

Circuit Court for Baltimore City
Case No. 122333002

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2288

September Term, 2023

KNOWLEDGE HAMILTON

v.

STATE OF MARYLAND

Albright,
Kehoe, S.,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: August 11, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted appellant, Knowledge Hamilton, of second-degree assault and openly carrying a dangerous weapon with intent to injure.¹ The trial court sentenced Hamilton to a total of thirteen years in prison, suspending all but ten years. He filed a timely notice of appeal.

Hamilton asks us to consider whether: (1) the trial court erred, in imposing sentence, by relying on other charges of which he was acquitted; and (2) the evidence presented at trial was insufficient to sustain his conviction for openly carrying a dangerous weapon with the intent to injure. For the reasons that follow, we conclude that the trial court erred during sentencing by appearing to consider crimes of which Hamilton was acquitted in fashioning its sentence. We therefore remand to that court for a new sentencing hearing. Because we conclude also that Hamilton failed to preserve the issue of evidentiary sufficiency for appellate review, we will not consider that issue and shall affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

On 14 September 2022, Baltimore City Police officers responded to a call for a shooting near the intersection of West Lafayette Avenue and North Calhoun Street. Arriving at the scene, the officers observed a vehicle speeding away and two men suffering from apparent gunshot wounds, one—later identified as Turrell Davis (with a “street name”

¹ The jury acquitted Hamilton of: first- and second-degree murder; attempted first- and second-degree murder; first-degree assault; wearing, carrying, or transporting a handgun on his person; and possession of a firearm by a prohibited person.

of “Dirty”)—lying on the sidewalk, and one—later identified as Tavon Thompson—taking apparent cover under a pickup truck. Davis died at the scene from seven gunshot wounds.

The police obtained security camera video footage from a corner store in the 1300 block of West Lanvale Street, which showed Lanvale and Calhoun Streets on the night of the shooting. In the video, a woman, later identified as Monica Talbert, is seen pulling over in her car and becoming involved in an altercation with a man on Calhoun Street. The man swings a belt, hitting Talbert in the face, after which she walks away with the belt. The video from the corner store did not show the shooting, but it was of interest to the police because they wanted clearer images of the man involved in the altercation with Talbert, as they had been told he was also the shooter.

In a recorded interview with Detective Kimberly Tonsch, Talbert explained that, as she pulled up to the 800 block of Calhoun Street, she spoke with a woman named Ann, who owed her money. A tall man she did not know—later identified as Hamilton—approached and called her a bitch. They fought. The man struck her in the face with the metal buckle of a belt wrapped around his hand.

Talbert drove off, only to return with a baseball bat and approached the same man. “He start[ed] shooting.” To Det. Tonsch, Talbert repeated later “that [the] same guy” she fought “at some point started shooting[.]” When she heard the shots fired, Talbert said she ran away. She did not see if anyone was hit by the shots. She learned only later that Turrell

Davis, a friend who came to her defense when the man struck her, was shot multiple times and died.²

Canvassing the area of the shooting, officers located a car with a bat and a green and black belt inside. The car was registered to Monica Talbert. Pursuant to a warrant, the vehicle was towed to the police Crime Lab forensic bay.

The bat and the belt were processed for DNA evidence. Hamilton was determined, with 99.9% certainty, to be the source of the major contributor of DNA obtained from the belt.

Tavon Thompson testified that, on 14 September 2022, he and Davis were walking in West Baltimore when an altercation between two groups of people erupted on Calhoun Street and gunshots rang out. Thompson said he and Davis were not involved in the altercation. He did not see Davis get shot. Although he told Det. Tonsch during a recorded interview that Davis and a “guy” exchanged words and that “Monica” argued with “some guy” who pulled out a gun and started shooting, Thompson denied at trial any memory of making those statements.

² During her trial testimony, Talbert said she did not see anyone with a gun that night; nor did she recall telling the police that the person who hit her with the belt was the same person who fired the shots. Therefore, the State sought to introduce Talbert’s recorded police interview as substantive evidence as a prior inconsistent statement. The trial court ruled that it appeared that Talbert was feigning memory loss, so it admitted the recording into evidence, over defense objection.

