

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2801

September Term, 2014

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JAHWIL TAMAD SHEARD

v.

STATE OF MARYLAND

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Kehoe,  
Leahy,  
Salmon, James P.  
(Retired, Specially Assigned),

JJ.

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Opinion by Salmon, J.

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Filed: May 17, 2016

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On December 12, 2014, a jury sitting in the Circuit Court for Prince George’s County, found Jahwil Tamad Sheard (“Sheard”) guilty of second degree murder and carrying a concealed dangerous weapon. He was sentenced to 30 years of incarceration for the second degree murder conviction and to a concurrent three-year term of incarceration for carrying a concealed dangerous weapon. Sheard presents two questions on appeal:

1. Did the admission of recorded 911 calls violate appellant’s right of confrontation and right to due process of law?
2. Is the evidence legally insufficient to sustain appellant’s conviction for carrying a concealed deadly weapon?

For the reasons discussed below, we shall answer the first question in the negative and affirm his second degree murder conviction, but answer the second question in the affirmative and reverse the conviction for carrying a concealed dangerous weapon.

## **BACKGROUND**

### **A. Evidence Introduced by the State**

On June 14, 2014, Terrell Burton, Henry Cook, Cornelious Savoy, and Jerome Lancaster met at the New Carrollton Metro station.<sup>1</sup> While at the station they saw Sheard. Cook knew that Sheard sold phencyclidine (“PCP”). A member of the group approached Sheard and inquired about purchasing PCP.<sup>2</sup> Sheard agreed to sell them that drug and began walking with the group to a more secluded area to make the sale. Once under an

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<sup>1</sup> Cook, Savoy, and Lancaster testified at trial that another friend, a man named George Samuel, was with them at the metro station, but left the group before the victim was stabbed.

<sup>2</sup> Cook, Savoy, and Lancaster each testified at trial. Their testimony differs as to who approached appellant to purchase PCP.

overpass, Sheard removed a small vial of liquid, dipped two cigarettes in it and sold the cigarettes laced with PCP for twenty dollars. The purchasers then smoked the laced cigarettes while they walked in the direction of the Glenarden Woods apartment complex.

Cook left the group before they reached the apartment complex but testified that when he left, it appeared that everyone was getting along. Once at the parking lot of the apartment complex, Sheard left briefly but returned to the group while they were still in the parking lot. Sheard asked Burton his name. When Burton answered, Sheard started stabbing him “immediately.” Burton attempted to fight off Sheard’s blows by grabbing his hands, but was unsuccessful. According to Lancaster, Sheard stabbed Burton approximately fifteen times while they were in the parking lot. Lancaster and Savoy tried to help Burton by pulling Sheard’s sweatshirt over his head. Burton got away from Sheard and ran towards a nearby apartment building. Savoy then ran to get help while Burton and Lancaster ran to a basketball court located on the grounds of the apartment complex. Burton, who was bleeding profusely, collapsed on the basketball court. At that point, Lancaster saw Sheard “marching towards” Burton.

Sheard got on top of Burton, and began stabbing him again. Lancaster tried to help Burton by hitting Sheard a couple of times. In response, Sheard “[g]rowled” at Lancaster. According to Lancaster, Sheard stabbed Burton approximately fifteen times while Burton lay on the basketball court. When someone yelled that the police were coming, Sheard got up and started running.

Rohan Wallace, a resident of the apartment complex, was at home when he heard a “piercing noise.” He went to his window to investigate, and saw a man lying on the

basketball court with a second man “over on top of him.” He heard the first man say, “get him up off, Jerome, please, get him up off me.” Wallace testified that the man on top was “just stabbing, stabbing” the man on the bottom, while a third man was trying to get the assailant off the first man. Wallace said that the third man was unable to stop the assault, because each time he approached the assailant, the assailant would swing a knife at him. The assault finally ended and the assailant left. Wallace later identified Sheard in a photo array as the assailant.

