Circuit Court for Baltimore City
Case No. 121308005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1633

September Term, 2022

DAVON MAURICE LITTLE

v.

STATE OF MARYLAND

Berger,
Ripken,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: September 11, 2023

*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).

The State of Maryland charged Appellant, Davon Maurice Little ("Little") with various offenses relating to an armed robbery at a Baltimore City gas station in October of 2021. In August of 2022, a jury in the Circuit Court for Baltimore City found Little guilty of the following offenses: robbery with a deadly weapon; use of a handgun in the commission of a crime of violence; illegal possession of a regulated firearm; wearing, carrying, or transporting a loaded handgun on his person; wearing, carrying, or transporting a loaded handgun in a vehicle; and discharging a firearm in Baltimore City. The court imposed an aggregate sentence of 38 years of incarceration.[1] Little noted this timely appeal. For the reasons to follow, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Little presents the following issues for our review:[2]

I. To the extent preserved, whether the evidence was sufficient to support Little's convictions for armed robbery and use of a firearm in

[1] Little was sentenced to 20 years on the armed robbery conviction, a concurrent 20 years on the use of a firearm in the commission of a crime of violence conviction, a consecutive 15 years on the conviction for illegal possession of a firearm, a consecutive three years for wearing, carrying, and transporting a loaded firearm on his person, and one year on the conviction for discharging of a firearm in Baltimore City, to run concurrent with the other sentences.

[2] Consolidated and rephrased from:

1. Whether there is insufficient evidence supporting appellant's armed robbery conviction in view of the State's failure to prove that the property allegedly taken by appellant was owned by or lawfully in the care, custody, or control of the complainant.
2. Whether there is insufficient evidence supporting appellant's conviction for using a firearm in the commission of a crime of violence.
3. Whether there is insufficient evidence supporting any of appellant's firearms-related convictions because there is insufficient evidence that the object that he allegedly used was a "firearm" (or "handgun") as defined by Maryland law.

the commission of a crime of violence.

II. Whether the evidence was sufficient to support the jury's finding that Little used a firearm, as defined by Maryland law, in the commission of the offenses with which he was charged.

FACTUAL AND PROCEDURAL BACKGROUND

The State alleged that on the date of the incident, Little approached Rasheed Jones ("Jones") at a gas station, pointed a gun at him, and forcibly took a "fanny pack"[3] from him. After struggling with Little over the fanny pack, Jones ran from the area, but returned shortly thereafter with a firearm which he fired at Little multiple times. Little returned fire, also multiple times, at Jones from a firearm that was on or about his body. The State's evidence at trial included two surveillance videos depicting the incident, testimony from responding police officers and testimony from Jones.

A. Gas Station Surveillance Videos[4]

State's Exhibit 1 showed Little approach Jones' vehicle, which was parked at a gas station pump. The two men appeared to engage in a conversation as Jones remained in the driver's seat of his vehicle with his window open, while Little stood outside of the vehicle

[3] A "fanny pack" is "a pack that straps to the waist and is used for carrying personal articles." Fanny Pack, Merriam-Webster, https:// www. Merriam -webster. com/ dictionary /fanny%20pack (last visited September 7, 2023).

[4] During oral arguments, Little's counsel suggested the videos to be "grainy." We do not find that to be so. In addition to videos depicting the primary interactions, the State offered additional gas station surveillance videos into evidence. (State's Exhibits 5 and 6) While these do not show the incident, we note that State's Exhibit 5 does show Jones outside of his vehicle at the gas station cashier's window, just before the incident occurred, with the fanny pack strapped around his upper body. This is relevant to our analysis below. *See* Discussion Section, I.A., *supra*.

on the driver's side. Little stood there for approximately 30 seconds, and at one point, appeared to count currency he held in his hands. Little then used his left hand to put the currency in his left side pocket and used his right hand to remove a gun from his waist band. Little quickly approached Jones' driver's side window, which was still open, and pointed the gun at Jones. Next, Little reached in the vehicle with his left hand, and after a brief struggle with Jones, removed the fanny pack that was strapped around Jones' upper body. Jones then exited the vehicle he was in and ran from the location. Jones was out of the camera's view for approximately 5 seconds, during which time Little rummaged through the driver's seat area of the vehicle from which Jones had run. Jones then returned into the camera's view and ran towards his vehicle while holding a gun and shot in Little's direction multiple times, striking him at least once.

