Circuit Court for Baltimore City
Case No. 119064007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1220

September Term, 2019

DAMONTE SMITH

v.

STATE OF MARYLAND

Berger,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: January 7, 2021

A jury, in the Circuit Court for Baltimore City, convicted Damonte Smith, appellant, of possession of cocaine, possession of cocaine with intent to distribute, possession of Alprazolam, and possession of Buprenorphine. The Court sentenced appellant to a total term of 15 years' imprisonment. In this appeal, appellant presents three questions for our review:

1. Did the trial court err in refusing to give jury instructions on "missing evidence" and "spoliation?"

2. Did the trial court err in refusing appellant's request to represent himself and present closing argument to the jury?

3. Was the evidence adduced at trial sufficient to sustain appellant's convictions?

For reasons to follow, we hold the trial court did not err in refusing to give appellant's requested jury instructions. We also hold the trial court did not err in refusing appellant's request to represent himself at trial. Finally, we hold the evidence was sufficient to sustain appellant's convictions. Accordingly, we affirm.

BACKGROUND

In the afternoon hours of February 5, 2019, appellant was walking along North Avenue in Baltimore when he was approached by two police officers. Before the officers could make contact, appellant fled. He was quickly apprehended after a brief chase. A search of appellant's person revealed multiple bags containing various narcotics. In the area near where he was apprehended, the police also recovered a revolver loaded with seven live rounds and one spent casing. Appellant was arrested and charged with possession of cocaine; possession of cocaine with intent to distribute; possession of

Alprazolam; possession of Buprenorphine; possession of a firearm in nexus to a drug trafficking crime; wearing, carrying, and transporting a handgun on his person; possession of a firearm by a prohibited person; possession of ammunition by a prohibited person; and discharging a firearm in Baltimore City.[1]

At trial, Baltimore City Police Detective Michael Wood testified that, on February 5, 2019, he was working as a member of the Southwest District Action Team ("DAT"), which was responsible for monitoring suspicious activity in certain high crime areas of Baltimore. Detective Wood testified that part of his duties included watching live feeds from closed-circuit television camera ("CCTV camera") placed throughout Baltimore City. On the day in question, Detective Wood was watching a live feed from a CCTV camera located in the area of North Avenue and Bloomingdale Road when he observed an individual, later identified as appellant, wearing a jacket that was "heavily weighed down on his right side." Detective Wood testified that individuals carrying unholstered firearms were known to have "weight in the pockets." Detective Wood continued to observe appellant and, in so doing, noticed several other mannerisms that were "characteristics of an armed person."[2] Detective Wood eventually relayed his observations to two other detectives who were also DAT members.

[1] Appellant was charged with several additional crimes, but those charges were not submitted to the jury and thus are not relevant here.

[2] Detective Wood was admitted as an expert in the characteristics of an armed person.

Baltimore City Police Detective Anthony Taurisano testified that, on the day in question, he and his partner, Detective Shank, drove to appellant's location after being advised by Detective Wood "to stop an individual in reference to that individual displaying characteristics of an armed person." Upon locating appellant, Detective Shank exited the vehicle and attempted to stop him, but appellant fled.

Detective Taurisano testified that he pursued appellant in his vehicle and eventually located him in an alley a short distance away. Appellant "hopped a fence" and went out of the officer's view. Taurisano then "heard a round discharged from a firearm." He got out of his vehicle and pursued appellant on foot, eventually regaining sight of him. As he did, Taurisano observed appellant throw a revolver onto the roof of a nearby garage. Shortly thereafter, he apprehended appellant and conducted a search of appellant's person. He discovered "two pills, a Suboxone strip, and numerous pieces of cocaine and marijuana."

Regarding the cocaine, Taurisano testified that he recovered "34 green flip top containers with rock from [appellant's] outside left jacket pocket" and "a clear plastic bag which contained five more bags containing rock substance from inside his left jacket pocket." Taurisano, who was admitted as an expert in the area of narcotics' distribution, testified that the amount of cocaine and the way it was packaged was indicative of an intent to distribute. Taurisano testified that, after recovering the narcotics, he went onto the roof of the nearby garage, where he recovered a loaded revolver that "had seven live .22 caliber rounds and one spent casing."

Mohammed Abdul Majid, a forensic scientist with the Baltimore City Police Department, testified that he analyzed the substances recovered from appellant. He testified that the "34 green plastic tubs with white substance" and the "five plastic bags with white substance" tested positive for cocaine. Majid also testified that the "plastic strip" contained Buprenorphine and that the two tablets contained Alprazolam.