A number of calls reporting a stabbing and asking for police assistance were made to a 911 operator. Officer Jerard Atkinson of the Glenarden Police Department responded to the scene. He testified that when he arrived he saw Sheard wearing a white tank top with blood on it and holding “a knife in his hand[.]” Officer Atkinson proceeded to chase Sheard on foot. During the chase, Sheard threw his knife under the officer’s vehicle. Officer Atkinson caught up to Sheard and the two struggled. During that struggle, Sheard said “[t]hey tried to get me to kill him[.]” Also during that struggle, two men approached Officer Atkinson and said: “he just killed my friend, he stabbed my friend.” Thereafter, additional officers arrived and were eventually able to take Sheard into custody. The knife used in the attack was recovered at the scene and a bottle of PCP was found in Sheard’s pocket.

Burton was transported to the Prince George’s County Hospital Center where he died due to stab wounds.

### **B. Sheard's Testimony**

Sheard acknowledged stabbing Burton with his knife, but claimed that he did so to defend himself after a group of three young men – all in their 20s - - tried to rob him of his drugs.

Prior to the attack, Sheard was at the New Carrollton Metro station when he saw Cornelious Savoy who asked him for some PCP. Sheard agreed to sell the men PCP and Burton, whom he had never seen before, gave him \$20.00. Next, the group went into a tunnel near the Metro station where Sheard “served them[.]” Savoy and Burton then smoked and “got high” after which Sheard separated from the group and went to a bus stop, intending to go to a friend’s house. But before he had gone far, Burton asked him: “you still got some . . . more of that [?]” Before Sheard could reply, someone struck Sheard from behind. Sheard tried to run but someone grabbed him by the back of his hoodie and the group “just converged” on him. In response to the attempt to rob him, Sheard grabbed his knife and started swinging. According to Sheard: “I guess I reared back like one good time” before his hooded sweatshirt was pulled over his head. After his sweatshirt came off, Sheard fell down. He then stabbed Burton once in the leg.

Sheard testified: “I was scared. That’s why I tried to run.” He saw Burton collapse on the basketball court but denied that he stabbed or cut Burton while the latter was on that court. When he heard sirens, he ran toward the sound and as soon as he saw the police, he threw down his knife because he knew “from me being in the streets, around, that if you have a weapon the cops can shoot you.” He did not immediately obey the police officer’s

orders to get on the ground because Lancaster was still coming after him. One officer tackled him and another hit him with a nightstick and he was then arrested.

On cross-examination, Sheard stated that he had not realized that his swings with his knife were connecting with anyone. The confrontation, according to Sheard, “was like a scuffle. It all happened so fast.” He professed to not know how many times he swung his knife. He denied intending to kill the victim.

## II.

### DISCUSSION

#### A. Admission of 911 Calls

Counsel for Sheard moved *in limine* to preclude the admission of recorded calls made to a 911 operator concerning the stabbing of Burton. The callers did not testify at trial and their identities were unknown.

After listening to the 911 calls, the trial judge found that the calls were not “testimonial in nature,” and that their probative value outweighed any possible prejudice. After the court denied Sheard’s motion, two 911 calls made by unidentified persons were played to the jury. During the first call, the following exchange occurred:

**911 Operator:** Prince George’s County 911. What is the location of your emergency?

**Caller:** Hello?

**911 Operator:** Yes, this is 911. Do you have an emergency?

**Caller:** Yeah man. Someone is out here getting stabbed. I’m on Hayes Street in Glenarden.

**911 Operator:** Okay

**Caller:** Right by the pool. You need to come down. The dude stabbed him about six times.

**911 Operator:** Okay, stay on the line sir. Repeat the location.

**Caller:** It's on Hayes Street. In Glenarden apartments. The dude is in a white shirt, with uh, tan shorts, he's got something. Two other dudes are around him. They trying to stop him, but the dude is really hurt.

**911 Operator:** Okay, stay on the line sir. Just give—

**Caller:** You need to hurry up, please. He's out here dying. He stabbed him like six times—

**911 Operator:** Listen sir. I'm trying to get help. I need (unintelligible) second streets, or an address—

**Caller:** I'm trying—

**911 Operator:** I don't know—

**Caller:** I'm trying—

**911 Operator:** where you are.

**Caller:** umm, Hayes Street, umm, like 77 ... 7000 block. Yeah. Right behind (faint yelling in background) Oh dang! He just stabbed him again in his face.

