Circuit Court for Baltimore City
Case No. 118172030

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2382

September Term, 2019

MICHAEL MAURICE ALLEN, SR.

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 3, 2022

A jury in the Circuit Court for Baltimore City found Michael Maurice Allen, Sr., appellant, guilty of first-degree murder and carrying a dangerous weapon openly with intent to injure.[1] The court sentenced appellant to a term of life imprisonment for the conviction of first-degree murder and three years, concurrent, for the weapon conviction.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in allowing the prosecutor, during closing argument, to comment that appellant did not testify and that he invoked his right to remain silent during a custodial interrogation with the police?

2. Did the circuit court err in admitting portions of appellant's recorded custodial interrogation in which the interrogating officer expressed doubt as to the validity of appellant's statements and appellant ultimately invoked his right to remain silent?

3. Did the circuit court err in permitting a police officer to testify about the contents of body-camera footage that was not admitted into evidence?

4. Was the evidence adduced at trial sufficient to sustain appellant's conviction for carrying a dangerous weapon openly with intent to injure?

For reasons set forth below, we shall reverse the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of June 1, 2018, Elizabeth Holland, appellant's long-time partner, was stabbed to death in the home that they shared. Appellant called 911, alleging that he had come home from walking his dog to find the door to the home open and Ms. Holland

[1] According to the State's Sentencing Memorandum, this was appellant's second trial. In appellant's first trial, which began on March 12, 2019, the jury deliberated for two days and was unable to reach a verdict. The court then declared a mistrial.

lying on the bed upstairs bleeding and unresponsive. He said that he saw "blood everywhere." He told the operator: "Me and the dog just came in, went upstairs. I called her, I text[ed] her and told her I'd be coming home soon." Ms. Holland was not breathing. Blood was "up near her chest somewhere," but he did not "want to touch it." The operator asked appellant to lay her on her back on the floor, but appellant refused, saying that he was "not going to touch her." The operator heard appellant telling his dog, Milo, to "sit down."[2]

Officer Michael Bongiorno, a member of the Baltimore City Police Department, arrived at the scene at 11:26 p.m. Appellant was sitting in the living room, and Ms. Holland was lying on the bed upstairs, unresponsive. There was a "dollar bill on the floor by the staircase," but this was the only "personal affect[] thrown about the living room," and there was a television in the house. Officer Bongiorno's partner, Officer Slauder, asked appellant, pursuant to police department policy, to keep the dog in a room upstairs.

"[V]arious bottles and drugs" were next to Ms. Holland's body on the bed. Officer Bongiorno did not recall sending these bottles to collect fingerprints.

After the medics pronounced Ms. Holland dead, Officer Bongiorno notified the Homicide Department, and Detective Frank Miller of the Baltimore City Homicide Unit arrived at the scene. Detective Miller directed that appellant be transported out of the house because the house was a crime scene, and appellant needed to be interviewed because he

[2] Milo is occasionally spelled "Mylow" throughout the transcripts. We will use "Milo" in this opinion.

was the only person at the house at the time. Detective Miller noticed that the living room was "fairly orderly," "not ransacked or anything like that." There were "plenty of items of value, electronics" that were still in the house when he arrived, the cushions on the couch were intact, and he did not notice any damage to the deadbolt or the other latch on the front door. He asked the Crime Lab to process for fingerprints the handle and the front door, but there were no "suitable prints" found inside the home. He explained that this did not mean that the fingerprints did not match anyone, but that there was not enough of a fingerprint to match it to anyone.

When he entered the upstairs bedroom, he saw that Ms. Holland was dead. The medical examiner had not yet arrived at the scene. He estimated that he was in Ms. Holland's bedroom for approximately three hours before the medical examiners arrived.

The State played the video of appellant's interview with the detectives at the Homicide Unit. Appellant first spoke briefly with Detective Diener. Detective Diener noticed that there was "some blood" on appellant's arm. Appellant initially responded that it was "from the dog" because the dog had "been in the bushes or something." Then, he said that he "probably touched it off [his] girl." He told Detective Diener that he did touch Ms. Holland.