When asked specifically upon cross-examination, “So did you see Knowledge Hamilton shoot anybody on September 14, 2022?” Talbert responded, “No.”

The recording of Thompson’s police interview was then played for the jury as a prior inconsistent statement. In it, Thompson said that he and Davis saw their friend, Talbert, “beefing” with a man, getting “up in each other face.” The man was tall with brown skin, a little facial hair, and a tattoo, “like a star by his eye.”³

After the man said something to Talbert, Davis had words with the man and hit him. The man then pulled out a gun. Everyone ran as he began to shoot. Thompson reiterated to Det. Tonsch that the man who argued with Talbert was the same person who pulled the gun and shot him.

Thompson told the detective that he believed the first shot ricocheted off the ground and hit Davis because Davis fell to the ground. When he was hit in the leg, Thompson collapsed and took cover under a truck. From under the truck, Thompson saw someone walk up to Davis and shoot him at close range approximately four more times, but he did not know if it was the same shooter or a different person. The man who shot Davis then jumped in a car and drove up Calhoun Street.⁴

Upon cross-examination by defense counsel, Thompson denied that Hamilton shot him on 14 September 2022.

³ At trial, Hamilton did not have a tattoo on his face, but, according to Det. Tonsch, the physical characteristics Thompson provided of the shooter otherwise aligned with Hamilton’s appearance.

⁴ The car was later identified by the police as an Acura with Virginia registration; it was registered to Diera Hamilton, believed to be Hamilton’s aunt.

Hamilton was arrested on 8 November 2022. At that time, he gave a statement to Det. Tonsch. At the interview, Hamilton was wearing the same hat and shoes as seen on the suspect in the video of the altercation with Talbert.

Det. Tonsch used deception tactics in the interview in an effort to induce Hamilton to incriminate himself in the shooting. The detective told Hamilton that there was video footage of the shooting and of him with a handgun. This was not true.⁵ Although Hamilton admitted there had been a fight between him and a female and that he “kept slapping her with [his] belt” after she spit on him, he denied repeatedly any involvement in the shooting.

Instead, Hamilton claimed that, after he hit her, the female—Talbert—went up the street to get friends, including Davis. When the friends arrived, Hamilton knew they were going to do “gun play or they fighting.” He asked Davis why he was fighting Talbert’s battle for her when he and Hamilton were “family.”

As the shooting began, Hamilton said he and Davis fled together. After hearing about seven or eight shots, Hamilton fired back to protect himself. When Davis fell, Hamilton ran toward an alley and pulled off in his Acura, believing that the shooter was aiming for him and hit Davis by mistake.

Despite Hamilton’s claim of another shooter, no witness mentioned a second shooter. All thirteen shell casings recovered from the scene had been fired from the same unknown firearm.

⁵ Police deception “may be a legitimate investigative technique where it does not rise to the level of an ‘overbearing inducement.’” *Smith v. State*, 220 Md. App. 256, 263 n.2 (2014) (cleaned up) (quoting *Whittington v. State*, 147 Md. App. 496, 520-21 (2002)).

At the close of the State’s case-in-chief, Hamilton moved for judgment of acquittal. The trial court denied Hamilton’s motion.

Hamilton did not produce any evidence. At the close of the case, he renewed his motion for judgment of acquittal. The court denied the motion.

The jury convicted Hamilton of the second-degree assault of Talbert and of openly carrying a dangerous weapon (a belt) with intent to injure her but acquitted him of all charges related to the shooting of Davis and Thompson.

DISCUSSION

I. Sentencing

Hamilton contends that the trial court was motivated by impermissible considerations in sentencing him to the statutory maximum prison term for the two crimes of which he was convicted, rather than sentencing within the much lower range suggested by the sentencing guidelines. In his view, although the jury concluded that he was not the person who shot Davis and Thompson, the trial court, in imposing sentence, “overr[o]de the jury’s verdict” of not guilty on those charges and violated “numerous fundamental rights[.]” Acknowledging that he did not object to the sentence during the trial, thereby failing to preserve the issue for appellate review, Hamilton asks that we exercise our discretion, pursuant to Maryland Rule 8-131(a), to consider the merits of the issue and to remand the matter to the trial court for resentencing.

