

Circuit Court for Harford County  
Case No. C-12-CR-22-000259

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1799

November Term, 2022

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JORDAN ISAIAH CHRISTY

v.

STATE OF MARYLAND

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Wells, C.J.,  
Nazarian,  
Kenney, James A., III,  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Wells, C.J.

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Filed: December 12, 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 Maryland Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Harford County convicted appellant Jordan Christy of carrying a concealed dangerous weapon, a BB gun that looked like a real firearm. Later, the court sentenced him to one year of incarceration with all but two months suspended, followed by one year of supervised probation.

At trial, the jury found that Christy's BB gun qualified as a concealed dangerous weapon. Christy timely appealed. While his appeal was pending before this Court, the Harford County Sheriff's Office destroyed the BB gun. Christy has submitted the following questions for our review:

1. Is the evidence sufficient to sustain the appellant's conviction for carrying a concealed dangerous weapon pursuant to Md. Code Ann., Crim Law § 4-101(c)(1)?
2. Has the appellant been denied meaningful appellate review due to the Sheriff's Office destruction of the gun, and, consequently, does he deserve a new trial?

For the reasons we will discuss, we conclude the evidence is sufficient to sustain Christy's conviction for carrying a concealed dangerous weapon. The record makes clear that under the circumstances, Christy possessed the BB gun to protect himself and could inflict serious bodily harm. Further, the BB gun meets the requirements for a dangerous weapon as expressed in *Brooks v. State*, 314 Md. 585, 600 (1989). We also conclude that

even though the BB gun was destroyed after trial, Christy was not denied meaningful appellate review. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

At about 3:00 p.m. on Christmas Day 2021, Christy was driving near his home, near the 700 block of Magnolia Road. At that time and place, Deputy Ryan Jeffries of the Harford County Sheriff's Office was on patrol. Deputy Jeffries scanned the license plate of Christy's passing car and learned that the vehicle's owner, Christy, had a suspended license. Deputy Jeffries stopped the car and asked for Christy's driver's license and vehicle registration. While doing so, Deputy Jeffries smelled the odor of marijuana emanating from inside the vehicle, so he asked Christy to step out to conduct a search of the car. As Christy was about to get out, he told Jeffries that there was a BB gun beneath the driver's seat. Jeffries asked Christy why he needed a BB gun, Christy responded, "For my protection. I ain't hurtin' nobody with it." Deputy Jeffries arrested Christy and charged him with carrying/wearing a concealed dangerous weapon.

At the time of his arrest, the BB gun had a CO2 cartridge and was loaded with fourteen projectiles. Deputy Jeffries also recovered a CO2 canister and fifty-one other projectiles from the vehicle. At the subsequent trial, the BB gun was admitted into evidence, as were pictures of the BB gun as it was positioned under the seat, CO2 cartridge, and CO2 canister.

As part of its case-in-chief, the State contended (1) that the BB gun was a dangerous weapon and (2) that Christy intended to use it as such. Defense counsel moved for judgment

of acquittal, arguing that while Christy wore or carried the BB gun and it was concealed, it did not qualify as a dangerous weapon. The court denied that motion. The court later instructed the jury, using the appropriate pattern jury instruction, they should consider whether the State had proved the BB gun was a dangerous weapon beyond a reasonable doubt. The jury ultimately found Christy guilty of carrying a concealed dangerous weapon. Christy filed a timely appeal.

While this appeal was pending, and for reasons that aren't clear, the Harford County Sheriff's Office destroyed the BB gun. Christy requested affidavits from the trial judge, the prosecutor, and defense counsel regarding their recollections of the BB gun's physical attributes. The trial judge did not provide any details about the gun. The prosecutor thought the BB gun weighed "approximately two pounds," but defense counsel contended that it weighed "approximately one pound."

## DISCUSSION

### I. Concealed Dangerous Weapon

#### A. Standard of Review

We accord a jury's factual findings a deferential standard of review. This Court will determine "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Indeed, our task is to review "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.” *Mungo v. State*, 258 Md. App. 332, 363 (2023) (quoting *Allen v. State*, 158 Md. App. 104, 249 (2004)).

### **B. Parties’ Contentions**

Christy asserts that his BB gun is not a dangerous weapon because it is incapable of administering serious bodily harm. At trial, Christy’s counsel argued the BB gun was designed for neither offensive nor defensive purposes; instead, counsel argued the BB gun was “something you give to kids as entertainment, for shooting cans.” But in this appeal Christy does not address his reason for ownership; instead, Christy’s primary contention is about the BB gun itself. *First*, Christy argued the gun cannot cause seriously bodily harm by firing projectiles. *Second*, Christy contended that because the BB gun was destroyed and now the State and the defense disagree in their recollections about the weight of the BB gun, this Court must adopt the defense’s lighter weight of “approximately one pound.” Consequently, Christy contends the BB gun was not able to administer deadly or serious bodily injury as a bludgeon.