State's Exhibit 7 is another surveillance video depicting a different angle and produced by the same camera system at the gas station. Exhibit 7 depicted Jones shooting in the direction of Little, while Little was lying on the ground at the gas station. Little proceeded to roll on the ground and eventually crawled into a red vehicle and was driven away from the scene.[5] State's Exhibits 1 and 7 were admitted into evidence and published for the jury.

[5] Although not relevant to the issues on appeal, we note that Little was driven to and left outside of Sinai Hospital shortly after the incident. Officer Maseruka, who testified at trial, responded to a call for "somebody laying in the grass" outside of the hospital. Upon arrival, Officer Maseruka encountered Little, who stated that someone tried to rob him and that he had a gunshot wound on his leg. Officer Maseruka's interactions with Little were recorded on his body-worn camera and were admitted into evidence.

B. Witness Testimony

Jones, who was prosecuted for shooting Little, pled guilty to first-degree assault, and was subsequently compelled to testify at trial.[6] Although Jones appeared to be a reluctant witness, he did provide some testimony. On direct examination, Jones identified himself as one of the two men depicted in a surveillance video from the gas station. The video having been admitted into evidence, was published for the jury. Jones agreed that the video showed him sitting initially in the front seat of his silver vehicle parked next to a gas pump. Jones, likewise, agreed that the video was a "fair and accurate representation of the events as they occurred" on the date of the incident. Jones also indicated he recently plead guilty to first-degree assault for his actions as depicted in State's Exhibit 1.

Detective Githara, the primary detective who responded to the scene, also testified at trial. Upon his arrival at the gas station, Detective Githara found evidence of a firearm having been discharged, consisting of five shell casings and one projectile located on the ground. While still at the scene, Detective Githara reviewed the surveillance video footage from the gas station which would later become State's Exhibits 1 and 7. Detective Githara testified that based on the video footage, Jones was the victim of a robbery because "Little pointed a gun at him and took his property from him when he was sitting in the vehicle."

[6] Jones was granted "use and derivative immunity" for his testimony at Little's trial. *See, e.g. State v. Rice*, 447 Md. 594, 607 (2016) discussing Maryland's Immunity Statute, which "provides that a witness may not refuse to testify on self-incrimination grounds when the court issues an order compelling the testimony under a grant of use and derivative use immunity." Md. Code, Cts. & Jud. Proc. ("CJP") § 9-123(b)(1). Any information "directly or indirectly" derived from the witness's testimony "may not be used against the witness in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with the order." CJP § 9-123(b)(2).

On cross-examination, defense counsel asked Detective Githara what evidence he had that Little possessed a firearm. Detective Githara responded that he "saw the firearm on the video," and that "firearm was discharged on the video." Detective Githara acknowledged that he did not witness the event in person, and could not tell, based on the video, whether the firearm Little discharged was an automatic or a revolver.

C. Motion for Directed Verdict

At the close of the State's case, defense counsel moved for a directed verdict and a judgment of acquittal as to all counts. Defense counsel argued that there was insufficient evidence to sustain the charges against Little. With respect to the armed robbery and theft charges, defense counsel asserted:

> [T]he State has not presented sufficient evidence to sustain the charge of robbery with a dangerous weapon. There is no evidence of a robbery. The person who was allegedly robbed said he didn't even know who the defendant was. There is no indication other than the . . . idea and thought process of the detective [Githara] is that "Well, this happened, so it must have been a robbery." There is no other indication that there was a robbery. There is nothing indicated missing; no robbery reported; no nothing. So that there was a forceful taking, the elements of the crime of robbery with a dangerous weapon, or robbery itself has not been . . . established in this case . . . and it cannot be allowed to go to the jury. There has to be some indicia of facts to support the State's proposition, not just a proposition, which is what we have here. The same thing with count six, theft.