The jury convicted appellant on the charges of possession of cocaine, possession of cocaine with intent to distribute, possession of Alprazolam, and possession of Buprenorphine. The jury acquitted him of possession of a firearm in nexus to a drug trafficking crime and discharging a firearm in Baltimore City. The jury did not reach a verdict, and thus a mistrial was declared, on the charges of wearing, carrying, and transporting a handgun, possession of a firearm by a prohibited person, and possession of ammunition by a prohibited person. Additional facts may be supplied below.

DISCUSSION

I.

Appellant's first claim of error concerns the State's failure to produce the video of the CCTV footage that Detective Wood observed, in real time, prior to appellant's arrest. On the first day of trial, prior to jury selection, appellant moved to exclude Wood's testimony on the grounds that the State had failed to provide "the actual footage from the camera." In response, the State proffered that the CCTV footage "was not preserved." The State added: "I would proffer to the Court, based on what the officer would say, that it was not preserved, not in bad faith, it is a system that only holds video for 28 days. The officer

neglected to preserve it or there was a miscommunication." The trial court ultimately overruled appellant's objection, noting that the officer could "testify to his observations."

At trial, Wood testified that he did not know how long the CCTV footage was preserved on video. He testified that, if he wanted to acquire a copy of the footage, he had to fill out and submit a form to a "Watch Center" located at "Headquarters." He testified that he did complete and submit a form for the video in appellant's case, but he never received the video. He added that he did not know if the video had been preserved.

Baltimore City Police Detective Victor Villafane testified that a request form for the CCTV footage had been timely submitted through the appropriate channels. He added that, to his knowledge, the video footage had not been preserved.

At the conclusion of the evidence, defense counsel asked the trial court to give a "missing evidence" instruction. Specifically, defense counsel requested that the jury be instructed on the permissible inference that, because the CCTV video had been destroyed, the video would not have supported Wood's testimony regarding what he saw on the camera's live feed on the day of appellant's arrest. After the State objected to defense counsel's request, the following colloquy ensued:

> THE COURT: Well, do we know that it's been destroyed?
>
> [DEFENSE]: I know. I was thinking about that. I don't know whether it's been destroyed. I just—I mean, maybe I can propose having it except not saying "destroyed" but "failing to retain video footage?"
>
> * * *
>
> THE COURT: Well, first of all, can I ask this, how long do they retain that video footage?

[STATE]: I believe it is 28 days, Your Honor.

The parties then discussed the issue in greater detail. One of the issues brought up during that discussion was whether the CCTV footage was "peculiarly" in the power of the State and whether the defense could have subpoenaed the evidence. At the conclusion of the discussion, defense counsel suggested that the court could give, in the alternative, an instruction on "spoliation," which "does not indicate whether the evidence was peculiarly in the power of a certain party," but rather "indicates whether a party has failed to preserve certain evidence and the inferences that can be made from failing to preserve the evidence." The following colloquy ensued:

> THE COURT: All right. Well, I don't think this missing evidence rule applies in this case. . . . [Y]ou can certainly argue all those things. Like, where is it, you know. But it's not something that the State really needed to provide to prove their case. Even if it existed, they could have proved their case without it.
>
> [DEFENSE]: I understand that, but they did use it as a big part of their case. And it actually goes to their case that [appellant] might have actually been armed, because he's doing these characteristics prior to—
>
> THE COURT: Right. And since they don't have it, it's a good argument for you to make.
>
> [DEFENSE]: I agree.
>
> THE COURT: But . . . it would fall under this—you know, I don't really know how long these—you know, I haven't been given—which I don't know why, it's not that hard to find out, I'm sure, how long they keep this evidence. And I know that sometimes even though they say they only keep it a certain time, it's still there—
>
> [DEFENSE]: Might still be on the system, who knows, right?

> THE COURT: Right. But it's like no one subpoenaed the—you could have done it too. So I don't think it's appropriate[.]

Although the trial court ruled that it would not give the "missing evidence" instruction, the court reserved its ruling on the "spoliation" instruction. The court ultimately decided not to give the spoliation instruction, either.