**911 Operator:** Okay, you said 7300 block of what street?

**Caller:** I'm on 7930 Glenarden Parkway. But I'm at the pool. The pool is on Hayes Street. Oh, damn! He just stabbed him again.

**911 Operator:** Stay on the line sir.

**Caller:** His friends are trying to drag him.

**911 Operator:** Okay, do you have the 100 block? Is it the 3200 block?

**Caller:** No I don't. I'm at 79. I'm at 79.

**911 Operator:** Okay, what's the cross street? Glenarden Parkway and Hayes?

**Caller:** Glenarden Parkway and Hayes, yes.

**911 Operator:** Okay—

**Caller:** He's stabbing him. Oh shit, he's stabbing him again ... Oh, he's stabbing him again, sir. (faint yelling in background) The dude got on white. I heard some—the boy name is Terrell. Who's, who's getting stabbed. Now he's chasing the other dude. (louder yelling in background)

**911 Operator:** Okay sir. We have a call into (unintelligible). What's your name?

**Caller:** I don't, I don't want to do that.

**911 Operator:** That's fine. Would you like to leave a number?

**Caller:** Come on, come on!

**911 Operator:** Just stay on the phone with me sir. Would you like to leave your number? Yes or no.

**Caller:** Can you hear him? Can you hear him?

**911 Operator:** Sir, would you—

**Caller:** Now he's (unintelligible) the other guy.

**911 Operator:** Would you like to leave your phone number?

**Caller:** No, just come on, please.

**911 Operator:** That's fine. Listen, we're sending someone, okay. I'm on the phone. I'm letting them know what's going on while we're talking.

**Caller:** Okay, he's chasing the other two guys. He's chasing the other guy. The other guy is in the middle, in the middle of the concrete by the pool. The man who's chasing. They right on Hayes Street. You probably want to send them both ways 'cause he's trying to chase the



other two guys. Right now he's walking back towards, ugh, he's walking back toward the concrete. Now he's getting on his phone.

**911 Operator:** Okay, and where's the suspect now?

**Caller:** He's walking up ... he's walking down Hayes Street towards Glenarden Parkway. He's walking up towards Glen— he's walking up Hayes Street towards Glenarden Parkway. He got on a white wife-beater and ... and some, ugh, some jeans, like some jeans, ugh, jean pants/half shorts.

**911 Operator:** Okay, stay on the line sir. Do you know where the suspect is going?

**Caller:** No sir. I can't see him no more. I'm on my balcony.

**911 Operator:** Okay. Is he light-skinned or dark skinned?

**Caller:** I don't know sir. I'm on the balcony. It's dark in the woods. I mean it's not woods, but –

**911 Operator:** You can't, okay, so you just saw his shirt and his pants? You can't see his complexion?

**Caller:** No, I can't see his complexion.

**911 Operator:** Do you know about how old he was?

**Caller:** No sir. I don't. And the other guy is chasing him up the street.

**911 Operator:** The victim? The victim?

**Caller:** What? I don't know who that is. (unintelligible)

**911 Operator:** You said the victim is chasing someone?

**Caller:** No, his friend was trying to pull him away.

**911 Operator:** Okay. And what is the victim description? Do you have the color clothing he was wearing?

**Caller:** Ahh, he had on some jeans. He's laying in the street sir.

**911 Operator:** And is the victim black, white, or Hispanic?

**Caller:** Black, they all black. What? The guy is black.

**911 Operator:** Okay. And we still have the police and the paramedics driving as fast as they can.

**Caller:** I heard. I heard them coming.

**911 Operator:** They are still coming. Okay.

**Caller:** I heard.

**911 Operator:** Okay, how many people are injured?

**Caller:** One person is injured sir.

**911 Operator:** Just one? Okay.

**Caller:** Yes. Where you going? (unintelligible voice in background) I'm not walk—I'm on the phone. Don't worry about that.

**911 Operator:** Yeah, tell everyone to stay where they are. Okay. We don't – you know we can send an officer to that location but we don't want like different people unless they are going to let the officer know if anyone recognizes the suspect that will help. Is there anyone with the victim now or is he by himself?