Regarding the assault charges, defense counsel argued:

> Obviously, I made the issue in this case identity. So, as to . . . the assault counts . . . I would argue in that case that there may be some evidence, or you could argue in the light most favorable to the State that an assault occurred, or if you believe sufficiently that the actions . . . Mr. Jones probably engaged more in the assault than the person alleged, but the interaction at the car door where it's alleged that Mr. Little removed stuff from the car, even that I don't believe is sufficient to support an assault. Again, we don't know what was going on . . . [W]e must avoid supposing that . . . this was some

> sort of assault, or unlawful touching, or anything of that nature . . . Mr. Little didn't pick the witnesses against him or for him, or whatever Mr. Rasheed Jones was in this case. The person who was in a position to say, "I was assaulted" went on to say he didn't even know – there was no point in asking him whether he was assaulted . . . it wasn't Mr. Little. So, I don't think there's sufficient evidence there.

Lastly, defense counsel addressed the handgun charges, arguing the State failed to prove that Little used a "firearm":

> The counts regarding the remaining of [the charges] have to do with firearms and handguns. The only evidence of a handgun . . . is the video. We don't know if that, in fact, is a handgun sufficient to propel by the legal definition of a handgun . . . many times you're going to mistake things for a handgun, if it's cell phones, wallets, whatever . . . [E]ven in the light most sufficient, I think there has to be something more than just "Oh, well, this looks like . . . a handgun. This looks like gunplay and return fire," and all that.
>
> Finally . . . I don't think shell casings on the ground are sufficient either because we don't know how long they've been there . . . [Detective Githara] couldn't describe whether it was a revolver or automatic, what type of weapon was allegedly held by Mr. Little.

The court denied the defense's motion, stating, "the State has made a prima facie case regarding each of the counts." At the close of all of the evidence, Little's counsel renewed his motion and adopted all of his previous arguments. Additional facts will be included as they become relevant to the issues.

DISCUSSION

The standard of review for determining whether sufficient evidence exists to support a conviction on appeal 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." *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). "Weighing the credibility of witnesses and

resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Smith*, 374 Md. 527, 532-34 (2003) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). This Court gives "due regard to the [fact finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of the witnesses." *State v. Smith*, 374 Md. 527, 534 (2003) (quoting *Moye v. State*, 369 Md. 2, 12 (2002). "A valid conviction may be based solely on circumstantial evidence." *State v. Suddith,* 379 Md. 425, 430 (2004). Moreover, generally, "proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Id.*

I. LITTLE'S INSUFFICIENCY OF THE EVIDENCE CLAIMS REGARDING HIS CONVICTIONS FOR ARMED ROBBERY AND USING A FIREARM IN THE COMMISSION OF A CRIME OF VIOLENCE ARE UNPRESERVED.

Little argues that the evidence was insufficient to support his convictions for armed robbery. Little next asserts that because there was insufficient evidence of robbery or assault, his conviction for using a firearm in the commission of a crime of violence must be reversed. The State contends, as a threshold matter, that this Court should decline to address Little's insufficiency of the evidence challenges for the armed robbery and handgun offenses because his claims are not preserved. To the extent Little's insufficiency of the evidence claims are preserved, the State asserts the evidence was sufficient. In reply, Little advances for the first time that, "assuming *arguendo* that [Little's] counsel did not preserve [these] issues, trial counsel provided ineffective assistance[.]"[7] We agree with the

[7] We decline to address Little's argument regarding ineffective assistance of counsel, raised for the first time in his reply brief. *See Strauss v. Strauss*, 101 Md. App. 490, 509, n.4

State that Little's insufficiency of the evidence claims are not preserved.