The State counters that, in failing to object during the sentencing hearing, Hamilton forfeited any consideration of this issue, and suggests that we decline his invitation to engage in plain error review. Even had he not waived the issue, the State continues,

Hamilton has not established any error on the part of the trial court, which relied on appropriate sentencing considerations, including charges of which Hamilton was acquitted, in fashioning the penalty it imposed.

During the sentencing proceeding, the prosecutor informed the trial court that the sentencing guidelines suggested a prison term between six months and three years for second-degree assault and between probation and eighteen months for openly carrying a dangerous weapon with intent to injure. Nonetheless, “based on the evidence that was presented in this case,” the prosecutor requested “a maximum sentence for both counts, consecutive[,]” that is, ten years on the assault charge and three years on the weapon charge.

The prosecutor explained that, at the time of the incident in this matter, Hamilton was already on two active probations for second-degree assault and possession of a firearm after a disqualifying crime of violence, thus indicating his proclivity toward violence and the use of weapons. Due to his apparent lack of respect for the law and the courts that gave previously him the benefit of probation, instead of jail time, the State did not believe Hamilton was entitled to any reduction in sentence in this matter. The prosecutor continued:

The State respects the jury’s verdict in this case and accepts it as true. However, given the evidence that was presented in this case, the State wholeheartedly believes that Mr. Hamilton was responsible for the death of Turrell Davis and the attempted murder, or at least the shooting, of Tavon Thompson, despite the jury’s verdict, and for those reasons as well, the State is asking this Court to impose a total of 13 years.

Defense counsel, pointing out that the sentencing guidelines took into account prior convictions and violations of probation, requested a sentence within the guideline's suggested range.

The trial court imposed sentence, as follows:

The Court sat, heard all the testimony in this case, and while the Defendant was found not guilty of certain offenses, that finding is not the same as finding that those offenses did not occur and that Mr. Hamilton did not commit them. It is merely a finding that legally he is not guilty, not that he is necessarily innocent, and I take note of that.

I also take note of his prior history and the fact, as stated by [the prosecutor], that had he been appropriately sentenced previously, he would be currently incarcerated for his prior crimes, or one of his prior crimes.

Mr. Hamilton does not appear, as a result of his prior history, to be amenable to any form of rehabilitative action by the State through probation, and that weighs heavily on the mind of the Court in fashioning an appropriate sentence.

The Court does—having heard the testimony, it is astounding that the injury inflicted with the belt was not worse. It could have been much more significant, but that doesn't change the fact that the Defendant was found guilty of that offense and that it was a violent act. And the Court will, as to Count 7 of the case ending in 002, impose a sentence of ten years for the second degree assault.

As to openly carrying a dangerous weapon, the belt, which is Count 8, the Court will also impose, as requested by the State, and because the facts of the case, as heard by the Court, do warrant it, impose a sentence of three years, consecutive to the prior sentence.

However, the Court will suspend that three years and place the Defendant on five years of supervised probation upon release.

Defense counsel made no objection to the sentence as imposed. Nevertheless, he avers now that the trial court's comments indicate that it considered impermissibly the crimes of which he was acquitted in its upward deviation from the sentencing guidelines.

Ordinarily, an argument asserting an impermissible consideration in a sentencing hearing is preserved for this Court’s review only when the issue has been raised in or decided by the trial court. *Bailey v. State*, 464 Md. 685, 697-98 (2019); *see also Ellis v. State*, 185 Md. App. 522, 550 (2009) (“[A] timely objection is required to prevent waiver of a defendant’s claim that the sentencing judge relied upon impermissible sentencing considerations.”).

Pursuant to Md. Rule 8-131(a), however, this Court may exercise its discretion to reach an unpreserved issue “if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” This discretion is characterized most often as the plain error doctrine. It is used only in rare occurrences because

considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court’s ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007). Thus, plain error review is reserved for errors that are ““compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.”” *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)).

