Circuit Court for Baltimore City
Case No. 000116196009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2736

September Term, 2016

BRANDON BLOUNT

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: October 18, 2017

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore City found Brandon Blount,[1] the appellant, guilty of two counts of possession of a firearm after being convicted of a crime of violence, in violation of Md. Code (2003, 2011 Repl. Vol., 2016 Cum. Supp.), section 5-133(c) of the Public Safety Article ("PS"), and two counts of wearing, carrying, or transporting a handgun on his person, in violation of Md. Code (2002, 2012 Repl. Vol.), section 4-203(a)(1)(i) of the Criminal Law Article ("CL"). The court sentenced Blount to a total of 10 years of incarceration without the possibility of parole for the first five years.[2]

On appeal, Blount asks whether the evidence was sufficient to sustain his convictions. We shall affirm the judgments.

FACTS AND PROCEEDINGS

The State called two witnesses at trial: Officer Norman Jones, who saw Blount drop two guns while pursuing him on foot, and Jennifer Ingbretson, an expert in identification and operability of firearms.

Officer Jones testified that on the night of June 21, 2016, he and three other Baltimore City police officers were on patrol near the 1200 block of Greenmount

[1] In the charging documents, the appellant originally was identified as Anthony Blount. Prior to trial, however, the State moved to amend the appellant's name on the charging document from Anthony Blount to Brandon Blount. The circuit court granted the State's motion at trial before jury selection.

[2] For each count under PS section 5-133(c), Blount was sentenced to 10 years of incarceration without the possibility of parole for five years. For each count under CL section 4-203(a)(1)(i), Blount was sentenced to three years of incarceration. All four sentences were to run concurrently.

Avenue, a "high crime area." Greenmount runs north and south. The 1200 block is a mostly residential area with some vacant and some inhabited houses. Mura Street is a single block immediately east of the 1200 block of Greemount. Mura Street ends at a "T" intersection with Greenmount. There is an alley behind Mura Street, on its south side. There are entrances to the alley parallel to Greenmount on both ends of Mura Street.

At about 11:30 p.m., the four officers were travelling south on Greenmount in an unmarked sedan. They were in plain clothes, except for black vests marked "Police." As they approached the "T" intersection with Mura Street, Officer Jones looked to his left and noticed a man standing at the entrance to the alley behind Mura Street. The officer who was driving stopped the vehicle so they could observe the man. Although Officer Jones's view of the man was partially obstructed, he could see the right side of the man's body and most of his torso. The man was black with a light complexion, tall, thin, and was wearing a blue shirt and blue jeans.

Officer Jones got out of the sedan. The man began to "quickly move[] through the alley." Officer Jones gave chase and, after hearing an engine revving, sprinted in the man's direction. When Officer Jones reached the part of the alley behind Mura Street, he saw a four-wheel ATV (all-terrain vehicle) in the center of the alley and the man running in front of it. The officer continued chasing the man and noticed that he had his right arm close to his body "as if he was holding something in his front waistband area." The man removed a silver object from his waistband and discarded it. The man then reached into his back pocket, pulled out a black object, and discarded that as well.

In the alley, Officer Jones recognized the man he was chasing was Brandon Blount. At that point, there was a "three to four house[]" distance between the officer and Blount. The alley was dark, but "[t]he lighting from Greenmount," was enough that Officer Jones could identify Blount. Officer Jones was familiar with Blount because during the preceding four to five months he had seen Blount during his patrol "[a]lmost every day . . .[, u]sually on the sidewalk[by] the 1200 block of Greenmount."

After Blount dropped the objects, Officer Jones stopped chasing him and radioed other units for assistance. He retrieved the objects Blount had dropped, which were a Taurus semi-automatic pistol ("semi-automatic pistol"), and an Iver Johnson revolver ("revolver"). The guns were tested for fingerprints, but the results of the tests were not offered at trial. There was no DNA testing conducted on the guns and no fingerprint or DNA testing conducted on the ATV. The officers were unable to find Blount that night, but arrested him the next day (June 22, 2016) at the 1200 block of Greenmount.

Ms. Ingbretson testified that the guns Blount dropped were operable. She determined that the semi-automatic pistol was operable after firing it at a firing range. She did not fire the revolver due to safety concerns. She nevertheless determined that it probably was operable after conducting other tests, as she explained in the following exchanges during cross, redirect, recross, and re-redirect examinations:

CROSS-EXAMINATION

Q: And what did you have to do in order to test-fire [the revolver]?

A: Well, instead of test firing it with a cartridge that has a projectile, for my own safety, because . . . it has a piece that's broken off up top, I took

the projectile out of a cartridge, . . . emptied out the gunpowder and just used a primer only cartridge in there just for my own safety.

Q: What piece did you indicate was broken off of it?