The State argues the BB gun was a dangerous weapon. The State notes that at trial, Christy admitted he intended to use the BB gun for defensive purposes, citing his comment to Deputy Jeffries that the weapon was “for [his] protection.” According to the State, that comment weighs heavily towards establishing the BB gun as a dangerous weapon. Furthermore, the State contends the BB gun was a “heavy, metal object” with fourteen loaded projectiles. The State’s position is that an operational BB gun of this sort could qualify—on its face—as a dangerous weapon. Further, the fact that Christy had the BB gun

concealed it under his car’s seat would make it one by implication. The State argues that if Christy had not intended to use it to protect himself, there would be no reason for him to have concealed the BB gun. Thus, it qualifies as a concealed dangerous weapon under the circumstances.

### **C. Analysis**

There is sufficient evidence to sustain Appellant’s conviction of a concealed dangerous weapon. Christy was convicted of a violation of Maryland Annotated Code, Crim Law (“CR”) Article § 4-101(c)(1) which states that “[a] person may not wear or carry a dangerous weapon of any kind concealed on or about the person.” CR § 4-101(a)(5)(i) states that a “‘weapon’ includes a dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku.” But this enumerated list is not exhaustive. *See Vanison v. State*, 256 Md. App. 1, 17 (2022) (holding that the principle of statutory construction *ejusdem generis* does not apply to § 4-101(a)(5)(i). In other words, simply because the statute enumerates a list of weapons, that list is not exclusive considering that the statute contains different classes of weapons).

As for what constitutes a *dangerous* weapon, we have held that a rational fact finder must make that determination based on the context and circumstances of the case presented. *Vanison*, 256 Md. App. at 17 (quoting *McCracken v. State*, 150 Md. App. 330, 367 (2003)). “[S]uch a determination requires a finding, based on all of the circumstances, that the person had ‘at least the general intent to carry the instrument for its use as a weapon, either of offense or defense.’” *Id.* In *Wright v. State*, 72 Md. App. 215 (1987), we

noted that “[t]he dangerousness of a weapon is determined not only by its design, construction, or purpose but also by its capability to be used in such a way as to cause injury or death. Thus, a taxi cab’s microphone cord used as a garrote was deemed to be a dangerous or deadly weapon.” *Id.* at 219 (citing *Bennett and Flynn v. State*, 237 Md 212, 215 (1964)).

Instructive is *Brooks v. State*, 314 Md. 585 (1989), in which the Supreme Court of Maryland (at the time called the Court of Appeals) held that dangerous weapons fall within one of the following three categories:

(1) designed as ‘anything used or designed to be used in destroying, defeating, or injuring an enemy, or as an instrument of offensive or defensive combat[;]’ (2) under the circumstances of the case, immediately useable to inflict serious or deadly harm (e.g., unloaded gun or starter’s pistol useable as a bludgeon); or (3) actually used in a way likely to inflict that sort of harm (e.g., microphone cord used as a garrote).

*Id.* at 600. In *Brooks*, the Court considered whether a toy gun Brooks used to rob someone could properly be deemed a dangerous or deadly weapon to sustain his conviction for armed robbery. *Id.* at 587. In holding that the toy gun did not qualify as such, the Court rejected a subjective analysis (the victim believed the toy gun was a real one), in favor of an objective standard, namely, that the object must be inherently dangerous or deadly or may be used in a manner that gives the object that character. *Id.* at 590, 598-99.

For our purposes in determining the potential dangerousness of the BB gun here, we note that *Brooks* cited to *Hayes v. State*, 211 Md. 111 (1956). There, the Supreme Court of Maryland observed that an unloaded pistol could be a dangerous or deadly weapon because it could be used as a bludgeon, or it could be loaded “under some circumstances in a matter

of seconds.” *Id.* at 114. That same reasoning, the Court noted, was reiterated and followed in *Jackson v. State*, 231 Md. 591, 595 (1963), holding that a starter’s pistol could be a dangerous or deadly weapon because it could be used as a bludgeon. *Id.* at 592.<sup>1</sup>

In this case, at trial, the prosecutor, in arguing against a judgment of acquittal at the end of the State’s case-in-chief, argued that the BB gun qualified as a dangerous weapon because not only could it fire a .177 caliber steel projectile that was in itself dangerous, but the gun could also be used as a bludgeon:

And as far as a dangerous weapon under the circumstance where it says, you know, a dangerous weapon is capable of causing death or serious bodily injury such as a knife or club, an object may be dangerous if it was designed or made for offensive or defensive purposes or to cause serious bodily injury or death.