In this case, we will exercise our discretion to review Hamilton’s unpreserved issue because we are persuaded that the trial court committed plain error in appearing to disregard, in imposing the sentence, either the jury’s verdict of acquittal of the charges relating to the shooting of Davis and Thompson or Hamilton’s presumption of innocence

of those crimes, thereby affecting the fairness of his sentencing. The invocation of this discretion will not work unfair prejudice upon the State because our remedy for the error is limited to a remand to the trial court for resentencing and does not affect the jury’s verdicts. *See Abdul-Maleek v. State*, 426 Md. 59, 70 (2012) (stating that consideration of the waived sentencing issue causes “only *de minimis* prejudice to the State, as our review would not broach the underlying judgment of conviction but rather would be confined to resentencing, at which the same sentence could be imposed, based on proper considerations”); *Baker v. State*, 3 Md. App. 251, 258-59 (1968) (noting that appropriate relief for sentencing error is limited remand for resentencing). In light of our concerns that the trial court appears to have negated the presumption of innocence and/or ignored the jury’s verdict in fashioning its sentence, the exercise of our discretion will promote the orderly administration of justice. *See Abdul-Maleek*, 426 Md. at 74 (holding that a sentencing court’s improper reference could “‘lead a reasonable person to infer that [the court] *might* have been motivated’ by an impermissible consideration” (quoting *Jackson v. State*, 364 Md. 192, 207 (2001))).

In Maryland, trial courts are “vested with very broad discretion in sentencing criminal defendants.” *Jackson*, 364 Md. at 199 (quotation marks and citations omitted). A court “‘should fashion a sentence based upon the facts and circumstances of the crime committed and the background of the defendant, including his or her reputation, prior offenses, health, habits, mental and moral propensities, and social background.’” *Id.* (quoting *Poe v. State*, 341 Md. 523, 532 (1996)). Yet, a court’s discretion is not unfettered.

It may not be motivated by prejudice, ill-will, or any other impermissible sentencing considerations. *Sharp v. State*, 446 Md. 669, 685 (2016).

Under certain circumstances, a sentencing court may consider, in crafting its punishment, crimes of which the defendant has been acquitted. *See, e.g., Smith v. State*, 308 Md. 162, 169 (1986) (stating that a sentencing court may “consider the criminal conduct of a defendant even if there has been no conviction”); *Harrod v. State*, 65 Md. App. 128, 140 (1985) (“A [sentencing] court may properly consider reliable evidence concerning the details and circumstances surrounding a criminal charge of which a person has been acquitted.” (cleaned up)); *Curry v. State*, 60 Md. App. 171, 183 (1984) (noting that the trial court has broad discretion to consider evidence of a defendant’s involvement in an alleged offense, even though the jury considered it insufficient to convict).

In *Smith*, *Harrod*, *Curry*, and *Henry v. State*, 273 Md. 131 (1974), all cited by the State in support of its assertion that the trial court considered permissibly the crimes of which Hamilton was acquitted in deviating upward from the sentencing guidelines, the crimes of which the defendants were acquitted all related directly to the crimes of which they were convicted. In other words, there was no dispute as to the defendants’ identity as participants in the crimes, despite the juries’ acquittals on some of the charged counts.

For example, in *Henry*, the jury convicted the defendant of larceny of a vehicle and receipt of stolen goods, but acquitted him of murder, assault, and armed robbery charges when the competent evidence showed Henry drove a stolen car to pick up two associates, one of whom was armed, to go to a grocery store. The armed associate held up the store and shot the proprietor and his wife while Henry waited in the car. 273 Md. at 140-42, 144.

Although the jury did not convict Henry of the charges related to the murder, the sentencing court imposed the maximum consecutive sentences based on Henry’s undisputed involvement in those crimes. *Id.* at 142. The Supreme Court of Maryland upheld the sentence, explaining that the sentencing court, in fashioning an appropriate sentence, could “consider reliable evidence concerning the details and circumstances surrounding a criminal charge of which a person has been acquitted” because the court “was not required to remain oblivious to evidence of Henry’s involvement in the homicide and robbery[.]” *Id.* at 148, 150 (cleaned up).

