Circuit Court for Dorchester County
Case No.: 09-K-14-015441

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2079

September Term, 2023

DESHAUNE DARNELL DARLING

v.

STATE OF MARYLAND

Leahy,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.
Concurring Opinion by Raker, J.

Filed: May 5, 2025

*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).

On September 16, 2015, following trial in the Circuit Court for Dorchester County, a jury found Deshaune Darnell Darling, appellant, guilty of first-degree murder, conspiracy to commit first-degree murder, second-degree murder, first-degree assault, conspiracy to commit first-degree assault, second-degree assault, wearing, carrying, or transporting a handgun, use of a firearm in the commission of a felony or crime of violence, kidnapping, and conspiracy to commit kidnapping. On October 14, 2015, the court sentenced appellant to a term of life imprisonment for first-degree murder, a consecutive term of life imprisonment for conspiracy to commit first-degree murder, a consecutive term of twenty years' imprisonment for use of a firearm in the commission of a felony or crime of violence, and a consecutive term of thirty years' imprisonment for kidnapping. The court merged the remaining convictions for sentencing.

In his direct appeal to this Court, appellant argued, among other things, that "there was insufficient evidence to sustain his conviction[] for wearing, carrying, or transporting a handgun . . . because the State failed to prove that a 'handgun' was used." *Darling v. State*, 232 Md. App. 430, 467 (2017). We declined to address that argument because it was not preserved for appeal as appellant's counsel did not make that argument to the trial court when moving for judgment of acquittal during trial. *Id*.

On August 22, 2019, appellant, proceeding as a self-represented litigant, filed a petition seeking relief under Maryland's Uniform Postconviction Procedure Act found in Md. Code (2001, 2018 Repl. Vol.), § 7-101 *et seq*. of the Criminal Procedure Article ("CP"), raising a variety of claims. Through counsel, he filed a supplement to that petition

on October 7, 2022. One of his post-conviction claims asserted that he had been denied his right to effective assistance of counsel when his trial counsel erroneously failed to argue in his motion for judgment of acquittal that the evidence was insufficient to sustain his conviction for wearing, carrying, or transporting a handgun because the State failed to prove that a "handgun" was used.

On March 30, 2023, the post-conviction court granted appellant post-conviction relief in the form of the right to file a belated motion for modification of sentence, but otherwise denied appellant's petition.

Appellant sought leave from this Court to appeal from the post-conviction court's ruling. On December 28, 2023, we granted appellant leave to appeal and transferred the case to our regular appellate docket for briefing. On appeal, appellant presents us with the following question which we have slightly re-phrased[1]: Did the post-conviction court err in determining that appellant was not denied his right to effective assistance of trial counsel when counsel failed to move for judgment of acquittal on the basis that the evidence was insufficient to support the charge of wearing, carrying, or transporting a handgun?

For the reasons that follow, we affirm the judgment of the post-conviction court.

BACKGROUND

In our decision on direct appeal affirming appellant's convictions and sentences, we

[1] Appellant presented his question as follows: "Did the postconviction court err in denying relief on Appellant's claim of ineffective assistance of counsel based on trial counsel's failure to state with particularity the reasons supporting the motion for judgment of acquittal for count eight, wearing, carrying, or transporting a handgun?"

summarized the trial evidence as follows:

> The State's theory of prosecution was that appellant and an accomplice murdered Radames Guzman either in revenge for providing information about appellant to the police or to prevent Guzman from testifying against appellant in a subsequent trial. The State's evidence was circumstantial and came primarily, from evidence seized from two vehicles; the decomposed body of Guzman; and the testimony of Jessie Jo Stewart, a drug addict who bought drugs from appellant. The defense's theory was that Stewart, killed Guzman to curry favor with appellant. The defense presented no testimonial evidence.
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> In the summer of 2011, Guzman, a confidential informant for the Delaware State police, made several controlled drug buys from appellant. Based on those buys, a search warrant was issued and executed for appellant's home in Dover, Delaware. Appellant was arrested, released on bond, but then "disappeared" and failed to appear for trial.
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> Roughly three years later, on the night of August 2, 2014, Guzman was last seen by his family leaving his house in Delaware. About three weeks later, on August 24th, his partially decomposed and buried body was found in a wooded area near Linkwood and Red Mill Roads in Dorchester County. Guzman's wrists were bound behind his back with duct tape, and he had three gunshot wounds to the back of his head. He was identified by his fingerprints. A subsequent medical examination revealed that the cause of death was multiple gunshot wounds and the manner of death was homicide.
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> An investigation into Guzman's Facebook account and cell phone usage revealed that he was last in contact with a woman named Jessie Jo Stewart. The police interviewed her on September 2, but she told the police that she did not know Guzman or what had happened to him.]
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> Two days after that interview, police set up a covert surveillance at appellant's home, located at 309 Pr[y]or Avenue in Salisbury. A van was parked in the driveway and a Lexus on the street; both vehicles were associated with appellant. Police officers saw appellant leaving his home in the van. They followed him and eventually stopped the vehicle. He was taken into custody, and the van was towed to a Maryland State Police Barrack. Pursuant to a search warrant, two black ski masks and a cell phone service receipt were seized from the vehicle.
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> After appellant's arrest, a police canine unit made a positive alert for drugs on the Lexus. The Lexus was also towed to a Maryland State Police