A motion for judgment of acquittal made at the close of all evidence is a prerequisite to a claim of insufficiency of the evidence on appeal. *Haile v. State*, 431 Md. 448, 464 (2013); *see also* Md. Rule 4-324(a). It is well established "that our review of claims regarding the sufficiency of evidence is limited to the reasons which are stated with particularity in an appellant's motion for judgment of acquittal." *Claybourne v. State*, 209 Md. App. 706, 750 (2013); *see also* Md. Rule 4-324(a). Because the language of Maryland Rule 4-324 is mandatory, *Wallace v. State*, 237 Md. App. 415, 432 (2018), "a defendant must 'argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient.'" *Arthur v. State*, 420 Md. 512, 522 (2011) (quoting *Starr v. State*, 405 Md. 293, 303 (2008)). "Rule 4-324(a) is not satisfied by merely reciting a conclusory statement and proclaiming that the State failed to prove its case." *Arthur*, 420 Md. at 524. "When a defendant only argues a generality, he does not preserve for review more particularized insufficiency arguments that could have been made but were not." *Correll v. State*, 215 Md. App. 483, 498 (2013) (citing *Taylor v. State*, 175 Md. App. 159–60 (2007)). "Accordingly, a defendant is not entitled to appellate review of reasons stated for the first time on appeal." *Arthur*, 420 Md. at 523 (quoting

(1994) ("[T]he scope of a reply brief is limited to the points raised in appellee's brief, which, in turn, address the issues originally raised by appellant. . . . A reply brief cannot be used as a tool to inject new arguments."); *see also Gazunis v. Foster*, 400 Md. 541, 554 (2007) and cases cited therein. Additionally, we note that "[i]t is the general rule that a claim of ineffective assistance of counsel is raised most appropriately in a post-conviction proceeding." *In re Parris W.*, 363 Md. 717, 726 (2001). Although there are "extremely rare" exceptions to this general rule, *see Crippen v. State*, 207 Md. App. 236, 251 (2012), this case does not fall within those exceptions.

Starr, 405 Md. at 302) (internal quotation marks omitted).

A. Armed Robbery

Addressing first the armed robbery conviction, Little argues that the State failed to prove that Jones owned or had lawful care, control, or custody "of the bag strapped around [Jones'] shoulders." On appeal, Little contends that there was no evidence that Little "lacked an equal or superior property or possessory interest in the bag." The State contends that Little's argument is not preserved, because he did not raise it with particularity in his motion for judgment of acquittal. To the extent preserved, the State asserts the evidence supports a reasonable inference that the property, i.e. the fanny pack, belonged to Jones, and was sufficient to support Little's conviction.

To be sure, Little made a motion for judgment of acquittal at the close of the State's case and again at the close of all of the evidence, and generally argued that the evidence was insufficient to sustain the charges for armed robbery. Now, on appeal, Little asserts for the first time that that there was insufficient evidence that "Jones was the owner of the bag strapped around his shoulders or at least had lawful care, custody, or control of the bag in a manner superior to [Little's] interest in the bag." The record reflects that in his motion for judgment of acquittal, Little did not assert that the State failed to prove Jones was the owner of the fanny pack or that Little had "an equal or superior property or possessory interest in the bag." Since Little's first argument was not raised with particularity, as required by Maryland Rule 4-324(a), it is not preserved for our review.

Even if Little's argument was preserved, it lacks merit. The surveillance video footage depicted Jones outside of his vehicle at the gas station cashier's window with the

fanny pack strapped around his upper body immediately preceding the incident. Moreover, the surveillance video footage showed Little forcibly removing the fanny pack from Jones' upper body while Little was pointing a gun at Jones. Little does not point to any evidence that suggests that he had "an equal or superior property or possessory interest in the bag." Because of Jones' possession of the fanny pack before Little arrived on the scene, and the fact that Little removed the fanny pack from Jones' person at gunpoint, there was sufficient evidence from which the jury could reasonably conclude that the fanny pack belonged to Jones and, thus, there was sufficient evidence to support Little's conviction for armed robbery.