**Caller:** He by himself. His friends are walking up the stre-- his friends are chasing the dude up the street.

**911 Operator:** Okay. And is he at Glenarden Parkway yet?

**Caller:** I'm trying to see. I see lights.

**911 Operator:** So they – Did you see them turn on Glenarden Parkway?

**Caller:** Sir, I don't know. I just see police. I see the lights I don't know where they're going.

**911 Operator:** Okay, actually the officer's have ... oh, okay the officers are there. They have him. Okay.

\* \* \*

The colloquy between the 911 operator and the second call was as follows:<sup>3</sup>

**911 Operator:** Prince George’s County 911. What is the location of the emergency?

**Caller:** Hey (unintelligible) record it! Somebody is getting stabbed to death right now in front of me!

**911 Operator:** Hello?

**Caller:** Somebody, yeah, somebody is getting stabbed to death right in front of me. Umm, I’m –

**911 Operator:** I need the address.

**Caller:** ugh, 7935 Johnson Avenue. Please hurry. It’s, it’s in the umm, parking lot.

**911 Operator:** Verify the address one more time.

**Caller:** 7935 Johnson Avenue. It’s in the back of the building. Somebody is getting stabbed to death right now.

**911 Operator:** Listen to me. What city?

**Caller:** It’s Glenarden, Maryland.

**911 Operator:** Okay, what number are you calling me from in case we get disconnected?

**Caller:** (distant yelling in background) Record it.

**911 Operator:** Sir, listen to me. What number are you calling me from in case we get disconnected?

**Caller:** (distant yelling in background) (unintelligible)

**911 Operator:** Sir! Hello?

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<sup>3</sup> The second call was approximately 9 minutes in length. Only the first five minutes, however, were played for the jury.

**Caller:** It's in Glenarden. Glenarden!

**911 Operator:** I know. The number you are calling me from.

**Caller:** It's 301—I don't want to give you that ma'am. Just come!

**911 Operator:** Sir, listen to me. Where is the weapon now?

**Caller:** He's—it's in his hand. He's stabbing around. I'm trying to record it.  
Fuck! Hurry up y'all! Come on!

**911 Operator:** Listen to me. I've got the call in. I need more information.  
Where is the suspect now?

**Caller:** He's, he's still stabbing him! He's in the fucking parking lot! Just  
come to 7935!

**911 Operator:** Listen to me—

**Caller:** He's got dreads on. He got dreads and a tank top. He got a white tank  
top and dreads—

**911 Operator:** What's he wearing? What's he wearing?

**Caller:** (screaming in background) He's wearing jeans and a white tank top  
and he's still fucking stabbing him! He's killing him! Come on y'all!

**911 Operator:** How tall is he sir?

**Caller:** He's like 5'8"

**911 Operator:** Listen to me, I have the call in –

**Caller:** He's like 5'8"—

**911 Operator:** I need information, okay—

**Caller:** Listen, listen, listen. He's 5'8." I was listening for a name. He's got  
white socks on. He's walking away fucking slowly!

**911 Operator:** Okay, how old does he look like? How old?

**Caller:** He look like he 24. He still coming back to fucking stab him! And there's a guy in a blue shirt. Cut the TV off Ma. I need to listen for a name. Cut the TV off. He's about to stab—

**911 Operator:** Did he arrive in a vehicle?

**Caller:** I don't know.

**911 Operator:** Okay, stay on the line with me. Are you safe where you are?

**Caller:** Shhh. Yes.

**911 Operator:** Okay. Are you or anyone else in immediate danger?

**Caller:** Fuck!

**911 Operator:** The man getting stabbed, is he in a blue shirt?

**Caller:** (whispering) No.

**911 Operator:** Okay. What does he look like?

**Caller:** He's in, ugh, grey pants. He's on the ground now dying. My cell ... He's on the ground dying. Please send an ambulance.