Appellant now claims that the trial court erred in not giving either instruction. He asserts that the jury could have inferred that the police "deliberately allowed the missing video recording to be routinely destroyed because it would not have supported Detective Wood's version" of events. Appellant also asserts that the record of the proceedings, including the fact that the jury deadlocked on some counts and acquitted him on others, established "that the credibility of some aspects of the detectives' testimony may have troubled every single member of the jury." Appellant maintains, therefore, that "the defense was entitled to a jury instruction on the permissible inference that the destroyed evidence would not have supported the detectives' testimony." Appellant cites *Cost v. State*, 417 Md. 360 (2010), in support.

The State argues that the trial court did not err in refusing to give the requested instructions. The State maintains that *Cost* is distinguishable because there was no evidence the CCTV video had in fact been destroyed and because the footage was not central to the State's case. The State contends that the circumstances of appellant's case are more akin to those faced by this Court in *Gimble v. State*, 198 Md. App. 610 (2011), where we held that the trial court did not err in refusing to give a "missing evidence" instruction. *Id.* at 632. The State also contends that, even if the court erred in refusing to

give the instructions, any error was harmless because the jury ultimately did not convict appellant of any of the firearm charges.

Maryland Rule 4-325(c) states, in relevant part, that a "court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." "Rule 4-325(c) has been interpreted consistently as requiring the giving of a requested instruction when the following three-part test has been met: (1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given." *Dickey v. State*, 404 Md. 187, 197–98 (2008). "Generally, 'we review a trial judge's decision whether to give a jury instruction under the abuse of discretion standard.'" *Page v. State*, 222 Md. App. 648, 668 (2015) (citing *Thompson v. State*, 393 Md. 291, 311 (2006)). "In so doing, we are mindful that 'jury instructions must be read together, and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate.'" *Kazadi v. State*, 240 Md. App. 156, 190 (2019) (citing *Fleming v. State*, 373 Md. 426, 433 (2003)), *rev'd on other grounds*, 467 Md. 1 (2020).

The propriety of a "missing evidence" instruction was first discussed by the Court of Appeals in *Patterson v. State*, 356 Md. 677 (1999). There, the defendant was charged with possession of cocaine after the police found a jacket containing cocaine in the trunk of the defendant's vehicle. *Id.* at 680–81. At trial, the State failed to produce the jacket, and the defendant asked the court to instruct the jurors that they could infer that the missing

jacket would have been unfavorable to the State. *Id.* at 681–81. The defendant's theory was that the jacket containing the drugs did not belong to him, and argued that the jacket was important because he wanted to "try on the jacket at trial to show it did not fit him." *Id.* at 682. The trial court refused to give the instruction, and the defendant was convicted. *Id.* This Court affirmed. *Id.*

After granting *certiori*, the Court of Appeals affirmed this Court's judgment and held that the trial court did not err in refusing to give a "missing evidence" instruction. *Id.* at 694. The Court explained that, although Rule 4-325(c) requires that instructions be given on the applicable law, the rule "does not apply to factual matters or inferences of fact." *Id.* at 684. The Court explained further that an instruction on an evidentiary inference, unlike an instruction on a legally-recognized evidentiary presumption, "is not based on a legal standard but on the individual facts from which inferences can be drawn and, in many instances, several inferences may be made from the same set of facts." *Id.* at 684–85. The Court noted that, when an instruction on a particular evidentiary inference is given, such an instruction can be "devastatingly influential upon a jury" because it "may have the effect of overemphasizing just one of the many proper inferences that a jury may draw." *Id.* at 684 (citations and quotations omitted). The Court held, therefore, "that, regardless of the evidence, a missing evidence instruction generally need not be given; the failure to give such an instruction is neither error nor an abuse of discretion." *Id.* at 688.

The Court of Appeals went on to note that, in that case, the trial court did instruct the jurors that they "may draw any reasonable inferences or conclusions from the evidence

that you believe to be justified by common sense and your own experiences." *Id.* at 689. The Court also noted that the defendant was permitted to question witnesses about the absence of the jacket and to raise the issue of the missing jacket during closing argument. *Id.* at 690. The Court concluded that the defendant's "ability to draw an inference against the State was thus satisfied." *Id.*

