. Shortly after the court's second response, the jury advised the court that it had reached a verdict. *Id*. at 617. The jury acquitted Simms of the murder charges and convicted him of the lesser charges. *Id*. at 611.

On appeal, Simms argued, among other things, that the circuit court erred in not considering a partial verdict. *Id*. at 613. The State responded that Simms had waived that issue, and we agreed. *Id*. at 617, 619. We stated that the circuit court "broached" the issue of a partial verdict after the first jury note, stating, "I'm not taking a partial verdict." *Id*. at 618-19. Defense counsel responded by "suggest[ing] the issue could be further discussed," but "there was no significant discussion" on the matter as the parties and the court moved on to "focus . . . on whether the court should tell the jury to keep deliberating." *Id*. at 619. Neither the court nor the parties ever again discussed the possibility of a partial verdict. We concluded that "defense counsel acquiesced to the court's decision" and did not preserve his partial verdict argument on appeal. *Id*.

As in *Simms*, we are persuaded that appellant has not preserved his partial verdict argument for our review. Appellant raised no objection to the taking of the jury's verdict nor when the jury was polled and hearkened. Moreover, appellant never objected to any response the circuit court directed to the jury nor did he ever request the circuit court to take any action that the court refused to take. On the contrary, as in *Simms*, appellant acquiesced and consented to all the court's actions regarding the jury. However, even if

appellant had preserved his argument for our review, we would have found it without merit. We explain.

Analysis

Maryland permits partial verdicts where a jury states that they are unanimous on at least one count. *See* Md. Rule 4-327(d) ("When there are two or more counts, the jury may return a verdict with respect to a count as to which it has agreed, and any count as to which the jury cannot agree may be tried again."). A verdict in a Maryland criminal case tried before a jury is final when the jury "intentionally render[s] a unanimous verdict." *Caldwell v. State*, 164 Md. App. 612, 630-31 (2005). *See* Md. Rule 4-327(a) ("The verdict of a jury shall be unanimous and shall be returned in open court."). In contrast, a verdict is not final where it is conditional, tentative, or provisional. *Caldwell*, 164 Md. App. at 642-43, 646. Under Maryland law, a circuit court, therefore, is "permitted to inquire of a jury as to the possibility of a partial verdict where it has not been indicated by the jury or requested by counsel[.]" *State v. Fennell*, 431 Md. 500, 522 (2013) (emphasis omitted). We review jury unanimity de novo as "a mixed question of law and fact, . . . considering the totality of the circumstances." *Caldwell*, 164 Md. App. at 643.

On the record before us, there is no indication that the jury's verdict lacked finality. We agree with the State that when the jury expressed that it was at an "impasse" as to all of the counts, the circuit court carefully crafted clarifying questions to determine whether there was any unanimity as to any of the counts. Contrary to appellant's argument, we fail to see how the circuit court's actions "'transform[ed] a provisional decision into a final verdict.'" *Fennell*, 431 Md. at 524 (quoting *Caldwell*, 164 Md. App. at 643).

The facts before us are unlike those in *Caldwell*, on which appellant relies. In *Caldwell*, we held that "[t]he emergency closure of the courthouse [on Friday due to an impending and severe hurricane], compounded by one juror's inability to return for deliberations the following Monday, disrupted and derailed the deliberations midstream, bringing them to an abrupt conclusion." *Caldwell*, 164 Md. App. at 643. Additionally, when the jury's deliberations were interrupted, the foreperson's progress report showed that the jurors were still "engaged in a give-and-take bargaining process" and "some jurors had expressed a willingness to reconsider the votes they previously had cast." *Id*. at 645. Moreover, uncertainty as to the finality of the verdicts "escalated" during polling when the foreperson announced a guilty verdict on one count but then changed it to a "no verdict," in response to the reaction from the other jurors. *Id*. In contrast here, there were no outside pressures nor were the jurors' deliberations interrupted in any way to suggest the jurors had reached a premature resolution. Under the circumstances presented, there is no evidence that the circuit court in any way influenced a provisional verdict into a final verdict, and therefore, we would find no error by the circuit court in not inquiring whether the jury's verdict was provisional or final.

II.

Appellant argues that the circuit court erred in admitting nine surveillance videos and seven photographs from those videos because no person at trial authenticated the videos. The State argues the videos and photos were properly authenticated because the State had submitted a certification of business record as to the videos several weeks prior to trial that appellant never challenged.