**911 Operator:** Okay, how many are injured? Just the one?

**Caller:** Just one. Just one.

**911 Operator:** Okay. Listen to me. I need you to repeat the address one more time for me to make sure I got it right.

**Caller:** It's in the back of 7935 Johnson Avenue.

**911 Operator:** Thank you very much. Stay on the line with me, okay?

**Caller:** (whispering) Okay. (voices in background) Hold on, I'm listening for a name. Please be quiet. Be quiet, I'm listening for a name. The name matters. (yelling in background) I heard somebody scream Terrell. (yelling in background)

**911 Operator:** Listen to me. The suspect, how much does he weigh? Is he thin, heavy, medium-set?

**Caller:** (screaming in background: Call 911!!) I did!

**911 Operator:** Any other characteristics you can tell me? Tattoos, piercings.

**Caller:** (screaming in background) I don't know. I don't see any tattoos.

**911 Operator:** Okay. You can still see him? Is he light-skinned or dark-skinned?

**Caller:** He's dark-skinned. The one that's dying. His friends are outside.

**911 Operator:** Okay.

**Caller:** I heard Terrell.

**911 Operator:** Okay. Listen to me. Okay. I want you to stay where you are. Do not, if you are in a safe location, do not put yourself in any danger. Okay?

**Caller:** Okay, I won't.

**911 Operator:** Stay where you are, but stay on the line with me so I can hear what's going on. Okay?

**Caller:** Okay. He's dying.

**911 Operator:** Is it a female that got stabbed? Or a male?

**Caller:** A male. He's got white shoes on. He's laying down. He's not moving. I heard somebody yelling Terrell. It's in the back of 7935. It's where the pool at, where the pool at.

**911 Operator:** I've already got that in the call. It's by the pool?

**Caller:** Yeah. It's right beside the pool. Fuck, I tried to record it. Fuck! Damn! I got, I got a good—

**911 Operator:** What's your name? What's your name?

**Caller:** Ma'am, I don't want to be involved in this.

**911 Operator:** Alright. It's okay. Stay where you are, okay? I need you to keep this line open so I can hear.

**Caller:** Okay. His friends left him.

**911 Operator:** His friends left him?

**Caller:** He's laying by himself. Yeah.

**911 Operator:** Okay. Is the vic—is the suspect still there?

**Caller:** No.

**911 Operator:** Which way did he go?

**Caller:** ahh, he went towards the front of 7935.

**911 Operator:** Is he on foot or did he get in a vehicle? Sir, is he on foot?

**Caller:** He's on—

**911 Operator:** Is he on foot, or did he get in a vehicle?

**Caller:** I didn't see him get in a vehicle. He headed towards the front of 7935.  
But he's chasing his friend.

**911 Operator:** We've got multiple calls in so they're all coming to you as soon as possible. Okay. Just stay on the line with me until they get there. Okay?

Sheard argues that the statements made by the 911 callers were testimonial, and therefore admitting those statements violated the Confrontation Clause of the United States Constitution “because they were made in response to interrogation to investigate a possible crime and not so clearly made to assist police officers to meet an ongoing emergency.” The State responds that the 911 calls were not testimonial because the “primary purpose of the calls was to enable police and medical personnel to respond to an ongoing emergency.”

“In all criminal prosecutions, the accused shall enjoy the right,” under the Sixth Amendment to the United States Constitution, “to be confronted with the witnesses against

him[.]” U.S. CONST. amend. VI. The Sixth Amendment bars “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). We use a non-deferential, *de novo* standard of review when considering a claim of a violation of the Confrontation Clause. *Langley v. State*, 421 Md. 560, 567 (2011).

In *Davis v. Washington*, 547 U.S. 813, 822 (2006) (footnote omitted), the Supreme Court explained the difference between testimonial and non-testimonial statements as follows:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

The *Davis* Court held that statements made to a 911 operator were non-testimonial where the declarant was “speaking about events as they were actually happening,” and “was facing an ongoing emergency.” *Id.* at 827-28. In addition, the statements elicited in *Davis*, “were necessary to be able to resolve the present emergency, rather than simply to learn . . . what had happened in the past. That is true even of the operator’s effort to establish the identity of the assailant, so that the dispatched officers might know whether they would be encountering a violent felon.” *Id.* at 827. Finally, in *Davis*, the declarant’s “frantic answers were provided over the phone, in an environment that was not tranquil, or even . . . safe.” *Id.* The Court concluded that, “the circumstances of [her] interrogation



objectively indicate[d that] its primary purpose was to enable police assistance to meet an ongoing emergency.” *Id.* at 828.