You know, a lot of these cases where we don’t have these per se, I guess, weapons, you know, if it’s a cell phone, a baseball bat, a water bottle, you know, whatever, I think the Legislature uses this sort of language because some things can be one or the other.

You know, I’m using this water bottle to drink out of but it’s also made out of metal and I could probably seriously injure someone with this. **That BB gun** that is made by the same arms company that manufactures arms and to look like a realistic firearm **is made of metal and can absolutely be used as a bludgeon to bludgeon someone.**

So, you know, obviously, you know, someone’s—a jury’s going to look at this and see oh, you know, it’s a BB gun and they’re going to take

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<sup>1</sup> Also in *Wright*, previously cited, we held a plastic toy gun used in what was charged as an armed robbery was not a dangerous weapon. 72 Md. App. at 221. Employing the subjective standard of what the victim thought at the time of the robbery, later rejected by *Brooks*, we concluded that that because the victim understood the weapon displayed was not a real handgun, the toy gun did not qualify as a dangerous or deadly weapon. *Id.* at 222-23. But we observed that “[t]here are many cases in other jurisdictions that conclude a metal toy pistol is a dangerous weapon in that it can be used as a bludgeon.” *Id.* at 221.



their knowledge and everyday life experiences and consider what the sort of normal intended use is for it, as well.

**But, you know, if you get into a situation where you're using it for defensive purposes and you're using it for how it's intended, you know, you can also use it in other ways. Just like you would a handgun. If you're firing a handgun at someone and you miss them and you run out of ammunition, you can certainly start bludgeoning them if they're coming at you or close enough.**

(Emphasis added. Paragraph breaks introduced for ease of reading.)

In closing argument to the jury, the prosecutor explicitly asked the jury to consider that the BB gun was a dangerous weapon because it could be used as a bludgeon.

**And interestingly enough, just like if you were to have a handgun or a pistol, whether you're using it for offensive or defensive purposes, if someone is coming at you and you're shooting at them and you miss them and you run out of ammunition, what's the next thing you're going to do? You're going to use it as a bludgeon. I mean, it's a heavy, metal object. You could absolutely use that to cause serious bodily injury. This is no different.**

And you guys will have a chance to look at this. I mean, this is one of the most realistic-looking – I'm sure the officer, but for the defendant telling him there's a BB gun in the vehicle, I'm sure the deputy probably would have assumed that that was a real gun before clearing it.

**And the thing is, if you're using it for defensive purposes and if you're shooting at someone and heaven forbid it doesn't cause the result that you're looking for and they're coming at you, it still makes a great weapon for hand-to-hand combat whether you're attempting to use it for offensive or defensive purposes.**

(Emphasis added. Paragraph breaks introduced for ease of reading.) Despite what Christy argues in this appeal about counsels' conflicting recollections of the weight of the BB gun, the jury had the opportunity to hold and examine the gun during deliberations. They could

determine its weight and whether it could be used as a bludgeon. Counsel’s recollection of the gun’s weight is immaterial, as is our belief about the gun’s weight. The jury’s collective determination is all that matters.

Consistent with the holdings in *Brooks* and *Haynes*, we hold that the material and weight of an object, such as a BB gun, can be used by the trier of fact to determine if it qualifies as a dangerous weapon. We determine that the jury could have found the BB gun in this case could have been used as a bludgeon because it was made of metal and weighed at least one pound, perhaps more, particularly with the added weight of the CO2 cartridge and fourteen projectiles loaded in the gun. We conclude that the BB gun, based on the record, was of sufficient size and weight to act as a bludgeon and could have inflicted serious, even deadly injuries, if used in this way.

Additionally, the second category of dangerous weapons articulated in *Brooks*, where one looks to “the circumstances of the case, [to determine if the object is] immediately useable to inflict serious or deadly harm,” further suggests that BB gun here, concealed but immediately usable by Christy, was a dangerous weapon. Four factors articulated in *Anderson v. State*, 328 Md. 426 (1992), guide the analysis in this regard: “(1) the nature of the instrument, *i.e.*, its size, shape, condition and possible alteration; (2) the circumstances under which it is carried, *i.e.*, the time, place and situation in which the defendant is found with it; (3) defendant’s actions *vis-à-vis* the item; and (4) the place of concealment.” *Id.* at 443.

We conclude that in addition to being a bludgeon, the BB gun qualifies as a dangerous weapon under this second category of *Brooks*, based on *Anderson*'s four-part analysis. *First*, the gun was of a size, shape, and weight that it could have been used to beat someone with causing serious injuries or death. *Second* and *Fourth*, Christy had the BB gun under the driver's seat of his vehicle where it was concealed but with its handle jutting out so that it was easily accessible. Further, the BB gun was loaded, had a CO2 cannister attached, and was operational, by Christy's own testimony. Arguably, the firing capabilities of the BB gun might not reach the threshold of a deadly weapon, but the fact that the gun was loaded and capable of firing suggests Christy's willingness to use the weapon. *Third*, it is undisputed that Christy told Deputy Jeffries that the BB gun was for his own protection, which suggests, at a minimum, Christy's intent to use the BB gun for defensive purposes.