Standard of review

We review a trial court's decision regarding authenticity for an abuse of discretion. *Miller v. State*, 421 Md. 609, 622 (2011). "A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." *Easter v. State*, 223 Md. App. 65, 75 (cleaned up), *cert. denied*, 445 Md. 488 (2015). *See Fontaine v. State*, 134 Md. App. 275, 288 (stating that an abuse of discretion occurs "where no reasonable person would take the view adopted by the trial court, and "where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal" (cleaned up)), *cert. denied*, 362 Md. 188 (2000).

Law on authentication

Evidence must be authenticated before it is admitted. Md. Rule 5-901(a) provides that authentication is a condition precedent to admissibility and "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." "[T]he burden of proof for authentication is slight, and the court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so." *Johnson v. State*, 228 Md. App. 27, 59 (cleaned up), *cert. denied*, 450 Md. 120 (2016). *See also Easter*, 223 Md. App. at 75 ("The existence of gaps or weaknesses in the chain of custody generally go to the weight of the evidence and do not require exclusion of the evidence as a matter of law."); *Jones v. State*, 172 Md. App. 444, 463 (upholding the admission of the evidence, but noting that the gaps in the State's chain of custody supported defense counsel's remarks in closing that the jury should

discount its value), *cert. denied*, 399 Md. 33 (2007). Thus, once a *prima facie* showing of authenticity is made, the ultimate question of authenticity is left to the jury. *See* 2 McCormick on Evidence § 227 (John W. Strong ed. 1999).

Md. Rule 5-901(b) "sets forth a nonexclusive list of ways to authenticate evidence." *Mooney v. State*, 487 Md. 701, 705 (2024). In *Mooney*, the Maryland Supreme Court reiterated three methods for authenticating videos under Md. Rule 5-901(b). The first method is by "pictorial testimony" – where a witness testifies from first-hand knowledge that the video "fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time[,]" which correlates to Md. Rule 5-901(b)(1) (authentication of an exhibit through testimony of witness with knowledge that the offered evidence is what it is claimed to be). *Id*. at 705-06 (cleaned up). The second method is by a "silent witness" – where "an adequate foundation [is laid] assuring the accuracy of the process [of] producing the video[,]" which correlates to Md. Rule 5-901(b)(9) (authentication of an exhibit through evidence describing a process or system used to produce the exhibit and showing the process provides an accurate result). *Id*. at 706 (cleaned up). The third method is by circumstantial evidence, which correlates to Md. Rule 5-901(b)(4) (authentication of an exhibit through such things as "appearance, contents, substance, internal patterns, location, or other distinctive characteristics"). *Mooney*, 487 Md. at 705, 708-09.

We recently decided *Campbell v. State*, 267 Md. App. 248 (2025), in which we discussed another method of authentication for videos, this time under Md. Rule 5-902.[5] We explained that Md. Rule 5-902 lists several types of evidence that are self-authenticating, meaning "it does not require testimony or other extrinsic evidence of its authenticity to be admitted." *Campbell*, 267 Md. App. at 299-300. *Cf. State v. Bryant*, 361 Md. 420, 427 (2000) ("[Md.] Rule 5-902 was designed in the interest of judicial economy to eliminate the need to call foundation witnesses for evidence that is so likely to be authentic that extrinsic evidence is unnecessary."). The types of evidence listed include "certified records generated by an electronic process or system" or "certified data copied from an electronic device, storage medium, or file." Md. Rule 5-902(13), (14).

Under the Rule, that type of evidence may be admitted if it meets the certification and notice requirements of paragraph (12). *Id*. Paragraph (12), in turn, provides that the original or copy of a record is self-authenticated if: 1) it meets the requirements of Md. Rule 5-803(b)(6)(A)-(D),[6] and 2) the record has been "certified in a Certification of Custodian of Records or Other Qualified Individual Form[,]" provided that:

[5] *Mooney* briefly mentioned this method of authentication in a footnote but because the facts of that case did not involve a business record, but rather pictorial testimony and circumstantial evidence, the opinion did not discuss authentication under Md. Rule 5-902. *Mooney*, 487 Md. at 706 n.1.

[6] Md. Rule 5-803(b)(6), the business records exception to the hearsay rule, provides:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the

(continued…)

> before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Md. Rule 5-902(12).

Under Md. Rule 5-803(b)(6) a business record is "presumptively trustworthy," and the burden of proving that the evidence "was generated under untrustworthy circumstances rests upon the party opposing its admission." *Goss v. Est. of Jennings*, 207 Md. App. 151, 169 (2012) (citing *Owens-Illinois, Inc. v. Armstrong*, 326 Md. 107, 116 (1992)). The Maryland Supreme Court has recognized that the "entire purpose of the business records exception is based on the premise that because the records are reliable enough for the running of a business, in part because of the business duty imposed on the reporter and the recorder, . . . they are reliable enough to be admissible at trial." *Hall v. Univ. of Md. Med. Sys. Corp.*, 398 Md. 67, 89 (2007). This is because the business records exception necessarily "exclude[s] self-serving records and statements made by individuals not bound by a business duty to transmit information truthfully." *Id*.

> diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness.

In *Campbell*, Campbell was tried for the shooting death of a victim shot outside The Spot, a bar and hookah lounge in Baltimore County. *Campbell*, 267 Md. App. at 261. Multiple video clips from electronic video footage from Nest, the company that held the video footage of the surveillance cameras at the lounge, were played at Campbell's trial. *Id*. at 262. Campbell was ultimately found guilty of first-degree murder and other crimes related to the shooting. *Id*. at 263-64.

On appeal, Campbell argued, among other things, that the circuit court had abused its discretion in admitting the Nest footage because it had not been properly authenticated. *Id*. at 298. We disagreed and held that, under Md. Rule 5-902(12) and (13) and Md. Rule 5-803(b)(6), the Nest footage was self-authenticated through the Nest Certificate and circumstantial evidence from a detective's testimony. *Id*. at 301-03.

Campbell also argued that the videos were not reliable or trustworthy, specifically, that there was a "lack of connection" between the cameras and the footage, and the video clips lacked a "visible date and time stamp[.]" *Id*. at 305. We applied the following factors to Campbell's reliability and trustworthiness argument:

> whether the records were made in anticipation of litigation; whether there was motive to falsify the records; how routine or non-routine the record was; how much reliance the business places on the record for business purposes; and if the record contains opinions and conclusions, whether those opinions and conclusions are valid or speculative.

Id. (cleaned up). Applying the relevant factors, we found no basis to conclude that the Nest footage was untrustworthy or unreliable, noting that: Nest was not a party to the litigation; there was no evidence suggesting that Nest had a reason to falsify the recordings; as stated in the Nest Certificate, Nest recorded and saved the footage at the time it was being

recorded by its camera; the footage was produced by a custodian of records for Nest, who declared under the penalty of perjury that everything discussed in the Nest Certificate regarding the footage was true and correct to the best of his knowledge; and the footage was produced in response to a search warrant. *Id.* at 306.

Analysis

Here, the circuit court admitted video footage and pictures/video compilation at four different times throughout the trial.

1. – St.Exh.1. During the testimony of Kristina Rosales, who was present at Sole D'Italia the night of the shooting, the State moved to admit St.Exh.1, which was video footage from the bakery next door to the restaurant that showed the rear of the restaurant and the melee that took place. Ms. Rosales identified herself on the video, and when asked if it fairly and accurately captured what happened that evening, she agreed, testifying that it caught more than she remembered. Appellant objected to the admission of the video, simply arguing that the video had not been properly authenticated. The circuit court responded: "It doesn't matter who took [the video] or where it came from. If she can – she should be able to authenticate from her memory of what happened, see herself in there in the video, presumably. So I think that's authentication." The State advised the court that Ms. Rosales was in the video footage, that she had viewed the video footage during her interviews with the police, and that, prior to trial, the State had filed a notice of "intent to introduce surveillance video without the use of a custodian." The court overruled the objection and admitted the exhibit.

2. – St.Exh.79. During the testimony of Veronica Boggs, lead detective from the Montgomery County Police Department, the State moved to admit St.Exh.79, which was surveillance video that she had collected from the Montgomery County Ride On Bus transportation service, showing appellant and another person riding and then exiting the bus across from the restaurant just before the shooting. Detective Boggs testified that she had reviewed the exhibit, and it accurately reflected the certified business records that were provided to her by Montgomery County. Appellant objected, arguing that the video was insufficiently authenticated and that "to prove authentication . . . someone from the Metro Bus – wherever they acquired the video from, should actually be here to authenticate it." The State responded that it was moving to admit the video footage as a certified business record and that proper notice had been filed in advance of trial. The court admitted St.Exh.79 over objection.

3. – St.Exhs.82-86 and 94-95. Again through Detective Boggs, the State moved to admit certified copies of two surveillance videos from Layhill Nail and Spa, which is located in the strip mall where the restaurant was located; three from Flowers Bakery, which is also in the strip mall where the restaurant was located and one from the restaurant where the shooting occurred. Appellant objected to each exhibit, raising "the same objection" as with the previous videos. The State responded that each video was a certified business record, and the State had timely filed notices of intent to introduce all the certified surveillance videos without the testimony of a custodian. Over objection, the court admitted each video. Lastly, the State moved to admit a compilation video of the above

videos. Appellant objected for "the same" reasons as he had objected earlier, and the court again overruled the objection.