Barrack where it was searched pursuant to a search warrant. The executing officer observed that the car and trunk were "very clean" and noted that as soon as the door of the car and trunk were opened he was "overwhelmed" by the "strong odor of cleaning material[.]" He found what appeared to be several spots of dried blood in the trunk—on the molding, interior lid, trunk mat, and side wall. Swabs of the suspected blood were collected, pursuant to an additional search warrant obtained by the officers. DNA analysis on the swabs showed that the blood was from either Guzman or a brother based on DNA swabs taken from Guzman's mother and father. DNA found on one of the ski masks matched appellant's DNA.

Stewart entered into a plea agreement with the State in which she agreed to plead guilty to a charge of kidnapping and testify truthfully at appellant's trial, and in exchange the State would recommend a sentence of eight years. Stewart testified that she was a long-time drug addict and had known appellant, who supplied her with drugs, for about a year prior to the murder. She paid for the drugs with money, if she had it, or with sex.

Stewart testified that appellant asked her to look up Radames Guzman, who she did not know, on the internet and arrange to meet him. She found Guzman on Facebook, and they agreed to meet on the evening of August 2; she told appellant about the arrangement. Messages from Guzman's and Stewart's Facebook accounts corroborated her account and were admitted into evidence.

On August 2, appellant picked up Stewart and drove her to the Royal Farms store in Easton to obtain a car he had arranged for her to use to pick up Guzman. Once at the store, they met three people in a gold Grand Marquis. Video footage from the store's surveillance cameras was introduced into evidence. Stewart entered the Grand Marquis and drove the three occupants to a nearby house where they got out. She then drove to Delaware to meet Guzman. During the trip, she was in cell phone contact with appellant.

After picking up Guzman, she drove to a Royal Farms store in Felton, Delaware and texted appellant while she was in the bathroom. Photographs from the store's video surveillance corroborated Stewart's and Guzman's presence at the store with a Grand Marquis around 11:30 p.m. They then left the store and drove to the Cambridge area of Maryland, during which she was in cell phone contact with appellant. At some point, a car, which she later learned was appellant's Lexus, pulled up behind her on a deserted, back road and flashed its headlights. She stopped the car she was driving and got out. As she did so, she was shoved to the ground, but saw two men wearing

ski masks and all black clothing. One of the men held a gun in his hands. Both of the men pulled Guzman, who was screaming, out of the car. One man hit Guzman in the face with the gun, and both men hit Guzman all over with their fists. The men duct taped Guzman's hands and ankles and put him in the back seat of appellant's Lexus. The men then pulled up their masks and she recognized appellant and another man, whom she had seen before but did not know his name.

Stewart followed the Lexus to another deserted, back road where the men placed Guzman in the trunk of the Lexus. They then drove to a migrant camp where appellant sold drugs for several hours. Stewart followed appellant back to Easton where they dropped off the Grand Marquis at the house where she had earlier left the three occupants. She then got into the Lexus with appellant and the other man. Appellant drove to the Royal Farms store in Easton. Video footage from the store's surveillance cameras shows Stewart and appellant at the store around 3:00 a.m. The video footage also shows appellant pumping gas and then walking to the rear of his car where he leans over as if to listen to noise from inside of the trunk.

Appellant then drove Stewart to her home in Cambridge, during which time she heard "kicking in the trunk." Before she got out of the car, appellant asked for her cell phone, which she gave to him. Cell phone records from the number on the cell phone receipt found in the van in which appellant was arrested show that between 4:07 a.m. and 4:50 a.m., that cell phone was in the area where Guzman's body was later found. The next day Stewart went to Walmart and bought a new phone with money appellant had given her. Photographs from the Walmart surveillance video support Stewart's testimony and show her walking out of Walmart with the phone on August 3 around 7:00 a.m.

Stewart admitted that she had not been honest in her first interview with the police on September 2. She explained that she was scared—appellant had threatened her and her family. Her second interview with the police, roughly two weeks later, on September 17, was played for the jury and more closely followed her trial testimony.