Similarly, in *Robson v. State*, 257 Md. App. 421 (2023), also cited by the State in support of its position, the defendant was acquitted of first-degree assault, but convicted of reckless endangerment, after he pointed a shotgun at a deputy who knocked on his door to serve a peace order. *Id.* at 430-33. At the sentencing proceeding, the State indicated it would be satisfied with a prison term of five years, suspending all but thirty days, and imposing a period of probation thereafter, but the trial court, “not going to tolerate anyone” pointing firearms at sheriffs, sentenced Robson to five years in prison, suspending all but two years. *Id.* at 433-34 (cleaned up). This Court let the sentence stand, reasoning that the trial court’s concern was based on “reliable evidence” that Robson had pointed the shotgun at the deputy’s head, which “bore directly . . . on the behavior of the appellant during a critical moment of the crime of which he was convicted[.]” notwithstanding the jury’s questionable determination that he was not guilty of first-degree assault. *Id.* at 449.

In this matter, however, there were two separate and distinct activities giving rise to the crimes charged—the assault of Talbert with the belt and the shooting of Davis and

Thompson. Hamilton's identity as Talbert's assailant was undisputed, as he admitted to hitting her with the belt during an argument. Additionally, he was caught on video doing so. The evidence that he was the perpetrator of the ensuing shooting was not as definitive, though, and apparently was deficient enough to raise reasonable doubt in the minds of the jury that Hamilton was the shooter.

Although Talbert and Thompson told initially the police that the same person who assaulted Talbert was the shooter, both recanted that statement during their trial testimony. Thompson denied that Hamilton shot him. There was no other eyewitness testimony or video evidence. And, Hamilton himself, even when faced with Det. Tonsch's deceptive statement that she had video of him with a gun and shooting Davis and Thompson, denied steadfastly firing a weapon at them. Unlike in the circumstances of the cases relied on by the State, Hamilton's involvement in the crimes relating to the shooting was not certain. Therefore, the trial court could not have been so sure of his involvement in the shooting as to use the circumstances of his acquittal of the crimes related to the shooting in increasing his sentence for the crimes related to the assault.

Nonetheless, the trial court here stated, at the outset of the recitation of its sentencing considerations, that:

while the Defendant was found not guilty of certain offenses, that finding is not the same as finding that those offenses did not occur and that Mr. Hamilton did not commit them. It is merely a finding that legally he is not guilty, not that he is necessarily innocent, and I take note of that.

In sentencing Hamilton to the statutory maximum for both crimes of which he was convicted, the court explained that it considered his prior crimes, including the two for

which he was on probation when he committed the assault upon Talbert, his apparent failure to be rehabilitated by the less severe sentences in those cases, and the violence of the assault upon Talbert, which could have resulted in a much more serious injury to her. It is therefore impossible to know to what degree the court may have considered the crimes for which Hamilton was acquitted in fashioning its sentence, but the trial court’s comments during Hamilton’s sentencing proceeding at least places in doubt the fairness of the sentence.

The inference is inescapable that the trial court considered as a factor in sentencing the crimes for which the jury acquitted Hamilton. The very possibility that the court may have disregarded either the jury’s not guilty verdict on the charges relating to the shooting of Davis and Thompson or the presumption of Hamilton’s innocence is enough to convince us to remand for a new sentencing proceeding. *See McClinton v. United States*, 600 U.S. ___, 143 S. Ct. 2400, 2402-03 (2023) (Sotomayor, J., statement respecting denial of *certiorari*) (“[A]cquitted-conduct sentencing also raises questions about the public’s perception that justice is being done, a concern that is vital to the legitimacy of the criminal justice system.”); *Offutt v. United States*, 348 U.S. 11, 14 (1954) (“Justice must satisfy the appearance of justice.”); *Jackson*, 364 Md. at 207 (“A defendant has a right to a trial in which the judge is not only impartial and disinterested, but who also has the appearance of being impartial and disinterested. Our system of law has always endeavored to prevent even the *probability* of unfairness.” (cleaned up)); *Johnson v. State*, 274 Md. 536, 543 (1975) (stating that when sentencing court comments indicated that it may well have employed an impermissible consideration, “[a]ny doubt in this regard must be resolved in

favor of the defendant[.]” and this is true even if the court’s remarks, as a whole, “do[] not necessarily demonstrate that a more severe sentence was imposed”).