Appellant told Detective Miller that he had been walking the dog for approximately two hours.[3] He sent a text message to Ms. Holland at 10:43 p.m., to let her know that he

[3] Detective Miller later testified that it was raining that night.

was coming home.[4] When he came home, he noticed that the front door and the backyard gate were open. He found Ms. Holland on the bed, and he thought that she was dead. He called out her name and touched her body, and he then called 911. He did not leave the door unlocked when he left. He and Ms. Holland had been dating on and off for approximately 50 years. Neither of them used drugs. He stated that he did not know anyone who had problems with Ms. Holland. As discussed in more detail, *infra*, Detective Miller expressed that appellant's 911 call was the "calmest call of any person [he had] ever heard call 911." Detective Miller also told appellant that it was not common for a 68-year-old person to be found stabbed in their own home. Appellant asked if he was being arrested, and Detective Miller said that he was not "under arrest at this point."

Detective Miller advised that officers found a pair of shorts and a belt that had been lying on the ground downstairs in the home. Appellant stated that they were his clothes. Appellant then asked if the clothes had blood on them and remarked that he believed that Detective Miller was "fishing."

Appellant asked whether Detective Miller had information from Ms. Holland's family members, and Detective Miller told appellant that he did and "[a] lot of her family showed up tonight." Appellant stated that her family members did not like him. He said he "never put [his] hands on her," but her family members would "stir up all types of shit, tell anybody anything about [him]."

[4] After extracting information from Ms. Holland's phone, the police determined that this text message had not been read.

Detective Miller expressed his belief, based on his 20 years' experience in the Homicide Unit, that Ms. Holland had been dead for three or four hours by the time the police arrived at the scene. Appellant maintained that he was out walking his dog, and nothing happened before he left to walk his dog. He asked Detective Miller whether a neighbor said that he and Ms. Holland were fighting.

While executing a search warrant for the house, Detective Miller walked into the upstairs room where the dog was being kept, and he saw that the dog had drops of blood on his back. He did not see any other blood in the room. There was no blood on the dog's paws.

There was a blue glove in the trash can in the upstairs bedroom. This glove, which had blood on it, was never submitted for DNA testing. He thought it "belonged to medics."

Detective Miller returned to the station to speak with appellant and stated that he had "follow-up questions." He was trying to figure out why there was blood splatter on the dog's back, and he questioned how that could be if appellant had taken the dog with him. As discussed in more detail, *infra*, the recording ended with appellant stating: "Look, I ain't going to answer no more questions. I told you what happened, and I'm going to shut my mouth."

Detective Miller also extracted information from Ms. Holland's and appellant's cell phones. Ms. Holland had sent a text to an individual listed as "Chunky" in her phone at approximately 8:16 p.m., June 1, 2018, saying: "I can't get nothing on the TV, is not

working. Call me . . . ." When Detective Miller was in the upstairs bedroom with Ms. Holland's body, the television was on.

Dr. John Stash, an assistant medical examiner, testified that he was involved in conducting the autopsy on Ms. Holland. Ms. Holland sustained "two stab wounds" on the side of her head, a "stab wound involving the ear" that "had a depth of approximately four inches," a penetration wound in the left cheek area, and multiple stab wounds to the chest and abdominal area that ranged in depth from a few inches to eight inches. Some of the wounds were consistent with "a knife that is double edged," and other wounds were consistent with a single-edged knife. He could not determine whether there were multiple knives used, but it was possible.

The majority of the injuries were concentrated to Ms. Holland's chest and abdomen. The cause of death was multiple stab wounds, and the manner of death was homicide. Dr. Stash did not find any defensive wounds, which usually occur when a person is being assaulted with a sharp weapon, and they "tend to either try to grab at it or to block it with their arms or even possibly their legs." Ms. Holland had a blood alcohol level between .18 to .21; .08 is the legal limit with respect to drunk driving. The toxicology report stated that there was no indication of controlled dangerous substances in Ms. Holland's system.