Stewart's testimony was corroborated, in part, by the testimony of Tytina Williams, her boyfriend Gary Barham, and their friend Donnie Eisman. They testified that on the afternoon of August 2, they drove in Eisman's car to Salisbury, Maryland where Barham bought drugs from appellant, who was driving a Lexus. An arrangement was made to meet later so appellant could borrow Eisman's car. That night the three drove to the Royal Farms store in Easton where appellant pulled up in his Lexus with a

> woman inside. The woman got in the passenger seat of Eisman's car, and they drove to Barham's house. The three got out of the car, and the woman drove off. During the early morning hours of the next day, the woman drove the car back to the house. At the same time, appellant drove up in his Lexus with a man known to Barham as "Terrell" sitting in the passenger seat. The woman exited Eisman's car and got into the back seat of the Lexus, which then left.
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> Following appellant's arrest, he was held at the Wicomico County Detention Center. On January 21, 2015, the detention center seized a letter from the outgoing mail addressed to appellant's fiancée and signed by appellant. A scanned copy was sent to the State's Attorney's Office. An expert in the field of handwriting analysis compared exemplars of appellant's handwriting to the scanned letter and concluded that she "was virtually certain that the letter was written" by appellant. In the letter, appellant admitted that he knew Guzman and knew that he had acted as a drug informant against him. Appellant wrote that Stewart killed Guzman as a "surprise" for him and he "didn't have anything to do with it." He wrote that Stewart had asked him about borrowing someone's car to carry out the surprise. Appellant made arrangements for her to borrow a friend's car, and sometime that night, she showed him her "surprise"—she opened the trunk and he saw Guzman lying inside.

Darling v. State, 232 Md. App. 430, 440-45 (2017).

DISCUSSION

As indicated earlier, appellant contends that the post-conviction court erred in not granting post-conviction relief on his claim that he was denied his right to effective assistance of trial counsel when his counsel failed to move for judgment of acquittal on the charge of wearing, carrying, or transporting a handgun[2] based on insufficiency of evidence. In appellant's view, there was no evidence that a "handgun," within the meaning of the relevant statutes, and as opposed to some other form of firearm, was used to kill the victim.

[2] The court merged this conviction for sentencing.

Claims of ineffective assistance of counsel are governed by a two-part test, under which the petitioner bears the burden of demonstrating: (1) that counsel's performance was deficient; and (2) that, as a result, the petitioner was prejudiced. *Barber v. State*, 231 Md. App. 490, 515 (2017) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). To prove a deficiency in performance, "a petitioner must show that the acts or omissions of counsel were the result of unreasonable professional judgment and that counsel's performance fell below an objective standard of reasonableness considering prevailing professional norms." *Id*. (citing *Cirincione v. State*, 119 Md. App. 471, 484 (1998)).

"The standard for 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." *Tracy v. State*, 423 Md. 1, 11 (2011) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). "Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998) (citing *Binnie v. State*, 321 Md. 572, 580 (1991)). "We do not re-weigh the evidence, but 'we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Smith*, 374 Md. at 534 (quoting *White v. State*, 363 Md. 150, 162 (2001)).

In the present case, the jury found appellant guilty of first-degree murder and multiple related counts, including wearing, carrying, or transporting a handgun in violation

of Md. Code (2002, 2021 Repl. Vol.), § 4-203 of the Criminal Law Article ("CR"). A "handgun" is defined in CR § 4-201(c) as follows: "(1) 'Handgun' means a pistol, revolver, or other firearm capable of being concealed on the person[;] (2) 'Handgun' includes a short-barreled shotgun and a short-barreled rifle[; and] (3) 'Handgun' does not include a shotgun, rifle, or antique firearm."

At trial, Jessie Jo Stewart testified pursuant to a guilty plea agreement with the State. As outlined above, she provided extensive testimony about her role in luring the victim into appellant's trap, culminating in the victim's execution. She testified that one of the two assailants hit the victim in the face with a gun. She was not, however, asked any follow-up questions about the gun and never testified to its appearance. The closest she ever came to describing the gun came during cross-examination by appellant's counsel, when she agreed that the victim had been "pistol whipped[.]"