We hold that the trial court’s comments during sentencing exceeded the outer limit of that court’s broad discretion in sentencing and therefore amounted to impermissible sentencing criteria. The court gave the impression that it based Hamilton’s sentence, which deviated significantly upwards from the sentencing guidelines, at least in part, on the improper consideration that Hamilton may have been guilty of the shooting of Davis and Thompson, despite the jury’s verdict that he was not. In other words, the court may have considered impermissibly separate crimes of which Hamilton was acquitted in formulating its sentence. Under the facts of this particular case, this would be an improper factor upon which to base Hamilton’s sentence and gives, at least, the appearance of a lack of impartiality. Accordingly, we will vacate Hamilton’s sentence and remand to the trial court for a new sentencing hearing.⁶

⁶ We are mindful that a new sentencing proceeding may not result necessarily in a lesser sentence, so long as the trial court uses permissible considerations in imposing it. *See* Md. Code, Courts & Judicial Proceedings Article § 12-702(b) (“If an appellate court remands a criminal case to a lower court in order that the lower court may pronounce the proper judgment or sentence . . . the lower court may impose any sentence authorized by law to be imposed as punishment for the offense.”); *see also Jones v. State*, 414 Md. 686, 694 (2010) (“In resentencing[,] the sentencing court must approach its task of sentencing as if no sentence had ever been imposed. The trial court is charged, therefore, with exercising its sentencing discretion as if the sentence was occurring for the first time.” (cleaned up)).

II. Sufficiency of the Evidence

Hamilton further argues that the evidence presented at trial was not sufficient to convict him of openly carrying a dangerous weapon with the intent to injure because the State failed to prove that the belt with which he assaulted Talbert could be considered reasonably a deadly weapon or that he had the intent to use it to cause death or serious injury. He did not make, however, this particular argument at trial. Therefore, this argument has not been preserved for our review.

At the close of the State’s case-in-chief, Hamilton moved for judgment of acquittal.

Pertaining to the assault of Talbert, defense counsel argued:

As to the assault second, Ms. Talbert didn’t identify Mr. Hamilton as being the perpetrator of that offense, so I’d make a motion for judgment of acquittal in that regard.

In addition, there was testimony that there’s a statement from Mr. Hamilton that, you know, his actions were in response to Ms. Talbert spitting on him prior to the use of the belt.

Dangerous weapon, intent to injure, I would submit as to that count to the extent that it incorporates a belt.

The court denied the motion. Hamilton did not produce any evidence, and at the close of the entire case, he renewed his motion for judgment of acquittal. As to the charge of openly carrying a dangerous weapon with intent to injure, defense counsel merely “adopt[ed] the arguments previously stated on the record.”

In *Starr v. State*, 405 Md. 293, 302 (2008), the Supreme Court explained:

It is well settled that appellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal. A criminal defendant who moves for judgment of acquittal is required by Md. Rule 4-324(a) to

“*state with particularity* all reasons why the motion should be granted,” and is not entitled to appellate review of reasons stated for the first time on appeal.

(Cleaned up; emphasis added.)

In support of a motion for judgment of acquittal, a defendant is required to ““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.”” *Poole v. State*, 207 Md. App. 614, 632 (2012) (cleaned up) (quoting *Arthur v. State*, 420 Md. 512, 522 (2011)). “[A] motion which merely asserts that evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with Rule 4-324 and thus does not preserve the issue of sufficiency for appellate review.” *Mulley v. State*, 228 Md. App. 364, 387-88 (2016) (quoting *Johnson v. State*, 90 Md. App. 638, 649 (1992)). “The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by appellant in his motion for judgment of acquittal.” *Whiting v. State*, 160 Md. App. 285, 308 (2004) (citation omitted), *aff’d*, 389 Md. 334 (2005).