Pamela Williams was appellant's next-door neighbor, and they shared a wall between their rowhomes. She recalled that, on June 1, 2018, between 7:00 and 7:30 p.m., she was leaving her home, and she saw Ms. Holland and appellant park their vehicle in front of their house and enter their home. Ms. Williams returned to her home between

10:30 and 10:45 p.m. The 11:00 p.m. news had not yet aired. The door to appellant's house was not open when she returned, and appellant's vehicle, a Nissan Maxima, was not parked in front of their home. She heard a dog barking inside the house.

Approximately 15 to 20 minutes after Ms. Williams returned, she heard the Maxima, which was very loud, pull up in front of appellant's house. She remembered looking out of the window to watch the car park to ensure that the car did not hit her vehicle, as she has had people hit her parked car. She did not pay attention to who got out of the Maxima; she was only looking outside to make sure her car was not hit.

Approximately ten minutes later, she saw bright red lights next to her car; an ambulance had pulled up in front of appellant's house. She spoke with the police that evening. She told them that she was familiar with their dog, which "barks a whole lot" and was aggressive.

Rosalind McKennie, another neighbor, testified that she was in her house on the night of June 1, 2018. At approximately 9:00 p.m., she heard someone knock on Ms. Holland's door. She did not hear the dog barking, which she thought was unusual because the dog usually barked at people when they came to the door. When she looked outside, she did not see appellant's car. She did not know whether anyone answered the door.

At approximately 9:30 p.m., Ms. McKennie went downstairs to her kitchen to get a snack, and she heard "two young men . . . next door in Ms. Holland's house." She did not hear anything for the rest of the evening, including the dog barking, until the police arrived

with flashing lights. She did not hear any sounds of anyone breaking in or any yelling or screaming.

Shelby Litz, a former crime scene technician for the Baltimore City Police Department, testified that she arrived at the scene at approximately 12:27 a.m. There were no signs of forced entry on the front or back doors of the home. She also went through the home's first-floor kitchen to look for "possible items that could have caused the injuries." She found two knives in the kitchen and drug paraphernalia and "four covered caps" in the trash can located next to the rear door. There were three one-dollar bills on the stairs and suspected blood splatter on the wall behind the bed.

There was blood on the back of appellant's dog, which she swabbed for DNA. The dog was secured in the room upstairs prior to when she was advised that there was blood on the dog.

Rebecca Jackson, a crime laboratory technician with the Baltimore Police Department, testified that she processed appellant's 1999 Nissan Maxima for physical evidence. She photographed it and searched the entire vehicle. Inside the center console, she found money and CD cases. There was suspected blood on the money.

She performed "luminol testing," which involves spraying luminol on the surface of the vehicle and looking for a reaction with the chemical, which manifests through a "chemiluminescence," a "bluish light in the presence of suspected blood." The front driver door and the center console reacted to the luminol, but swabs taken subsequently were determined to be negative for blood.

Evonna Hebb, a forensic scientist with the Baltimore City Police Department, tested the swabs from the dog, the blade of a "black-handled long blade knife," swabs of blood from appellant's arm, and "$24 U.S. currency [from appellant's vehicle] with suspected blood." The swabs from the dog, the currency, and appellant's forearm were all positive for human blood. The swabs of suspected blood from the blade of the knife were negative for blood, but there were skin cells sent for DNA testing. Ms. Hebb then sent the swabs to be tested for DNA.

Christy Silbaugh, a forensic scientist for the Baltimore City Police Department, testified that she processed the samples taken from the items collected from the scene. The blood on the dog matched Ms. Holland's DNA. The swab from appellant's forearm yielded a mixture of a major female contributor, Ms. Holland, and a minor male contributor, appellant. The swabs from the currency "yielded a DNA profile of a mixture of a major female contributor," Ms. Holland, "and at least one minor contributor."

After appellant was convicted and sentenced, this appeal followed.

DISCUSSION

I.

Closing Argument

Appellant contends that the trial court erred in allowing the prosecutor to engage in impermissible closing argument. He asserts that, during closing argument, the prosecutor impermissibly commented on (1) his choice not to testify, and (2) his invocation of his

right to remain silent during the police interview. The State contends that the court properly acted within its discretion in regulating the prosecutor's closing argument.