“[W]hether an emergency exists and is ongoing is a highly context-dependent inquiry.” *Michigan v. Bryant*, 562 U.S. 344, 363 (2011). “An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat solely to the first victim has been neutralized because the threat to the first responders and public may continue.” *Id.* Further, “the duration and scope of an emergency may depend in part on the type of weapon employed.” *Id.* at 364. In addition, the “victim’s medical state also provides important context for first responders to judge the existence and magnitude of a continuing threat to the victim, themselves, and the public.” *Id.* at 365.

In the present case, both 911 callers frantically began their calls by telling the operator that someone was being stabbed. In the words of the second caller, “[s]omebody is getting stabbed to death right now in front of me!” Both callers were so distressed that they had trouble relaying their location to the operator. As the calls continued, the callers informed the operator that the stabbing was ongoing, and pleaded for help to be sent. At some point, in both calls, it became clear that the stabbing had concluded, but that the victim, in the view of the callers, was dying as they watched. Additionally, both callers reported that the assailant had left the victim and was being chased by other individuals.

There clearly was an ongoing emergency in this case during the entire duration of both calls. The callers witnessed the victim getting stabbed multiple times and later saw the victim lying motionless. Further, the assailant was armed with a knife and was being

actively chased through an apartment complex by at least one other individual prior (and up to) the point that the police arrived. The information provided by the callers regarding the emergency and the assailant was essential so that the police and first responders could assist the victim and assess the danger to themselves and to the general public.

Sheard contends that the “emergency was coming to an end without a severe threat to the law enforcement officers or others” because the weapon he used was a “knife, rather than a gun,” and because (purportedly) he was “seeking help” when he approached the police officer.

We disagree with Sheard’s characterization of the nature of the emergency in this case. While the weapon used was a knife, and not a gun, it proved deadly for the victim in this case. The emergency had not yet concluded upon the arrival of the police officer, because Sheard still had the weapon in his hand and at least one person was chasing him. Further, a police officer testified that while he saw Sheard drop the knife, Sheard continued to resist the responding officers’ efforts to subdue him.

We can discern no meaningful distinction between the facts set forth in *Davis*, *supra*, and those presented in this case. Here, the statements made by the unknown callers were “made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation [was] to enable police assistance to meet an ongoing emergency.” *Davis*, 547 U.S. at 822.

We therefore hold that the statements were non-testimonial and Sheard’s rights under the Confrontation Clause of the Sixth Amendment were not violated.

In the “Questions Presented” section of his brief, appellant raised the issue of whether admission of the 911 tapes violated his right to “due process of law.” He does not, however, brief that issue and it is therefore waived.

### **B. Sufficiency of Evidence**

Sheard was convicted of carrying a concealed dangerous weapon in violation of Md. Code (2012 Repl. Vol.), Criminal Law Article (“CL”), Section 4-101(c)(1). Sheard argues that the State failed to prove that the knife he carried met the definition of “weapon” found in Section 4-101(a)(5)(i). The problem with the State’s proof, according to Sheard, was that the State failed to prove that the instrument used to stab the victim did not come within the exception set forth in the statute under which he was charged that allows a person to carry a “penknife without a switchblade.” *See* CL, Section 4-101(a)(5)(ii)(2). The State responds that “[a]rmed with photos of the knife, the knife itself, the testimony of Corporal Webb, and a jury instruction that correctly stated the law, the jury concluded, as was its province, that the knife possessed by Sheard was a dangerous weapon as that term is defined by statute.”

Based on *Mackall v. State*, 283 Md. 100, 111 (1978), we hold that the State failed to prove that the knife appellant used was not a penknife without a switchblade, and therefore, Sheard’s conviction for carrying a concealed dangerous weapon must be reversed.

