

Circuit Court for Howard County  
Case No.: 13-K-16-056992

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1259

September Term, 2017

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JOSEPH MARTIN BUTLER

v.

STATE OF MARYLAND

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Wright,  
Kehoe,  
Reed,

JJ.

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Opinion by Kehoe, J.

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Filed: February 6, 2019

\*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.

By an indictment filed in the Circuit Court for Howard County on August 24, 2016, Joseph Martin Butler, appellant, was charged with kidnapping, armed robbery, conspiracy to commit armed robbery, first-degree assault, theft of less than \$1,000, and related charges. On May 16, 2017, following a jury trial, appellant was convicted of possession of a regulated firearm after a disqualifying conviction and was acquitted of all other charges.<sup>1</sup> Appellant filed a timely motion for a new trial on May 22, 2017, which the court denied. On June 30, 2017, the court sentenced appellant to a term of five years' imprisonment.<sup>2</sup> On appeal, appellant presents one question, which we have reworded:

Did the court abuse its discretion in denying the motion for a new trial on the ground that the evidence was insufficient to sustain the conviction?

We conclude that the trial court did not abuse its discretion in denying the motion for a new trial, and therefore affirm appellant's conviction.

### **Background**

On July 24, 2016, at approximately 10:50 p.m., Erlan Figueroa and Carlos Quintanilla were walking along Stevens Forest Road when Mr. Figueroa noticed two men following them.<sup>3</sup> He told Mr. Quintanilla to hurry, and as they waited to cross the street, two males appeared suddenly in front of them. Mr. Figueroa and Mr. Quintanilla testified through an

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<sup>1</sup> T2: Official Transcript of Proceedings, Criminal Jury Trial, Volume II of II. May 16, 2017.

<sup>2</sup> S: Official Transcript of Proceedings, Jury Trial – Day 1, June 30, 2017.

<sup>3</sup> T: Official Transcript of Proceedings, Criminal Jury Trial, Volume I of II. May 15, 2017.

interpreter that they had seen appellant and his accomplice, later identified as Devon Williams,<sup>4</sup> many times at grocery and liquor stores in the neighborhood. They also said that they recognized appellant, the shorter and smaller of the two men, by a cross tattoo on his forehead.

Mr. Williams grabbed Mr. Figueroa, and appellant gestured that he was armed as he approached Mr. Quintanilla. Mr. Figueroa testified that although he only knew a few words in English, he understood that he was being instructed to “come on” and that appellant and his accomplice intended to rob them. Mr. Figueroa and Mr. Quintanilla were forced to walk toward a dark, wooded area approximately 100 feet away from the road. When they reached the woods, appellant pointed a gun at Mr. Quintanilla’s head and demanded money. Mr. Figueroa and Mr. Quintanilla both testified that appellant had a black nine-millimeter handgun, and that they heard appellant load the weapon.

Appellant held the gun while Mr. Williams took Mr. Quintanilla’s necklace, earrings, and \$185 in cash. Appellant then approached Mr. Figueroa, pointed the gun toward his back, and took his black leather Nike wallet. The wallet contained a few documents and \$200 in cash. The State introduced a black wallet into evidence. Mr. Figueroa identified this wallet as the one taken from him during the robbery, however, he said that his wallet was newer. After taking their valuables, appellant pointed the gun at Mr. Figueroa and Mr. Quintanilla and told them to leave, and that “things would go badly” for them if they called

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<sup>4</sup> Mr. Williams first name is spelled “Dreyvon” and “Trayvon” in some sections of the record.

the police. Appellant and Mr. Williams then walked into the woods toward an apartment building, and Mr. Figueroa and Mr. Quintanilla ran home and called the police.

Howard County police were dispatched to an apartment complex where the victims lived approximately one quarter mile from the site of the robbery. Officer Jacob Lorrenson testified that when he arrived at the location, Mr. Quintanilla and Mr. Figueroa were “a bit hysterical” and “pretty scared.” Detective Christian Kim interviewed Mr. Figueroa and Mr. Quintanilla three days after the robbery. Detective Kim then visited Sam’s Mart, a nearby convenience store on Stevens Forest Road, where he obtained a copy of the surveillance camera footage from the night of the incident. The video introduced into evidence showed appellant inside Sam’s Mart at approximately 9:30 p.m., and then congregating in front of the store with Mr. Williams for several minutes.

Eight days after the incident, Detective Kim arranged for Mr. Figueroa and Mr. Quintanilla to participate in a photo array. Mr. Figueroa identified appellant and Mr. Williams as the men who had robbed him at gunpoint. Although Mr. Quintanilla testified that he recognized appellant during the robbery because of his tattoo, he was unable to identify appellant in the photo array.

Detective Kim obtained a search warrant for an apartment on Stevens Forest Road, as well as warrants for the arrest of appellant and Mr. Williams. Howard County police executed the warrants on August 4, 2016. Detective Kim testified that when officers entered the apartment, appellant was walking from a bedroom into the hallway and Mr. Williams was in the living room. Officers recovered a red backpack in the dining room

with a loaded nine-millimeter Luger handgun inside. The backpack also contained thirty-nine loose nine-millimeter bullets and a pair of men’s underwear. Detective Kim testified that the DNA found on the underwear matched Mr. Williams’ DNA profile. Officers also found a men’s wallet in the master bedroom closet, which the State later introduced into evidence.