A.

Proceedings Below

The State began its closing argument by noting the lack of eyewitnesses to the crime, stating that "[t]he only people that know what happened are the person that did it and the person that died." Asking how the victim "end[ed] up like this," the prosecutor stated:

> Well, there are several sources of information. There's Milo the dog, there's [appellant], there's [Ms. Holland], and there's the crime scene. Milo can't talk to you but his body can. [Appellant] didn't testify but he talked to police. [Ms. Holland] can't talk to you, but her body can. And the scene can tell you a lot about what happened.

Defense counsel did not immediately object to this argument.

The prosecutor then noted that Milo had spots of blood on his back, despite being put in another room at the request of police, which the prosecutor argued indicated that Milo was in the room at the time of the stabbing. The prosecutor then discussed appellant's conversation with the police. She noted that appellant initially said that he did not have any injuries, and when Detective Miller pointed out that there was blood on his arms, he said that the blood was from Milo. After further questioning, appellant said that the blood was Ms. Holland's because he probably touched her.

The prosecutor played the recorded police interview to show how appellant reacted when he was confronted about other physical evidence:

> [DETECTIVE MILLER]: So I have to go back to the house. So I have the following questions. Now, so you were gone, all this happened when you were gone? What would you say?
>
> [APPELLANT]: We've been over this, haven't we?
>
> [DETECTIVE MILLER]: Okay, well I was trying to figure out why there's blood splatter all over the dog.
>
> [APPELLANT]: Over what?
>
> [DETECTIVE MILLER]: Over the dog. The dog's back has blood drops all over it.
>
> [APPELLANT]: How would that happen?
>
> [DETECTIVE MILLER]: Because you had the dog with you.
>
> [APPELLANT]: Look, I ain't goin' to answer no more questions. I told you what happened and I'm going to shut my mouth.
>
> [DETECTIVE MILLER]: So I have to go back to the house.

After playing this portion of the interview, the prosecutor continued her closing argument, as follows:

> [THE STATE]: So, ladies and gentlemen, when [appellant] is confronted with more evidence that he didn't realize he left behind, he shuts down, he's done talking. All of this, ladies and gentlemen, *I would suggest to you points to signs of guilt*.

(Emphasis added).

At this point, defense counsel objected, arguing that this was the second time that the State violated appellant's constitutional rights. Counsel stated that the first time was when the prosecutor commented on appellant's refusal to testify, which defense counsel stated that he had planned to ask for a curative instruction. The second time was when the

prosecutor talked "about the invocation of his right again as if that is somehow a criminal act." The prosecutor responded that she simply repeated appellant's statement to the police when confronted with the evidence that he was done talking. The court overruled the objection, concluding that "in the context of which it came in it was appropriate."

B.

Standard of Review

"We review the trial court's ruling on objections to closing argument for an abuse of discretion." *Savage v. State*, 455 Md. 138, 157 (2017). "Where a party complains that the trial judge's action abridged a constitutional right, however, our review is *de novo*." *Id.* Thus, when an alleged constitutional violation occurs as a result of a trial court's discretionary decision, we "conduct our own appraisal of . . . [the] constitutional arguments and review the trial judge's [discretionary] determinations for abuse of discretion." *Reynolds v. State*, 461 Md. 159, 175–76 (2018), *cert denied*, 139 S. Ct. 844 (2019).

C.

Right to Remain Silent

Appellant contends that the prosecutor impermissibly commented on his right to remain silent two times. First, she stated: "Milo can't talk to you but his body can. [Appellant] *didn't testify* but he talked to the police." (Emphasis added). Second, the prosecutor argued that, at the end of the police interview, when appellant was confronted with evidence, "he shuts down, he's done talking," which "points to signs of guilt." We

need not address the first comment because we agree that the second comment was improper and requires reversal of appellant's convictions.

Appellant argues that the State "exploited" his post-*Miranda* silence when the prosecutor stated during closing argument that appellant's silence pointed toward "signs of guilt." He asserts that the prosecutor's comment regarding appellant's refusal to continue the interview was "highly improper because it encouraged the jury to consider [appellant's] silence in the face of accusation as evidence of his guilt."