Rohan Wallace, Cornelious Savoy, and Jerome Lancaster all testified that they observed Sheard use a knife to stab Burton. Additionally, the jury heard two 911 calls, during which the callers said that the assailant was using a knife to stab the victim. Moreover, Officer Atkinson testified that when he arrived on the scene, he saw a knife in

Sheard's hand, and saw Sheard throw it away. Corporal Webb testified that at the intersection of Hayes Street and Gleanarden Parkway, he recovered "a folding knife," and that knife was admitted into evidence fully open, and was identified by Corporal Webb as the knife he observed in Sheard's hand when he arrived on the scene.

The State introduced three photos of this knife into evidence. In two photos, the knife appears on the ground at the crime scene and is partially open. In the third photo, the knife is fully open. The medical examiner testified that forty of the forty-one wounds found on Burton's body were consistent with being caused by this knife.

During Sheard's motion for judgment of acquittal at the close of all the evidence, he argued that the knife did "not constitute a dangerous and deadly weapon under the statute," because it was a penknife without a switchblade. The following exchange then occurred:

THE COURT: Is it possible with the State to let the Court see the knife. It's in the –

[THE STATE]: I would be happy to, Your Honor. If you would like gloves as well, if you want to be able to inspect it.

\*\*\*

THE COURT: Can't even move it down, and I'm not going to. I means, it's like there are two knives in there, but some serration on the end, too. I don't know if this is.

\*\*\*

I don't even see how you open this knife, and I'm going to, because it's, it's very – I don't know if it's hard to close and open because of what it's gone through, but I think –

[DEFENSE COUNSEL]: There is no switch button to switch or open or close this knife, it would appear.

The court then denied Sheard’s motion, stating “I cannot say that this doesn’t constitute a switchblade,” and allowed the question to go to the jury.

We review for sufficiency of evidence by determining “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). To make that determination, we are not required to “undertake a review of the record that would amount to a retrial of the case.” *State v. Pagotto*, 361 Md. 528, 533 (2000). Nor are we required “to determine the credibility of witnesses or the weight of the evidence.” *Handy v. State*, 175 Md. App. 538, 562 (2007) (citation omitted).

Sheard was found guilty of Crim. Law § 4-101(c)(1), which prohibits the wearing or carrying of a concealed dangerous weapon. A “weapon” is defined under Section 4-101(a)(5)(i) as a “dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku.” Crim. Law § 4-101(a)(5)(ii)(2) exempts a “penknife without a switchblade” from the definition of a weapon.

The legislature has not defined “penknives” or “switchblade knives.” Nevertheless, penknives “are commonly considered to encompass any knife with the blade folding into the handle, some very large.” *Mackall*, 283 Md. at 113, n.13. The Merriam-Webster dictionary defines a switchblade as “a pocketknife having the blade spring-operated so that pressure on a release catch causes it to fly open[.]” Merriam-Webster, [www.merriam-](http://www.merriam-)

[webster.com](http://webster.com) (last visited Apr. 15, 2016). The State has the burden of showing that the weapon “was not a penknife without [a] switchblade.” *Mackall*, 283 Md. at 111.

In the present case, the knife was admitted into evidence and examined by the court. As mentioned, the trial judge was unable to completely open or close the knife, stating, “I don’t know if it’s hard to close and open because of what it’s gone through[.]” Counsel for Sheard remarked that he did not see a switch button to open or close the knife, and none can be seen on the photos admitted into evidence. There simply was no evidence presented at trial that the folding knife was “spring-operated so that pressure on a release catch cause[d] it to fly open.” Merriam-Webster, *supra*. Without such evidence, we hold that the State did not meet its burden of showing that the weapon was not a penknife without a switchblade. Accordingly, we reverse the conviction for carrying a concealed deadly weapon.

**CONVICTION FOR CARRYING A  
CONCEALED DEADLY WEAPON  
REVERSED. JUDGMENT OF THE  
CIRCUIT COURT FOR PRINCE  
GEORGE’S COUNTY OTHERWISE  
AFFIRMED; ONE-HALF OF COSTS TO BE  
PAID BY APPELLANT, ONE-HALF OF  
COSTS TO BE PAID BY PRINCE  
GEORGE’S COUNTY.**