4. – St.Exhs.87-93. During Detective Boggs' testimony, the State also moved to admit seven photos derived from the Flowers Bakery videos, depicting various persons, but not appellant, at the back of the restaurant the night of the shooting. Appellant again simply objected on authentication grounds, but the court overruled the objection and admitted all seven photographs.

Appellant argues on appeal that the circuit court erred in admitting the nine surveillance videos and seven photographs because no person at trial authenticated the videos. Appellant is essentially arguing that the State failed to authenticate the videos/photographs under the silent witness theory because it failed to produce a witness at trial to authenticate the videos/photographs. Appellant's argument is without merit because the State here moved to admit the videos (and photographs) not under the silent witness theory as appellant argues but under Md. Rule 5-902(12) or (13).

We note that appellant never cites *Mooney* or *Campbell*, both of which acknowledge that video evidence may be admitted as properly authenticated under Md. Rule 5-902(12) or (13), if it meets the requirements of Md. Rule 5-803(b)(6)(A)-(D) (regarding hearsay, which appellant does not raise on appeal) and is accompanied by a certified record of regularly conducted activity to which the proponent: 1) gives an adverse party reasonable written notice of the intent to offer the record, and 2) makes the record and certification available for inspection so that the adverse party can challenge the evidence on the ground

that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Appellant never claims that anything was amiss in the State's notice of intent to introduce business records without a custodian or that the videos and certifications were not available for inspection in compliance with Md. Rule 5-902(12). Appellant's only complaint at trial was that there was no custodian available to testify about the exhibits "operability," but the certification form eliminates the need for live testimony as to a record's operability. Appellant bears the burden of proving untrustworthiness, and he offered no evidence supporting this argument. Under the circumstances presented, appellant's argument is without merit.[7]

III.

Appellant argues that the evidence was insufficient to sustain his convictions because, at most, he was "merely present" at the crime scene. He argues that there were no eyewitnesses to the shooting, and, when he was arrested, no weapon was found on his person or near him. The State responds that appellant has failed to preserve his argument for our review.

Md. Rule 4-324(a) provides, in pertinent part: "A defendant may move 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. *The defendant shall state with particularity all reasons why the*

[7] We note that St.Exh.1 was also authenticated under the theory of pictorial witness through Ms. Rosales's testimony when she identified herself on the video and agreed that it fairly and accurately captured what happened that evening. *See* Md. Rule 5-901(b)(1).

motion should be granted." (Emphasis added.) "'[T]he rule is mandatory.'" *Warfield v. State*, 315 Md. 474, 484 (1989) (quoting *State v. Lyles*, 308 Md. 129, 135 (1986)). A criminal defendant "is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008). *See also Gutierrez v. State*, 423 Md. 476, 488 (2011) ("[W]hen an objector sets forth the specific grounds for his objection the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified." (cleaned up)).

The Maryland Supreme Court has stated that, while an appellant is entitled to present the appellate court with a more detailed version of the argument advanced in a motion for judgment of acquittal, the Court has refused to require trial courts "to imagine all reasonable offshoots of the argument actually presented to them[.]" *Starr*, 405 Md. at 304 (cleaned up). *Graham v. State*, 325 Md. 398, 416-17 (1992) (refusing to consider appellant's argument on appeal that there was insufficient evidence presented at trial regarding the value of the stolen items where appellant's attorney moved for a judgment of acquittal solely on the ground that the State had failed to prove that the owner of the stolen items was a corporation that was licensed to practice in the State of Maryland). *Cf. Sifrit v. State*, 383 Md. 116, 136 (2004) (finding unpreserved the trial court's ruling refusing to admit evidence that appellant's wife had threatened his mother, where, on appeal, appellant argued that the evidence showed that his wife was capable of committing the crime of murder alone, a more detailed version of the argument that the defendant advanced at trial that the evidence was relevant because it showed another incident in which his wife had threatened another with a gun).

At the close of the State's case, appellant argued that the evidence was insufficient to support the counts. He stated: "[T]here are issues in this case concerning identification. Also issues in this case, not necessarily credibility issues, but more so credibility as far as the State's case as a whole in the sense that many of the State's alleged victims and witnesses were not presented to the jury[.]" At the close of all the evidence, appellant renewed his motion for judgment of acquittal by "incorporat[ing] the same arguments that I did before." The circuit court denied both motions. We do not think that arguing identity and witness credibility was sufficient to put the court on notice that appellant might also be arguing mere presence. Under the circumstances, we hold that appellant has failed to preserve his "mere presence" argument for our review.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.