The State acknowledges that evidence of post-arrest silence is inadmissible for any purpose, but it notes that, in this case, "[u]nlike many of the cases construing a defendant's right to silence . . . [appellant] did not remain silent following *Miranda* warnings." The State argues that, because appellant spoke with the police and waived his *Miranda* rights, the "State was entitled to use his answers to questions as part of its case against him." It asserts that the prosecutor's comments in closing argument were not focused on appellant's silence, but on his response to the detective's question. It further notes that the defense never requested a curative instruction, but the trial court nevertheless instructed the jury that it should not hold appellant's silence against him. Finally, the State argues that, even if the prosecutor's comments were improper, reversal is not warranted.

"'The Fifth Amendment, as applied to the states by the Fourteenth Amendment, guarantees an accused the right to invoke his privilege against self-incrimination.'" *Savage*, 455 Md. at 172 (quoting *Coleman v. State*, 434 Md. 320, 333 (2013)). "[T]he procedural safeguards outlined in *Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966),

commonly referred to as the *Miranda* warnings, provide practical reinforcement for the right against compulsory self-incrimination." *Id.* (quoting *Coleman*, 434 Md. at 333). They require that a person subjected to custodial interrogation be advised, among other things, that he has a right to remain silent. *Id.* "'If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.'" *Younie v. State*, 272 Md. 233, 241 (1974) (quoting *Miranda*, 384 U.S. at 473–74). "'At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.'" *Id.* (quoting *Miranda*, 384 Md. at 473–74).

Furthermore, "[t]he protections bestowed upon citizens by the privilege against self-incrimination do not disappear once the accused initially waives his or her rights." *Crosby v. State*, 366 Md. 518, 529 (2001), *cert denied*, 535 U.S. 941 (2002). The privilege is not waived "'if the individual answers some questions or gives some information on his own prior to invoking his right to remain silent when interrogated.'" *Younie*, 272 Md. at 241 (quoting *Miranda*, 384 U.S. at 475–76).

Importantly, "[e]vidence of post-arrest silence, after *Miranda* warnings are given, is inadmissible for any purpose, including impeachment."[5] *Grier v. State*, 351 Md. 241,

[5] A narrow exception to this rule permits the admission of post-arrest silence "when it is introduced in fair response to an issue that is generated by the defense regarding the defendant's interaction with police." *McFadden v. State*, 197 Md. App. 238, 261–62 (2011) (citations and quotations omitted), *disapproved of on other grounds by State v. Stringfellow*, 425 Md. 461, 472 (2012). That exception is not applicable here.

258 (1998). "As a constitutional matter, allowing such evidence 'would be fundamentally unfair and a deprivation of due process.'" *Id.* (quoting *Doyle v. Ohio*, 426 U.S. 610, 618 (1976)); *see also Younie*, 272 Md. at 244 ("Silence in the context of a custodial inquisition is presumed to be an exercise of the privilege against self-incrimination from which no legal penalty can flow[.]"). In addition, "'silence is evidence of dubious value that it is usually inadmissible under Maryland Rule 5-402 [relevance] or 5-403 [prejudice].'" *Lupfer v. State*, 420 Md. 111, 125 (2011) (quoting *Kosh v. State*, 382 Md. 218, 227 (2004)). "When a defendant is silent following *Miranda* warnings, he may be acting merely upon his right to remain silent." *Grier*, 351 Md. at 258. "[S]ince 'silence may be motivated by many factors other than a sense of guilt or lack of an exculpatory store,' McCormick, *Evidence*, § 270 at 800 (1984 ed.), it carries little, if any, probative value." *Wills v. State*, 82 Md. App. 669, 678 (1990). And, because "'most laymen view an assertion of the Fifth Amendment privilege as a badge of guilt,'" evidence of post-arrest silence "'has a significant potential for unfair prejudice.'" *Grier*, 351 Md. at 263 (cleaned up).