A: It's a piece up top . . . . It's . . . the barrel assembly latch and the latch here holds this whole assembly onto the frame, so that when you fire it and the recoil doesn't . . . make [it] go open and have some projectile or something come back at you.

. . .

REDIRECT EXAMINATION

Q: Other than the safety precaution that you took, is that gun capable of firing a projectile?

A: Presumably, yes.

. . .

RECROSS EXAMINATION

Q: What do you mean by "presumably[?"]

A: . . . I mean, all of the components are there to fire a projectile and I just took the danger element out of it. If I wanted to fire a full projectile out of there, I could have. It's just very dangerous to do. Can it be done? Yes, probably, but I'm just not willing to take that risk, so that's why I took the projectile out of it.

. . .

[I]t's possible [to fire the revolver] because all of the components are here. It's not safe to do that and I wouldn't do it for my own safety, which is why I did not do that. Could somebody do that[? Y]es. Can I say for sure that a projectile will come out of the other end? No, because I didn't do that, but the components are here in order for that to happen. So presumably, yes, it is very plausible and possible. I just won't do it for my own safety.

. . .

RE-REDIRECT EXAMINATION

. . .

Q: . . . And in this case, why did you deem the gun to be operable instead of inoperable?

> A: Well, because the mechanism for firing a weapon is that I need to pull the trigger, it needs to cock the hammer back and the hammer needs to fall and the firing pin needs to strike that primer. There needs to be an explosion. When it happens in the primer, it's just a mini explosion. That happened. The bigger explosion happens when it ignites the gun powder and sends the projectile down the barrel.
>
> That's the component that I took out just for safety reasons. It's that danger factor, but all of the other mechanisms of the gun worked. Pulled the trigger, hammer cocked and it fell and it ignited the primer. The barrel is there, so is it likely that a projectile will go down the barrel, yes, but I just don't want to that chance . . . when I can show that the gun works with just a primer only cartridge case.

At the close of the State's case-in-chief, Blount's attorney moved for judgment of acquittal. He stated: "[A]t this time I'll make a Motion for Judgment of Acquittal and argue that the . . . case as presented by the State, when evidence is viewed in the light most favorable to the State is not sufficient to sustain the Counts that Mr. Blount is charged with." The State opposed the motion and the trial court denied it.

Blount rested without presenting any evidence, and his attorney made the same motion for judgment of acquittal. The trial court denied the motion.

After convictions and sentencing, Blount noted a timely appeal.

DISCUSSION

Blount contends the evidence was legally insufficient to support his convictions, for two reasons. First, the testimony of Officer Jones was insufficient to prove that he was in possession of the firearms, which is a necessary element under PS section 5-133 and CL section 4-203(a). Specifically, he argues:

> For a variety of reasons, the testimony of Officer Jones was too thin of a reed upon which to base the convictions. First, where Officer Jones had been in an unmarked car and could not recall whether he shouted "stop

> running" after he left the car, it cannot be said that the individual acted suspiciously when running away in the first place. Second, Officer Jones acknowledged that the alley was very dark when he ran into it. Third, he admitted that, contrary to his trial testimony, neither his incident report nor statement of charges indicated that the individual he saw running through the alley was light-skinned, slender[,] or tall. Fourth, the officer did not meaningfully explain how he knew that the recovered firearms were the items discarded by the running individual. Fifth, the officer did not know whether the police photographed the firearms or ATV at the scene. Finally, the police did not present any forensic evidence linking Mr. Blount to the fire arms.[3]

Appellant's Brief, at 6 (citations omitted). Second, Ms. Ingbretson's opinion testimony was not sufficient to prove that the revolver was operable, which is a necessary element of CL section 4-203(a)(1)(i).

The State responds that this contention is not preserved for review and lacks merit in any event.

We agree with the State that Blount's issue is not preserved for review.

"'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.'" *Arthur v. State*, 420 Md. 512, 522 (2011) (quoting *State v. Rich*, 415 Md. 567, 574 (2010)); *see also Starr v. State*, 405 Md. 293, 302 (2008). A defendant in a criminal case may move for judgment of acquittal under Rule 4-324(a) "at the close of evidence offered by the State and, in a jury trial, at the close of all

[3] The first and fifth reasons have no relevance to whether Blount possessed a handgun and do not explain why Officer Jones's testimony is insufficient evidence. The fourth reason is factually incorrect because Officer Jones explained that he watched Blount drop the firearms. With regard to the third reason, Officer Jones's testimony is not contradictory to the statement of probable cause but simply is more detailed.

evidence[, but t]he defendant shall state with particularity all reasons why the motion should be granted." The defendant must therefore "'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'" in order to preserve a sufficiency of the evidence argument for appeal. *Arthur*, 420 Md. at 522 (quoting *Starr*, 405 Md. at 303); *see also Hobby v. State*, 436 Md. 526, 540 (2014); *Poole v. State*, 207 Md. App. 614, 632 (2012).