The Court of Appeals revisited the issue in *Cost v. State*, *supra*. There, Ashanti Cost, a prison inmate, was charged with assault and reckless endangerment after he allegedly stabbed a fellow inmate while the inmate was in his cell. *Cost*, 417 Md. at 364–65. At trial, Cost highlighted "a series of unusual evidence and chain of custody issues that arose relating to the condition of [the victim's] cell," including that no physical evidence had been preserved from the victim's cell, despite the fact that there had been a large amount of blood and one or more blood-stained towels in the victim's cell following the attack. *Id.* at 365–66. Cost subsequently requested a "missing evidence" instruction regarding the State's failure to preserve the physical evidence. *Id.* at 367. The trial court denied the request, and Cost was ultimately convicted of reckless endangerment. *Id.* at 368. This Court affirmed. *Id.*

After granting *certiorari*, the Court of Appeals reversed and held that the trial court had erred in refusing to give the instruction. *Id.* at 382–83. In so doing, the Court noted, preliminarily, that Cost's requested instruction was most aptly labeled as a "missing evidence" instruction, rather than an instruction on "spoliation," because spoliation was often used in civil cases and "was often associated with egregious or bad faith actions, and

not for cases involving negligent destruction or loss." *Id.* at 369. The Court reasoned that, in the criminal context, "missing evidence" was a more appropriate term because it could "include situations where the State intentionally or negligently destroyed—or merely failed to produce—relevant evidence." *Id.* at 369–70.

The Court of Appeals discussed *Patterson* and stated, "*Patterson* presented the 'general' or 'typical' case, likely to be repeated, in which some piece of crime scene evidence, not of major import, was not retained or analyzed." *Id.* at 372–80. The Court explained that Cost's case was "not typical" and presented "unusual facts." *Id.* at 380. The Court noted: that the missing physical evidence was highly relevant to the crimes for which Cost was charged; that the missing items appeared to have been held as evidence by the State, albeit temporarily; that the missing evidence, which had been destroyed while in State custody, was highly relevant to Cost's case because, had it been properly analyzed, it could have shed doubt on the victim's story; and, that the missing evidence was not cumulative or tangential—it went "to the heart of the case." *Id.* at 380–81.

Although the Court of Appeals ultimately held that the trial court had erred in not giving Cost's requested instruction, the Court cautioned that its holding "does not require a trial court to grant a missing evidence instruction, as a matter of course, whenever the defendant alleges non-production of evidence that the State might have introduced." *Id.* at 382. The Court stated the decision to give a missing evidence instruction was committed to the trial court's discretion and that such discretion is abused when the court "denies a missing evidence instruction and the jury instructions, taken as a whole, do not sufficiently

protect the defendant's rights and cover adequately the issues raised by the evidence." *Id.* (citations and quotations omitted) (cleaned up). The Court added that, "[i]n another case, where the destroyed evidence was not so highly relevant, not the type of evidence usually collected by the State, or not already in the State's custody, as in *Patterson*, a trial court may well be within its discretion to refuse a similar missing evidence instruction." *Id.*

In *Gimble v. State*, *supra*, this Court found no abuse of discretion in the trial court's refusal to give a requested missing evidence instruction. *Gimble*, 198 Md. App. at 632. There, the defendant, on trial for possession of drugs recovered from a backpack found in the same area where he crashed his vehicle following a high-speed chase with police, requested a missing evidence instruction based on the fact that the police had failed to preserve several crime scene photographs and certain items recovered from the backpack. *Id.* 614–15, 626. The trial court denied the request. *Id.* at 626.

On appeal, the defendant, citing *Cost*, argued that the photographs and the missing items from the backpack could have been analyzed to determine whether the backpack actually belonged to him. *Id.* at 630–31. We rejected that argument, noting that the missing evidence "was not critical to the defense and was not of a sort that usually would be subjected to forensic testing." *Id.* at 631. We pointed out that, even if the missing evidence showed that the backpack did not belong to the defendant, that evidence would not have negated the fact that the defendant had been found in possession of the drugs. *Id.* We also pointed out that other evidence, including the testimony of several police officers, was presented at trial regarding the backpack's location and condition following the crash,

which made any further photographic evidence "neither necessary nor central to the defense." *Id.* at 632. We concluded that, unlike *Cost*, the defendant's case "was a typical case, likely to be repeated, in which some piece of crime scene evidence, *not of major import*, was not sustained or analyzed." *Id.* (citations and quotations omitted) (emphasis in original). We held the trial court did not abuse its discretion in declining to give a missing evidence instruction. *Id.*

Against that backdrop, we hold that the trial court in the present case did not abuse its discretion in refusing appellant's request for a missing evidence and/or spoliation instruction. Like in *Gimble*, and unlike in *Cost*, the missing evidence in this case was cumulative of other evidence, namely, the testimony of Detective Wood, who provided a first-hand account of his observations while monitoring the live feed from the CCTV camera prior to appellant's arrest.[3] Moreover, even if the CCTV video had been produced and was shown to contradict Detective Wood's testimony, that evidence would have, at most, cast doubt on the officers' justification for the initial stop, a matter that had no bearing on appellant's guilt. That is, the CCTV video would not have negated the State's evidence of guilt as to the crimes charged. In short, the missing CCTV video was not central to appellant's case.