Here, we conclude that the trial court erred in overruling appellant's objection to the prosecutor's comment. Appellant's statement that he "ain't goin' to answer no more questions" and instead was going to "shut [his] mouth" was a clear invocation of his right to remain silent. Accordingly, the prosecutor should not have been permitted to comment on that invocation during closing argument. *See McFadden v. State*, 197 Md. App. 238, 261–62 (2011) (holding that the trial court erred in allowing the prosecutor to comment

during closing argument on the defendant's invocation of his right to remain silent), *disapproved of on other grounds by State v. Stringfellow*, 425 Md. 461, 472 (2012).

The State argues that the comment at issue, in which the prosecutor argued that appellant's refusal to answer the officer's questions "point[ed] to signs of guilt," was not improper because the prosecutor, in making the comment, was not highlighting appellant's silence but rather his responses to the detective's questions. We disagree. Before playing the video clip from appellant's recorded interrogation, the prosecutor told the jurors to pay attention to appellant's reaction to the officer's questions. After playing the clip, which ended with appellant's invocation, the prosecutor quickly noted that appellant had "shut down" and was "done talking." The prosecutor then stated, in no uncertain terms, that appellant's refusal to continue talking "point[ed] to signs of guilt."

Thus, the prosecutor was not, as the State suggests, focusing on what appellant had said prior to his invocation. Rather, the prosecutor clearly was focusing on appellant's failure to respond, i.e., his invocation of his right to remain silent, and stated that appellant's invocation evidenced guilt on his part. The prosecutor's comment in this regard was improper, and the trial court erred in permitting it. That appellant chose to invoke his right to remain silent after initially waiving his *Miranda* rights by voluntarily answering questions is irrelevant. *See Crosby*, 366 Md. at 529 ("An accused may invoke his or her rights at any time during questioning, or simply refuse to answer any question asked, *and this silence cannot be used against him or her*." (emphasis added)).

Finally, we cannot conclude that the trial court's error was harmless beyond a reasonable doubt. *See generally McFadden*, 197 Md. App. at 256 (applying harmless error doctrine to closing argument). The prosecutor's comment infringed on appellant's constitutional rights, had little probative value, and was highly prejudicial. That the court had previously instructed the jury regarding appellant's right to remain silent did little, if anything, to cure the prejudice caused by the improper remark, as that general instruction was given well before the comment was made. *See Lee v. State*, 405 Md. 148, 178 (2008) (holding that the giving of a pattern jury instruction did not cure the resulting prejudice from comments made during closing argument, where the instruction "was neither contemporaneous nor specific"). Reversal is required.[6]

II.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to support his conviction for carrying a dangerous weapon openly with intent to injure. He argues that there was no evidence: (1) that he "carried" a weapon, or (2) that the weapon used to commit Ms. Holland's murder constituted a "dangerous weapon," as defined by the relevant statute.

[6] Because we are reversing the convictions, and the evidence addressed in the second and third questions may not be admitted at a retrial, we will not address them. We will, however, address the fourth question, i.e., whether the evidence was sufficient to support the conviction for carrying a dangerous weapon with the intent to injure. *See Benton v. State*, 224 Md. App. 612, 629 (2015) ("In cases where this Court reverses a conviction, and a criminal defendant raises the sufficiency of evidence on appeal, we must address that issue, because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place.").

The State contends that appellant did not preserve his second argument, regarding the type of weapon involved. In any event, it argues that the evidence was sufficient to support the conviction. It asserts that a reasonable fact-finder could have concluded that appellant brought a knife from another location into Ms. Holland's bedroom before killing her, which was sufficient to show that he "carried" a weapon. And the testimony of Dr. Stash, that there were stab wounds seven or eight inches deep, "was sufficient for a rational fact finder to conclude that the murder weapon was not the type of pocketknife excluded from the statute but a dangerous weapon."

"The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)), *cert denied*, 438 Md. 143 (2014). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitnesses accounts." *Neal v. State*, 191 Md. App. 297, 314, *cert. denied*, 415 Md. 42 (2010). Moreover, "'the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Darling v. State*, 232 Md. App. 430, 465 (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004)), *cert. denied*, 454 Md. 655 (2017). In making that determination, "'[w]e "must give deference

to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference."'" *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). Further, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314.