B. Use of a Firearm in the Commission of a Crime of Violence

Little next argues that there is insufficient evidence to support his conviction for using a firearm in the commission of a crime of violence. In Little's view, there was insufficient evidence of armed robbery, "which necessarily means that there was insufficient evidence" that Little used a firearm in the commission of armed robbery as a predicate offense.[8] Little argues that the State "failed to prove that he acted without 'legal

[8] Moreover, Little asserts that "there was insufficient evidence of the predicate offense of first-degree assault, assuming *arguendo* that is a relevant issue on appeal."
In its jury instructions, the trial court instructed the jury as follows:

> Do not consider the charge of use of a handgun in the commission of a felony or crime of violence unless you have reached a verdict on the charge of robbery with a dangerous weapon, robbery, and first-degree assault. Only if your verdict on at least one of those charges is guilty should you consider whether the defendant is guilty or not guilty of the use of a handgun in the commission of a felony or crime of violence.

Little contends, "that instruction means the jury's guilty verdict on the charge of using a firearm in the commission of a crime of violence necessarily was based solely on the

justification,' an essential element of assault." In response, the State presumes the "justification" Little is referring to is a self-defense claim.[9] The State contends this issue was not raised in Little's motion for judgment of acquittal and is not preserved.

As with Little's first claim, his second claim is likewise not preserved and without merit. Although Little argued that there was insufficient evidence to support his assault charges, he offered none of the particular reasons he now raises on appeal. To be sure, Little did not raise any argument that the State failed to prove that he acted without "legal justification." Accordingly, again Little is not "entitled to appellate review of reasons stated for the first time on appeal." *Arthur*, 420 Md. at 524.

Even if Little had preserved his claim, it also fails as we have already determined that there was sufficient evidence to sustain his conviction for armed robbery, the predicate offense for using a firearm in the commission of a crime of violence.

II. THE EVIDENCE WAS SUFFICIENT TO SUPPORT LITTLE'S HANDGUN CONVICTIONS.

Little argues that the State failed to prove beyond a reasonable doubt that the object he possessed was a "firearm" or a "handgun" as defined by Maryland law.[10] Little posits

predicate armed robbery charge (for which the jury reached a guilty verdict)." However, Little also concedes whether there was sufficient evidence of the predicate offense of first-degree assault is *not an issue on appeal* because the jury did not convict him of the first-degree assault charge. (Emphasis added). As such, we decline to address this issue.

[9] The State presumes that "Little is referring to a self-defense claim" based on Little's assertion that the evidence at trial failed to show "whether Jones, by word or act, threatened [Little] with the firearm (thus justifying [Little] to protect himself)."

[10] Section 5-101(h)(1) of the Public Safety Article defines "firearm" as follows:

that the object he possessed could have been "a toy gun, a blank gun, or a pellet gun. . . that *looked like* an actual "firearm." Little asserts that Detective Githara's testimony, as well as the video-recordings, were insufficient to sustain his firearm-related offenses.[11]

> (i) a weapon that expels, is designed to expel, or may readily be converted to
> (ii) expel a projectile by the action of an explosive;
> (iii) the frame or receiver of such a weapon; or an unfinished frame or receiver . . . .

A "handgun" is "a pistol, revolver, or other firearm capable of being concealed to the person." Md. Code Ann., Crim. Law § 4-201(c)(1).