Finally, as was the case in *Patterson*, the trial court in appellant's case instructed the jury on evidentiary inferences, generally, and permitted defense counsel to raise the

[3] In an attempt to distinguish *Gimble*, appellant relies exclusively on portions of that opinion in which we discuss a different issue involving the denial of a motion to dismiss filed by the defendant. Appellant does not cite to, or even mention, any portion of that opinion in which we discuss the trial court's refusal to give a missing evidence instruction.

issue of the missing video during closing argument. On those facts, we cannot say that the trial court abused its discretion.[4]

To be sure, discrepancies between Detective Wood's testimony and the CCTV video, had they existed, may have been useful to appellant's defense in that they may have had some tangential impact on the jury's willingness to believe the testimony of the other officers. However, such an attenuated evidentiary value could hardly be considered "of major import" or "so highly relevant" to constitute an abuse of discretion by the trial court. *Cost*, 417 Md. at 380, 382.

Assuming, *arguendo*, that the trial court did err, we are certain beyond a reasonable doubt that the error in no way influenced the jury's verdict. *Dorsey v. State*, 276 Md. 638, 659 (1976). Appellant was not convicted on any of the firearm charges, which were the only conceivable charges for which the CCTV video may have been probative. The drug charges for which appellant was convicted of were based on the fact that Taurisano found drugs on appellant's person at the time of his arrest. Those events were not captured by the CCTV camera, and there is no indication that any potential discrepancies in the missing video would have in any way affected the jury's determination of guilt on those charges. Accordingly, any error was harmless.

II.

[4] As noted, the State argues that there was no evidence from which the jury could infer that the missing video was actually "destroyed." Although the record is somewhat unclear on that point, Detective Villafane did testify that he believed that the video was not preserved. We think that testimony supports a reasonable inference that the video was destroyed. Regardless, that determination does not affect our holding.

Appellant's next claim of error concerns a request he made during trial to represent himself. At the close of all evidence, but before closing arguments, appellant informed the trial court that he wanted to represent himself during closing argument. After the trial court asked appellant if he was dissatisfied with present counsel, appellant responded that defense counsel had been "nothing but exceptional" and that, in fact, appellant did not want to discharge her. Appellant stated, rather, that he wanted to "speak on behalf of [himself]" during closing argument. The trial court then inquired further into appellant's desire to represent himself, making sure that appellant understood that he had to fire defense counsel in order to present closing argument. The court considered the matter during its lunch break.

When the proceedings resumed, the trial court asked appellant again why he wanted to represent himself during closing argument. Appellant responded that he felt "as though certain things would be more valid coming from me." When the court asked appellant if there were any other reasons, appellant responded in the negative. The court eventually denied appellant's request and found that appellant had not "given any good reason why [he] wants to discharge this counsel." The court also found that, given appellant's lack of legal training, much of what he said during closing argument would likely be objectionable, and the court did not want appellant's "closing argument to be objection after objection."

Appellant now claims that the trial court erred in denying his request to represent himself during closing argument.[5] He asserts that the court was "mistaken" in finding that

[5] Shortly after the trial court issued its ruling, appellant informed the court that he was dissatisfied with defense counsel and that he wanted to fire her and proceed *pro se*.

he had not provided any good reason for his request. He contends that he provided several legitimate reasons for the request, including that he wanted to speak on his own behalf; that "certain things" would be more valid if they came from him; and that he faced an "all-or-nothing" choice of either having the assistance of counsel or representing himself. For those reasons, appellant argues, the trial court abused its discretion in denying his request. The State counters that the trial court properly exercised its discretion in denying appellant's request.