We conclude that the BB gun meets each element under *Anderson* for a rational trier of fact to conclude that because the weapon was concealed but easily accessible it was a dangerous weapon under these circumstances. For the reasons stated, we hold that there was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that Christy possessed a dangerous weapon in violation of CR § 4-101(c)(1).

#### **D. Destruction of Gun After Verdict**

##### **A. Parties' Contentions**

Christy asserts that he deserves a new trial because the Harford County Sheriff's Office destroyed the BB gun, denying him meaningful appellate review. Focusing on whether the gun could in fact be used as a bludgeon, Christy contends that even though the

BB gun was admitted as evidence at trial, the weapon’s size and weight were not discussed at trial and cannot be found anywhere in the record. Absent that information—particularly in light of the BB gun’s destruction—Christy argues that this Court lacks the requisite evidence to ascertain if the BB gun was a dangerous weapon. Consequently, Christy urges us to vacate his conviction and order a new trial.

The State argues that the jury has already, literally, weighed the evidence and determined that the BB gun was a dangerous weapon. At trial, the court admitted the BB gun into evidence, and it went back to the jury room during deliberations for the jurors to handle. Therefore, the State contends, the jury was well-acquainted with the BB gun’s weight in reaching a verdict. The State contends the BB gun’s eventual destruction—after the trial had concluded—did not affect the jury’s fact-finding. Moreover, even if the BB gun had not been destroyed, this Court would not supplement the factual record with new information about the weapon’s size and weight. This Court’s task is to determine whether the jury had sufficient evidence to reach a verdict.

### **B. Analysis**

Destruction of the BB gun did not deny Christy meaningful appellate review. We agree with the State that the destruction of the BB gun by the Sheriff’s Office does not preclude meaningful appellate review. While the destruction of the gun has now created a void in the evidentiary record, this Court can nonetheless assess whether the jury possessed sufficient evidence to determine whether the BB gun was a dangerous or deadly weapon. Granted, the weight of the BB gun was not entered into evidence at trial, and the parties

now disagree about the precise weight of the weapon. That discrepancy, however, is not enough to trigger a new trial. After all, the BB gun was admitted into evidence and was the centerpiece of the trial. The jury had the opportunity to determine how much the gun weighed and whether they thought it could be used as a bludgeon.

“It is only when it is impossible [to] adequately [] substitute for the record . . . that the appellate court need consider a defendant’s claim of deprivation of meaningful appellate review.” *Wilson v. State*, 334 Md. 469, 476 (1994) (citing *Smith v. Smith*, 291 Md. 125, 137 (1981)). If it is truly impossible to substitute the evidentiary record, then the defendant bears the burden of “attempting to reconstruct the record,” and he/she must show that “the omissions are not merely inconsequential but are in some manner relevant on appeal.” *Wilson*, 334 Md. at 476-77. However, new trials should not be granted because the evidentiary record was not preserved *verbatim* for review. *Smith*, 291 Md. at 133. In other words, the defendant must show that “[he] has been irreparably prejudiced with regard to those issues that cannot even be determined.” *Thompson v. State*, 181 Md. App. 74, 105 (2008).

When the admitted evidence is altered before a trial verdict, a reviewing court is more likely to hold that the defendant is entitled to a new trial. *See Wilson*, 334 Md. at 476 (finding that the disappearance of significant cross-examination and redirect testimony during trial entitled the defendant to a new trial). But, if the evidence is altered or destroyed after a verdict, the jury’s examination of the evidence may be sufficient to prevent a new trial. *See Mosley v. State*, 378 Md. 548, 569 n.13 (2003) (noting that additional weapon

measurements after a completed trial—when a jury has already seen and handled the weapon—may not merit a new trial altogether).

We hold the destruction of the BB gun does not deprive Christy of meaningful appellate review. While Christy has attempted to reconstruct the record with affidavits from the circuit court judge, the prosecutor, and defense counsel, their differing opinions of the gun’s weight do not mandate a new trial. Any disagreement about the gun’s weight, even if argued at trial, was resolved by the jury. Counsel’s opinions about the gun’s weight would have merely been argument, not evidence. The jury’s collective decision about the gun’s weight is all that mattered then and now. We can hardly substitute our judgment about the true weight of the weapon and re-weigh the evidence. This is not the situation presented in *Wilson* where a key piece of evidence was altered or destroyed before the jury could examine it and render a verdict. Perceiving no error, we affirm.

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