As noted above, during Stewart's cross-examination, appellant played a roughly two-and-a-half-hour long audio recording of Stewart's September 17, 2014 interview with police for the jury. If that audio recording was ever transcribed, we are unaware of it. It is not part of the appellate record. Neither party asserts that it was introduced into evidence during the post-conviction proceedings.[3] Given the fundamental importance of Stewart's testimony to appellant's prosecution, the absence of the September 17, 2014 interview is telling. Although our decision is based on appellant's failure to sustain his burden of proof,

[3] Appellant introduced a copy of Stewart's September 2, 2015 interview with police during the post-conviction proceedings. However, the September 2, 2015 interview was used to support a claim that is not germane to this appeal.

we note that the evidentiary record before the post-conviction court demonstrated that the victim had been "pistol whipped," a characterization that would permit a reasonable factfinder to conclude that the victim was struck by a pistol. As, noted, one of the types of firearms meeting the definition of a "handgun" is "a pistol." CR § 4-201(c)(1). In conclusion, we reiterate that it is certainly possible that Stewart may have further described the gun during her lengthy interview, and that appellant had the burden of proving deficient performance under *Strickland*. The absence of Stewart's September 17 interview made it unlikely, if not impossible, for appellant to sustain his burden of proof to show deficient performance of his trial counsel for not moving for judgment of acquittal as he suggests. We agree with the State that the post-conviction court made no error in denying relief on this claim.[4]

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] It is of no moment that the post-conviction court did not rely on this ground when denying relief. "[A]n appellate court can affirm when 'the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties.'" *Yaffe v. Scarlett Place Residential Condo*., 205 Md. App. 429, 440 (2012) (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)).

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Raker, J., concurring:

I join in the judgment only. I would affirm the judgment of the Circuit Court for Dorchester County based on the opinion and ruling of the post-conviction hearing judge. I would hold that trial counsel's representation was not deficient as his performance did not fall below an objective standard of reasonableness. The record is clear that the State presented sufficient evidence, *albeit* not very strong, to support the conviction of wearing, carrying, or transporting a handgun, and hence, defense counsel was not deficient in declining to raise that issue for judgment of acquittal.

To prevail on a claim of ineffective assistance of counsel, appellant must show (1) counsel's performance was deficient, *i.e.*, outside the wide range of reasonable professional assistance; and (2) counsel's deficient performance prejudiced the outcome of the proceedings so that without the conduct, there was a reasonable probability that the outcome would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 690-92 (1984). If appellant fails to make the requisite showing on either prong, he would not be entitled to relief on that claim.

The majority holds that because appellant did not provide a transcript or record of the two-hour plus testimony/recording played to the jury during Ms. Stewart's testimony, appellant failed on his burden of proof. I part ways with the majority because as the record shows, and as recounted by the majority, the witness, Jessica Stewart testified to the use of a gun and pistol-whipping. There is no need for this Court to speculate on what might have

been said in a two-hour recorded interview, played before the judge and jury, and that it might have, or likely had, contained more information about the gun.

In a lengthy Memorandum and Opinion, the post-conviction court judge held, in pertinent part, as follows:

> "Trial counsel did not simply state he was moving for judgment of acquittal. Rather, he argued in depth and provided the Court with a case in support of his motion. In fact, trial counsel made lengthy arguments on the more serious offenses with which Petitioner was charged. While trial counsel did not preserve insufficiency of evidence in relation to the ballistics test, *there was both witness testimony and a stipulation on the issue at trial,* making it a matter for the jury to decide. Trial counsel proceeded on what he believed would be the best arguments, and he was not deficient as this did not fall below an objective standard of reasonableness. Petitioner cannot meet the first prong of the *Strickland* test." (Emphasis added).

When reviewing a challenge to the sufficiency of the evidence, the reviewing court views "the evidence, and all inferences fairly deducible from the evidence, in a light most favorable to the State." *Hackley v. State*, 389 Md. 387, 389 (2005). A motion for judgment of acquittal should be granted only if there is no view of the evidence from which a jury could make a finding contrary to that of the moving party. *See State v. Taylor*, 371 Md. 617, 651 (2002).

The testimony from Jessica Stewart, in my view, is sufficient, although barely, for the judge to have denied the motion for judgment of acquittal and to support a jury finding of guilty beyond a reasonable doubt of wearing, carrying, or transporting a handgun. Whether the trial transcript of the recording of the Jessica Stewart interview would have added more detail is insignificant to the question of whether appellant received effective assistance of counsel. A more likely scenario is that everyone in the trial courtroom

recognized that the State had established that a handgun was used in the murder of the victim, and a motion for judgment on those grounds was meritless or futile.

Strickland does not require trial counsel to make or argue motions that have no basis in law and no factual support. *See Strickland*, 466 U.S. at 688 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness."). Moreover, failing to make a motion for judgment of acquittal on grounds that would have been unsuccessful under the circumstances does not constitute ineffective assistance of counsel. *Mosley v. State*, 378 Md. 548, 571 (2003) ("As long as sufficiency of the evidence is at issue, the possibility remains that [defense] counsel lacked grounds to make the motion in the first place."). *See also State v. Scalise*, 660 N.W.2d 58, 62 (Iowa 2003) ("counsel is not incompetent for failing to pursue a meritless issue").