When a request to discharge counsel is made prior to trial, the trial court must abide by the precise rubric set forth in Maryland Rule 4-215. *State v. Hardy*, 415 Md. 612, 621 (2010). Once meaningful trial proceedings have commenced, however, Rule 4-215 no longer applies, and "the decision of whether to permit the discharge of counsel is entrusted to the discretion of the trial judge." *Barkley v. State*, 219 Md. App. 137, 162 (2014). In exercising that discretion, the trial court must give a defendant "the opportunity to explain to the court why he wishes to discharge his counsel." *Id.* at 165. "The court's burden in making this inquiry is to provide the defendant the opportunity to explain his or her reasons for making the request; in other words, the court need not do any more than supply the forum in which the defendant may tender this explanation." *Hardy*, 415 Md. at 629. Before rendering a decision, the court should consider the following factors:

> (1) the merit of the reason for the discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, the

After a lengthy discussion, appellant admitted that his primary motivation for discharging counsel was so that he could "say my own closing arguments." The trial court again denied the request. Appellant does not appear to challenge that portion of the court's ruling. Nevertheless, the trial court did not abuse its discretion, for the reasons discussed herein.

> discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

Id. (citing *State v. Brown*, 342 Md. 404, 428 (1996)). "All six of these factors, however, may be considered in a brief exchange between the court and the defendant about the defendant's reasons for requesting the dismissal of defense counsel." *Id.* If the court determines that there is no merit in the defendant's assertion it may still dismiss counsel "'but, only after warning the defendant of the possibility he or she will proceed pro se if substitute counsel is not secured.' Alternatively, the trial court may deny a defendant's request to dismiss counsel if it lacks merit." *Hargett v. State*, No. 1809, SEPT.TERM, 2019, 2020 WL 6793345, at *7 (Md. Ct. Spec. App. Nov. 19, 2020) (quoting *Brown*, 342 Md. at 425).

Here, there is no dispute that meaningful trial proceedings had commenced, as appellant's request to represent himself came at the close of all evidence. Thus, the question here is whether the trial court abused its discretion in declining the request.

We hold that the trial court did not abuse its discretion. The court provided appellant ample opportunity to explain his reasons for the request, which the court considered and found to be unmeritorious. During that discussion, appellant admitted that the quality of counsel's representation had been "nothing but exceptional." In fact, appellant stated that he did not actually want to discharge counsel, but instead wanted to simply give his own closing argument. The request was made very late in the proceedings, and the court expressed concerns regarding appellant's lack of legal training to deliver an effective

closing argument. The court also expressed concerns over the potential for disruption, explaining that appellant's closing argument would likely be met with "objection after objection." Based on those facts, the court properly denied appellant's request.

III.

Appellant's final claim of error is that the evidence adduced at trial was insufficient to sustain his convictions of possession of cocaine, possession of cocaine with intent to distribute, possession of Alprazolam, and possession of Buprenorphine. He argues that the jury's verdicts of acquittal on the firearm charges indicates that the jury found the stop to be illegal and unconstitutional. He contends that, "because the jury, apparently, did not credit the testimony of the police witnesses on those points, the trial court should have granted the motion for judgment of acquittal as to the drug possession charges as well."

The State argues, and we agree, that appellant's arguments were not preserved. **"**Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion." *Whiting v. State*, 160 Md. App. 285, 308 (2004). "The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal." *Id.* "Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal." *Jones v. State*, 213 Md. App. 208, 215 (2013).

Here, when defense counsel moved for judgment of acquittal on the charges at issue in the present case, he argued only that the State had failed to prove that appellant had

intended to distribute cocaine. At no point did either appellant or defense counsel raise the arguments appellant now raises in this appeal. Thus, those arguments were not preserved for our review.

Even if preserved, appellant's arguments are without merit. "The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Darling v. State*, 232 Md. App. 430, 465 (2017) (citations and quotations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). Further, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

Here, Detective Taurisano testified that he conducted a search of appellant's person and discovered "two pills, a Suboxone strip, 34 green flip top containers with rock, and a clear plastic bag which contained five more bags containing rock substance." Mohammed Abdul Majid, a forensic scientist, testified that the 34 green plastic tubs and the five plastic bags tested positive for cocaine; that the plastic strip contained Buprenorphine, and that the two pills contained Alprazolam. Taurisano, who was admitted as an expert in the area of narcotics' distribution, testified that the amount of cocaine and the way it was packaged was indicative of an intent to distribute. From those facts, a reasonable fact finder could have found appellant guilty of possession of cocaine, possession of cocaine with intent to distribute, possession of Alprazolam, and possession of Buprenorphine. That the jury ultimately acquitted appellant of the firearm charges, or that the jury may have had questions about the legality of the stop, is irrelevant.

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