The defense theory of the case was that neither Mr. Figueroa nor Mr. Quintanilla had been robbed, and that two men “got burned,” meaning that they did not receive marijuana they had purchased. In addition to asking whether they had tried to purchase marijuana, defense counsel also questioned Mr. Figueroa and Mr. Quintanilla about their alcohol consumption that night. Mr. Quintanilla testified that he had drunk three beers. Defense counsel also challenged Mr. Figueroa’s in-court identification of the black wallet. On cross-examination, Mr. Figueroa was questioned about his testimony that his wallet was “newer” than the wallet introduced by the State, and about documents in the wallet that he did not recognize. At the close of the State’s case-in-chief, appellant’s counsel made a motion for judgment of acquittal, but urged no grounds related to the charge of unlawful possession of a regulated firearm.

Arkima Johnson, who lived in the apartment where appellant and Mr. Williams were arrested, testified for the defense. Ms. Johnson said that she had seen Mr. Williams with the red backpack many times, and that he was sleeping on it when the police entered the house. She denied having seen appellant with the backpack. The State impeached her testimony with her prior statements that she did not know who owned the backpack and

had not seen it previously. Ms. Johnson denied that she had ever made those statements to prosecutors.

During closing arguments, appellant's counsel argued that Mr. Figueroa and Mr. Quintanilla's stories were not consistent and emphasized the discrepancies between the two men's accounts. The defense noted that Mr. Figueroa had testified that they played soccer at Centennial Lake that evening, while Mr. Quintanilla said that they were socializing with friends in front of the Grand Pointe apartments. Appellant's counsel also drew attention to Mr. Quintanilla's testimony that Mr. Williams had taken his necklace, earrings, and money. His testimony contradicted that of Mr. Figueroa, who stated that appellant had taken Mr. Quintanilla's necklace, but not his wallet.

At the close of all evidence, the defense renewed its motion for judgment of acquittal but, again, raised no arguments related to the weapons charge.

The jury returned a verdict of not guilty on all counts except possession of a regulated firearm after a disqualifying conviction. Trial counsel did not object to the verdict and the jury was discharged.

Within ten days of the verdict, appellant filed a motion for a new trial citing the insufficiency of the evidence to convict on the firearm offense in light of the acquittal of all other charges. The trial court denied the motion for a new trial without a hearing and without comment.

### **Analysis**

Appellant contends that the circuit court abused its discretion in denying his motion for a new trial on grounds of insufficient evidence. He claims that because he was acquitted of fifteen other charges, the jury could not, based on the same evidence, logically convict him of unlawful possession of a regulated firearm. The State counters that, (1) as the defense did not challenge the sufficiency of the evidence in a motion for judgment of acquittal, and (2) did not timely object to the alleged inconsistency of the verdicts, appellant's issue is not preserved for appeal. Moreover, the State argues that the trial court did not abuse its discretion in denying appellant's motion for a new trial based on "a camouflaged claim of factually inconsistent verdicts." The State also argues that several of appellant's contentions are not preserved for appellate review. We will first deal with this issue.

#### *Preservation: Sufficiency of the Evidence*

Maryland Rule 4-324(a) requires that a criminal defendant, when moving for judgment of acquittal on one or more counts, "state with particularity all reasons why the motion should be granted." A defendant is not entitled to appellate review of reasons stated for the first time on appeal. *Starr v. State*, 405 Md. 293, 302 (2008) (citations omitted). "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." *Albertson v. State*, 212 Md. App. 531, 570 (2013) (quoting *Whiting v. State*, 160 Md. App. 285, 308 (2004) (citations omitted), *aff'd*, 389 Md. 334 (2005)). This Court, in *Washington v. State*,

191 Md. App. 48, 121 (2010), discussed the preservation of grounds for appeal in a motion for a new trial and noted that:

Raising trial errors for the first time in a motion for a new trial is not a substitute for preservation. *Torres v. State*, 95 Md. App. 126, 134 (1993) (“A post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for nonpreservation.”).

*Washington*, 191 Md. App at 121 n. 22.

Nevertheless, a trial court has broad discretion to grant a motion for a new trial “in the interests of justice” when, as in this case, the motion is filed within ten days of the date of the verdict. Md. Rule 4-331(a). Accordingly, because such a motion “appeals to the trial judge’s subjective ‘sense’ or ‘feel’ as to whether a verdict was unfair or unjust, he may consider anything he wants to, preserved or unpreserved.” *Isley v. State*, 129 Md. App. 611, 622 (2000) (internal citations omitted), *overruled on other grounds*; *Merritt v. State*, 367 Md. 17, 24 (2001). However, “[t]he non-preservation of [a] claim ... could well serve as an unassailable reason for the trial judge, in his discretion, to reject the claim and to deny the motion [for a new trial].” *Id.*

In this case, defense counsel raised no arguments related to the charge of unlawful possession of a regulated firearm in either of his motions for judgment of acquittal. Consequently, appellant’s claim of evidentiary insufficiency is not preserved for our review. The issue before us is whether the trial court abused its discretion when it denied the motion for a new trial. and we will reverse the conviction only if we conclude that the trial court abused its discretion.