[11] Little emphasizes that Detective Githara was not qualified as an expert on firearms. However, Little does not argue that expert testimony was required, nor does he cite to any authority to support such a position. Little did not object to Detective Githara's testimony at trial or argue that the detective was not qualified to offer such testimony. In the State's view, Detective Githara's testimony that a gun was used based on his viewing a video appearing to show Little using a gun is sufficient. Maryland Rule 5-701 provides that a witness who is not qualified as an expert may testify "in the form of opinions or inferences . . . which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony of the determination of a fact in issue." The facts of this case are akin to those of *In re Ondel M.*, in which this Court held that a police officer, who was familiar with the smell of marijuana because of past experience, could give lay opinion testimony regarding the odor of marijuana. 173 Md. App. 223, 244–45 (2007). Here, Detective Githara testified that he had worked for the Baltimore City Police Department for more than 22 years and his duties included investigating shootings. Detective Githara explained that he reviewed the surveillance video footage and, in his opinion, observed Little with a gun and saw the firearm discharge on the video. We are persuaded by the rationale of *In re Ondrel M.* that just as an expert is not required to identify the smell of marijuana, an expert is not required to identify the presence of a firearm on surveillance video. Based on Detective Githara's substantial experience with the Baltimore City Police Department in investigating shootings, a practice which necessarily requires experience with firearms, he was permitted to give lay opinion testimony on the presence of a firearm.

Even if Little could establish that Detective Githara's testimony was improperly admitted, it is ultimately irrelevant to a sufficiency of the evidence analysis. *See Emory v. State*, 101 Md. App. 585, 629–30 (1994) (This Court "measures th[e] legal sufficiency on the basis of all of the evidence in the case, that which was improperly admitted just as surely as that which was properly admitted."); *see also Marlin v. State*, 192 Md. App. 134, 152 n.5 (2010)

Thus, Little contends that the jury's finding that the object he possessed was a "firearm" was "based solely on speculation, conjecture or probability." As a threshold matter, the State agrees that Little's final appellate claim was preserved. However, the State maintains the evidence was sufficient to support Little's firearm-related convictions.

It is well-established that "that there is no difference between direct and circumstantial evidence." *Hebron v. State*, 331 Md. 219, 226 (1993). Maryland courts have long held that circumstantial evidence alone is sufficient to support a handgun conviction. *Curtin v. State*, 165 Md. App. 60, 71 (2005) ("We have considered and upheld numerous convictions where no tangible evidence was presented at trial establishing the use of a handgun . . . ."). Notably, this Court has held that circumstantial evidence was "sufficient to conclude that a weapon was a handgun based on eyewitness testimony stating that a handgun was used." *Brown v. State*, 182 Md. App. 138, 168 (2008) (citing *Curtin*, 165 Md. App. at 70–72); *see also Couplin v. State*, 37 Md. App. 567, 578 (1977) (overruled on other grounds) (holding that "there is no suggestion . . . that a conviction is unobtainable" when the jury heard "credible testimony that the assailant used a weapon described as a handgun," but "the weapon was not subject to empirical examination because it was not recovered.")

Little relies on this Court's decision in *Beard v. State*, 47 Md. App. 410 (1980), to support his contention that the video evidence was insufficient to establish the object he possessed was a firearm. In *Beard*, this Court held the evidence was insufficient to establish

(citing *Emory* for the premise that "evidence improperly admitted at a trial may be considered in evaluating the sufficiency of the evidence on appeal.")

that the gun used by the appellant was a handgun. *Id.* at 414. In that case, the only evidence of whether the weapon in question was a "handgun" came from a witness who, "knew little, if anything, about guns." *Id.* at 413. Notably, the witness in *Beard* declared, "I don't know nothing about guns as far as the name of them." *Id.* at 412. Little's reliance on *Beard* is misplaced—unlike the present case, in *Beard* there was no video evidence depicting the alleged gun, nor was there video evidence showing the gun being fired. Comparatively unlike Detective Githara, who had over 22 years of experience as a police officer investigating major crimes, the witness in *Beard* had little familiarity with guns. Moreover, the witness in *Beard* only saw the weapon when it was stored in a bag with other items. *Id.* By contrast, in this case, Detective Githara and the members of the jury were able to see a video recording of Little firing the weapon.