Here, in submitting merely that the evidence was insufficient to support the charge of openly carrying a dangerous weapon with intent to injure “to the extent that it incorporates a belt[,]” and in renewing his motion simply by “adopt[ing] the arguments previously stated on the record[,]” Hamilton failed to present any argument “with particularity” concerning why the belt could not be considered a dangerous weapon, or that the State failed to prove he had the intent to use it to cause death or serious injury. Md. Rule 4-324(a).

Hamilton’s submission on the count that “it incorporates a belt” and his later re-adoption of that same argument were insufficient to preserve the issue of sufficiency of the evidence for appellate review. *Mulley*, 228 Md. App. at 387-88. Accordingly, we will not consider the issue of evidentiary sufficiency.

Even were we to consider the issue as presented on appeal, Hamilton would not prevail.

In discussing whether pepper spray may be a dangerous weapon when it is used as an offensive weapon to injure and overcome the intended victim, this Court, in *Handy v. State*, 126 Md. App. 548, 553 (1999), *aff’d*, 357 Md. 685 (2000), explained that

[i]t is the use to which the object is put that determines whether a particular object is a dangerous or deadly weapon. A jump rope, for example, has a perfectly benign use and purpose, but it may be a deadly weapon if used to hang someone. Likewise, an umbrella may be a suitable weapon for poking out an eye. The trial court properly left for the jury to decide as a factual issue whether pepper spray was a dangerous or deadly weapon.

Similarly, the belt as employed by Hamilton in his assault upon Talbert could have met the definition of a dangerous or deadly weapon. Hamilton wrapped the leather belt around his hand and swung the metal buckle end at Talbert’s face, hitting her near her eye and leaving a noticeable mark. Had the swing landed a few inches in another direction, it could have resulted in the loss Talbert’s eye or impairment of her vision.⁷

⁷ Other jurisdictions have determined a belt to be a deadly or dangerous weapon when swung at a person. *See, e.g., Commonwealth v. Dobson*, 85 N.E.3d 689, 692 (Mass. App. Ct. 2017) (“Hitting a five year old in the face with a leather belt with sufficient force to leave a mark could well have caused serious injury to his eyes or some other part of his face. Cases have long acknowledged that a belt can be used as a dangerous weapon, (continued)

The jury determined, as a factual issue, that the belt was used as a dangerous and deadly weapon. We must give deference to the reasonable inferences the jury could have drawn from the evidence. *Fuentes v. State*, 454 Md. 296, 308 (2017). In short, “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.” *Scriber v. State*, 236 Md. App. 332, 344 (2018) (cleaned up). If considered, we would have held that the evidence could have persuaded a rational juror that the belt as used by Hamilton in his assault upon Talbert met the definition of a dangerous or deadly weapon.

SENTENCE VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR RESENTENCING IN ACCORDANCE WITH THIS OPINION; JUDGMENTS OF CONVICTION OF THE CIRCUIT COURT AFFIRMED; COSTS ASSESSED ONE-HALF TO MAYOR AND CITY COUNCIL OF BALTIMORE AND ONE-HALF TO APPELLANT.

particularly when employed against a child.”); *State v. Boiteux*, 74 So. 3d 731, 736 (La.Ct. App. 2011) (“This Court has previously recognized that a belt can be used as a dangerous weapon for the purposes of aggravated battery.”); *Rivera v. United States*, 941 A.2d 434, 441 (D.C. 2008) (“Reasonable jurors could find that Mr. Rivera’s repeated manner of striking Officer Lawrence with a belt that had a metal buckle a little more than two inches in length created a substantial risk that the officer’s arm would be impaired seriously, or that there would be a protracted loss of the function of his arm. In short, on this record we cannot say that the trial court erred by denying Mr. Rivera’s motion for judgment of acquittal on the basis of appellant’s assertion that the belt was not a dangerous weapon used in a manner that could cause great bodily injury.”); *People v. Prue*, 219 A.D.2d 873, 873 (N.Y. App. Div.1995) (holding that testimony that defendant struck his twelve-year-old son in a whipping motion with a leather belt was “legally sufficient, if unexplained and uncontradicted, to establish that, in the manner in which it was used, the belt constituted a dangerous instrument”).