*Preservation: Inconsistent Verdicts*

To this Court, and among other contentions, appellant argues that the trial court abused its discretion in denying his motion for a new trial because his conviction on the firearm possession charge was inconsistent with his acquittals on all other charges. The State cries foul, asserting that to preserve a challenge to allegedly inconsistent jury verdicts, a defendant must object before the verdicts become final and the jury is discharged, and appellant’s trial counsel failed to do so in this case.

In *Givens v. State*, 449 Md. 433, 486 (2016), the Court held that “to preserve for review any issue as to allegedly inconsistent verdicts, a defendant in a criminal trial by jury must object to the allegedly inconsistent verdicts before the verdicts are final and the trial court discharges the jury.” The Court explained that “[w]here a jury reaches *legally* inconsistent verdicts, and the verdicts are not final and the jury has not been discharged, a trial court may correct the error in the proceedings by sending the jury back to deliberate to resolve the inconsistency.” *Id.* at 473 (emphasis added); *see also Price v. State*, 405 Md. 10, 41-42, (Harrell, J., concurring).

To the extent that appellant asserts that the verdicts were *legally* inconsistent, we agree with the State that such a contention is not preserved for our review. However, we read appellant’s brief as asserting (or perhaps as also asserting) that the verdicts were *factually* inconsistent and that this inconsistency, together with inconsistencies between the respective testimonies of Mr. Figueroa and Mr. Quintanilla as to what happened on the day

of the robbery, should have persuaded the trial court to grant the motion for a new trial. The latter contention is preserved for out review.

*The Merits: The Trial Court’s Denial of the Motion for a New Trial*

We now consider whether the circuit court abused its discretion by denying appellant’s motion for a new trial. Maryland Rule 4–331(a) grants the trial court the authority, upon a timely filed motion after a verdict, to order a new trial in the interest of justice. “Whether to grant a new trial lies within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent an abuse of discretion.” *Brewer v. State*, 220 Md. App. 89, 111 (2014) (citing *Argyrou v. State*, 349 Md. 587, 600 (1998)). On appeal, “we do not consider that discretion to be abused unless the judge exercises it in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law.” *Id.* (quoting *Washington v. State*, 424 Md. 632, 667-68 (2012) (internal quotation marks omitted)). The ruling of the trial court “will not be reversed simply because the appellate court would not have made the same ruling” but must be “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Arrington v. State*, 411 Md. 524, 552 (2009) (citations and internal quotation marks omitted). Moreover, it is the burden of the movant to persuade the court that a new trial should be granted. *Brewer*, 220 Md. App. at 111.

The core of appellant’s contention is that the trial court abused its discretion in denying the motion for a new trial because the evidence was legally insufficient to sustain his conviction for unlawful possession of a firearm.

When appellate courts review the legal sufficiency of evidence supporting a conviction, the proper standard 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.” *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in *Jackson*). Because the trier of fact “possesses 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.” *Id.* at 185. In performing its function, the jury is free to accept the evidence it believes and reject that which it does not believe. *Muir v. State*, 64 Md. App. 648, 654 (1985), *cert granted*, 305 Md. 244 (1989), *aff’d*, 308 Md. 2008 (1986). Accordingly, “[t]he test 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.’” *Painter v. State*, 157 Md. App. 1, 11 (2004) (emphasis in original). We see no reason why a trial court could not properly take the same analytical approach when considering a motion for a new trial based upon insufficient evidence.

The record in this case reflects that Mr. Figueroa and Mr. Quintanilla both identified appellant as the individual who pointed a black nine-millimeter handgun at them. This evidence was sufficient for a reasonable jury to find the essential element of possession beyond a reasonable doubt.<sup>5</sup> The State also introduced evidence that a nine-millimeter

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<sup>5</sup> The parties stipulated that appellant was legally disqualified from possessing a firearm.

handgun was found in the house where appellant was arrested. That there was evidence that the handgun belonged to and was in the possession of Mr. Williams at the time the police found it is irrelevant. The jury was free to infer that appellant possessed a weapon on the night that Mr. Quintanilla and Mr. Figueroa saw him wielding it—after all, they both testified that appellant pointed a handgun at them during the robbery.

That appellant was acquitted on the other charges does not change the analysis. Certainly, one can speculate as to why the jury credited some parts of Messrs. Quintanilla’s and Mr. Figueroa’s testimony and not others. But “a fact-finder is entitled to accept—or reject—all, part, or none of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.” *Grimm v. State*, 447 Md. 482, 506 (2016). Although the testimony of their testimony differed in some respects, both men testified that appellant pointed a handgun at them on the night in question.

Because there was legally sufficient evidence to support appellant’s conviction, the trial court did not abuse its discretion in denying a motion for a new trial asserting that there was no such evidence. We affirm his conviction.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR HOWARD COUNTY IS  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**