While the degree of particularity required by Rule 4-324(a) cannot be definitively described, our case law makes clear that a defendant must at least attempt to explain *why* the evidence adduced at trial is insufficient to support a conviction. In *Garrison v. State*, 88 Md. App. 475, 478 (1991), for example, this Court held that the defendant waived any complaint regarding the sufficiency of the evidence because at trial he chose to "submit" on his motions for judgment of acquittal "without articulating the particularized reasons which would justify acquittal." We explained, "[a] motion which merely asserts that evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with . . . [R]ule [4-324] and thus does not preserve the issue for sufficiency of appellate review." *Id.* at 478 (citing *State v. Lyles*, 308 Md. 129, 134–36 (1986)). *See also Parker v. State*, 72 Md. App. 610, 615–16 (1987).

More recently, in *Arthur*, 420 Md. at 524, the Court of Appeals made clear that Rule 4-324(a) "is not satisfied by merely reciting a conclusory statement and proclaiming that the State has failed to prove its case." There, in his trial for failure to obey a lawful order and resisting arrest, the defendant moved for judgment of acquittal, stating only that the State had failed to show that he did not obey a lawful order. On appeal, he argued

that the order from the officer was not lawful because it was an unconstitutional regulation of his right to free expression. The Court of Appeals declined to consider the more developed appellate argument because the defendant's "motion at the close of all evidence lacked the depth necessary to preserve the issue." *Id.* at 524. In short, the defendant "did not explain [to the trial court] why the order was unlawful." *Id.*

We return to the case at hand. After the State rested, Blount's lawyer moved for judgment of acquittal, stating, "viewed in the light most favorable to the State [the evidence] is not sufficient to sustain" the charges against Blount. Upon renewing the motion for judgment of acquittal at the end of the case, Blount's counsel again merely stated, "I'm making a Motion for Judgment of Acquittal at this juncture and indicating that the State's as—evidence as presented is insufficient to sustain the counts that Mr. Blount is charged with." These conclusory statements failed to explain even in a most basic way why the evidence was legally insufficient. Accordingly, Blount's sufficiency issue is not preserved for review.

Even if the issue were preserved, it lacks merit. The standard of review for legal sufficiency of the evidence in a criminal case 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.'" *Derr v. State*, 434 Md. 88, 129 (2013) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). In making this determination,

> "[t]he purpose is not to undertake a review of the record that would amount to, in essence, a retrial of the case. Rather, because the finder of fact has the unique opportunity to view the evidence and to observe first-hand the

> demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. We recognize that the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation, and we therefore defer to any possible reasonable inferences the trier of fact could have drawn from the admitted evidence and need not decide whether the trier of fact could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence."

Id. (quoting *Titus v. State*, 423 Md. 548, 557–58 (2011)).

1. *Possession.*

Officer Jones testified that he saw Blount discard objects in the alley behind Mura Street; that at least one of the objects appeared to be a gun; and that he quickly recovered the dropped objects and confirmed that they were, in fact, guns. Officer Jones further testified that he was familiar with Blount, having seen him in the past on patrol.

It is well established that the testimony of a single eyewitness can suffice to prove the element of possession in a criminal charge. *See Taylor v. State*, 175 Md. App. 153, 162 (2007) ("Possession may be established on the basis of eyewitness testimony such as the testimony . . . by a surveilling police officer."); *McCoy v. State*, 118 Md. App. 535, 537 (1997) ("The testimony of [the undercover officer who witnessed the event] alone was enough to establish, in terms of naked legal sufficiency, the guilt of the appellant[in a possession and distribution case]."); *cf. Branch v. State*, 305 Md. 177, 183 (1986) (explaining that identification testimony of victim is legally sufficient to sustain conviction).

Viewing the evidence in the light most favorable to the State, a rational juror crediting Officer Jones's testimony could have found beyond a reasonable doubt that

Blount was in possession of the two firearms. The officer's testimony that the alley was dark was pertinent to the weight of the evidence, namely his ability to positively identify Blount, not its sufficiency. Accordingly, the evidence was legally sufficient to prove that Blount possessed the firearms, beyond a reasonable doubt.

2. *Operability.*

Direct evidence is not necessary to prove operability of a firearm. *Mangum v. State*, 342 Md. 392, 393 (1996) ("[D]irect evidence is not required[. . . . O]perability of a firearm can be proved solely by circumstantial evidence."). Thus, firing a firearm is not required to prove operability. Here, Ms. Ingbretson opined that Blount's revolver was operable based on the fact that the revolver had all the components necessary to fire a projectile and that the components were in working order when she test-fired the revolver with a primer cartridge. It was for her own safety that she did not fire a projectile out of the revolver. A rational juror could have relied on this expert witness testimony to find that the revolver was operable, beyond a reasonable doubt.

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY THE APPELLANT.