Maryland Code Ann., Crim. Law Art. ("CR") § 4-101(c)(2) (2021 Repl. Vol.) provides: "A person may not wear or carry a dangerous weapon . . . openly with the intent or purpose of injuring an individual in an unlawful manner." The statute defines that a "weapon" includes "a dirk knife, bowie knife, switchblade knife, [and] star knife," and it specifies that a "weapon" does not include "a pen knife without a switchblade." CR § 4-101(a)(5)(i)–(ii)(2).

Appellant's first contention is that the evidence was insufficient to show that he "carried" a weapon, asserting that there was no evidence regarding where he obtained the weapon before stabbing the victim in her room. The term "carry" means "'to move while supporting; convey; transport' or 'to wear, hold, or have around one.'" *In re Colby H.*, 362 Md. 702, 712 (2001) (quoting *The Random House Dictionary of the English Language* 227 (1983)). To prove that a dangerous weapon was "carried," the State is "required to prove more than mere use of the weapon[] by [the defendant] or recovery of [the weapon] . . . in the vicinity of the victim." *Thomas v. State*, 143 Md. App. 97, 123, *cert. denied*, 369 Md. 573 (2002); *see also Chilcoat v. State*, 155 Md. App. 394, 409–13 (holding that the evidence was insufficient to sustain the defendant's conviction for carrying a weapon

openly with the intent to injure, where the evidence established that the defendant "merely pick[ed] up a beer stein that was convenient to him and walk[ed] a few steps with it to reach the victim"), *cert. denied*, 381 Md. 675 (2004).

Here, Ms. Holland was stabbed to death in her upstairs bedroom, and no potential murder weapon was found in the vicinity of the body. Two knives, which were identified as "possible items that could have caused the injuries" to Ms. Holland, were later recovered from the home's kitchen, which was located on the first floor. A DNA profile consistent with Ms. Holland's DNA was found on one of those knives. This evidence permitted a reasonable fact-finder to conclude that appellant "carried" a knife from the kitchen, walked upstairs, and stabbed Ms. Holland.

Appellant next contends that the State failed to prove that the weapon used in the murder was a "dangerous weapon." The State contends that this issue is not preserved for our review. We agree with the State.

"Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion." *Whiting v. State*, 160 Md. App. 285, 308 (2004), *aff'd*, 389 Md. 334 (2005). "The language of the rule is mandatory, *State v. Lyles*, 308 Md. 129, 135 (1986), and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal." *Whiting*, 160 Md. App. at 308. "Grounds that are not raised in support of a motion for judgment of acquittal at trial may

not be raised on appeal." *Jones v. State*, 213 Md. App. 208, 215 (2013), *aff'd*, 440 Md. 450 (2014).

Here, after the State rested its case, defense counsel made a motion for judgment of acquittal. With respect to the charge of wearing and carrying a dangerous weapon, counsel argued that the State failed to show that he was "wearing [the knife] or carrying it with an intent for the purpose of causing an injury," asserting that the charge did not encompass "having a knife in one's possession, in one's own home." At the conclusion of the defense's case, counsel renewed his motion for judgment of acquittal. He incorporated by reference his previous arguments. The court denied the motion.

Appellant did not argue in his motion for judgment of acquittal that the evidence was insufficient because the State failed to prove that the weapon was a "dangerous weapon." That argument, therefore, is not preserved for our review, and we will not address it.[7] Appellant's sufficiency claim, therefore, fails, and he can be retried on all charges.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.

[7] Appellant argues that the issue was preserved because it was raised in his motion for a new trial. Appellant is mistaken. Md. Rule 4-324(a) requires that the issue be raised at the time of the motion for judgment of acquittal. *See Jones v. State*, 213 Md. App. 208, 215 (2013) ("Grounds that are not raised in support of a motion for judgment of acquittal *at trial* may not be raised on appeal." (emphasis added)), *aff'd*, 440 Md. 450 (2014).