Little also relies on two unreported opinions from the intermediate appellate courts of Illinois and Louisiana to support his contention. Maryland Rule 1-104(b) governs opinions issued by courts in other jurisdictions. This statute provides, in relevant part, that unreported opinions issued by a court in a jurisdiction other than Maryland "may be cited as persuasive authority if the jurisdiction in which the opinion was issued would permit it to be cited as persuasive authority or as precedent." Md. Rule 1-104(b). Little's reliance on the Illinois Appellate Court's decision is not only unpersuasive, but it is misplaced.[12]

[12] Little asserts his case is analogous to *People v. Taylor*, 2015 Ill. App. (4th) 131009-U, 2015 WL 6163788, wherein the Illinois Appellate Court held that there was insufficient evidence that the defendant possessed a "firearm" based solely on a photograph which appeared to depict the defendant holding a gun. Notably, the court recognized "expert testimony is not critical in determining whether an object constitutes a firearm" and "unequivocal testimony of a witness that the defendant held a gun" was sufficient for a jury

Indeed, the Illinois case Little cites to does not fall within the limited exception for citing unpublished opinions for persuasive purposes pursuant to Illinois Supreme Court Rule 23(e)(1).

Little also cites a Louisiana case for the proposition that a detective's testimony was insufficient to establish the defendant illegally possessed a handgun, or that the gun was real, based on surveillance video footage. *State in Int. of J.H.*, 2022-0324 (La. App. 4 Cir. 8/9/22), *as clarified on reh'g* (8/19/22), 2022 WL 3210100. In 2006, the Louisiana legislature enacted a rule allowing certain unpublished opinions to be cited as authority.[13] La. Code Civ. Proc. Ann. Art. 2168 (2006). The unpublished opinion Little cites is permitted to be cited as persuasive authority in Louisiana; thus, we may consider it as persuasive authority. *See* Md. Rule 1-104(b). However, we find Little's reliance on the Louisiana case unpersuasive. The video in the Louisiana case only showed the suspect "brandishing a firearm." *State in Int. of J.H.* at *10. This case can also be distinguished

to find the defendant guilty. *Id*. at *5. The court further observed that, "something more than a photograph" was required for the State to meet its burden. *Id.* By contrast, in the present case, the video showing Little using a firearm is substantially "more than a photograph."

[13] Louisiana Code of Civil Procedure, Article 2168 provides:

> A. The unpublished opinions of the supreme court and the courts of appeal shall be posted by such courts on the Internet websites of such courts.
>
> B. Opinions posted as required in this Article may be cited as authority, and, if cited, shall be cited by use of the case name and number assigned by the posting court.

State of Louisiana In the Interest of J.H. is posted on the Court of Appeal Fourth Circuit's website, available at https://www.la4th.org/opinion/2022/4887449.pdf (last visited September 7, 2023).

from the case at hand as Detective Githara testified that the firearm in question was "discharged."

In the present case, there is sufficient evidence to support Little's firearm convictions beyond a reasonable doubt. At trial, Detective Githara explicitly testified that he reviewed the surveillance video footage and clearly observed Little with a gun. Detective Githara explained he "saw the firearm on the video." Detective Githara testified multiple times that he observed Little point a gun at Jones and shoot at Jones. Moreover, Detective Githara stated he saw Little and Jones "shooting at each other." Most notable, however, was Detective Githara's testimony that "the firearm was discharged on the video."

In addition to Detective Githara's testimony, the jurors were also presented with surveillance video footage which depicted the incident and showed Little discharge the firearm. Certainly, Jones' violent reaction of shooting at Little also supports the conclusion that Little possessed a firearm and not a toy gun, a blank gun, or a pellet gun. Thus, it was reasonable for the jury to infer that Jones would not react in such a violent manner if Little simply possessed an object that looked like a firearm. Likewise, it is rational to conclude that Little's reaction to Jones firing at him would be to respond by returning fire with a firearm and not a toy gun, a blank gun, or a pellet gun.

Viewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to sustain Little's firearms-related convictions.

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