

Circuit Court for Prince George's County
Case No. CT210111X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1850

September Term, 2021

TIGER JAMES SIMMS

v.

STATE OF MARYLAND

Kehoe,
Zic,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: December 5, 2022

*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.

This case arises from a criminal conviction from the Circuit Court for Prince George’s County. Tiger James Simms was charged with illegal possession of a regulated firearm, possession of a regulated firearm under the age of twenty-one, possession of a loaded handgun in vehicle, carrying or transporting a handgun in a vehicle, and illegal possession of ammunition. Prior to trial, the circuit court denied Mr. Simms’s motion to suppress. Mr. Simms was convicted by a jury on all counts, except for firearm possession by a minor. The trial court sentenced Mr. Simms to five years of incarceration and suspended all but the sixty-five days that he had already served, to be followed by three years of probation. He presents three issues on appeal:

1. Did the trial court err in denying Mr. Simms’s motion to suppress?
2. Did the trial court err and/or abuse its discretion in admitting the handgun and documentation pertaining to the chain of custody of the gun and in refusing to declare a mistrial?
3. Is the evidence insufficient to sustain Mr. Simms’s convictions?

We hold that the trial court did not err in denying Mr. Simms’s motion to suppress and did not abuse its discretion in its evidentiary rulings and in denying Mr. Simms’s motion for a mistrial. Finally, we decline to rule on whether the evidence was sufficient to sustain Mr. Simms’s convictions because the claim was not preserved.

In their briefs, the parties refer to “marijuana” and “hemp.” In this opinion we will use the term “hemp” when talking about cannabis that contains 0.3% or less of tetrahydrocannabinol (THC) content by dry weight which was, and is, legal. Md. Code, Agric. § 14-1202. We will use the term “cannabis” to refer to cannabis that contains

more than 0.3% of THC content by dry weight. Md. Code, Crim. Law §5-101. At the time of that operative facts occurred that gave rise to Mr. Simms’s conviction, possession of cannabis in small amounts was a civil, but not a criminal offense. *Robinson v. State*, 451 Md. 94, 116 (2017). When referencing the plant from which both hemp and cannabis are derived, we will use the term *cannabis sativa*. See Agric. § 14-101(c).

BACKGROUND

At approximately 9:55 p.m. on February 4, 2020, Corporal Stephen Samuel of the Prince George County Police Department conducted a traffic stop of a black Nissan after receiving a notification from his license plate recognition device that the vehicle’s registration was suspended. Mr. Simms and two other passengers were in the vehicle. Mr. Simms, who was driving the vehicle, pulled over. Once the automobile came to a halt, the two passengers immediately got out and ran to a nearby home. Corporal Samuel did not believe he had any “exigency” to follow the passengers, and instead approached the vehicle. During the suppression hearing, Corporal Samuel testified that as he approached the vehicle, he noted the odor of cannabis emanating from it. Corporal Samuel asked Mr. Simms for his license and registration. Upon this request, Corporal Samuel witnessed “a lot of movement in the vehicle” including Mr. Simms reaching towards the passenger’s seat but, Mr. Simms never produced his license or registration. Corporal Samuel went to his patrol vehicle to call for back-up to assist with the stop. The back-up arrived within a few minutes, and Corporal Samuel re-approached the vehicle. At this time, Corporal

Samuel asked Mr. Simms to exit the vehicle so he could conduct a search of the Nissan. Mr. Simms complied. During the search, Corporal Samuel recovered a loaded Glock 22 .40 caliber handgun from the passenger-side glove compartment, ammunition and drug paraphernalia.

Mr. Simms was arrested and charged with illegal possession of a regulated firearm, possession of a regulated firearm being under twenty-one, loaded handgun in vehicle, carrying or transporting a handgun in a vehicle, and illegal possession of ammunition. He filed a pre-trial motion to suppress the evidence recovered by Corporal Samuel from the vehicle.

During the suppression hearing, Corporal Samuel testified that while he was speaking to Mr. Simms, he “detected a strong odor of what [he knew], through [his] knowledge, training, and experience, to be marijuana coming from inside the vehicle.” This prompted Corporal Samuel to search the vehicle. The suppression court judge, Hon. Wytonja L. Curry, found Corporal Samuel to be credible and denied the motion to suppress.

Prior to trial, the defense counsel filed a motion in limine to exclude from the jury that Corporal Samuel had probable cause to search the vehicle based on the odor of cannabis emanating from the car. The defense argued that Mr. Simms was not charged with possession of cannabis or drug paraphernalia and revealing that to the jury could be prejudicial. The trial judge, the Hon. Judy L. Woodall, granted the motion in limine, thereby prohibiting the parties from disclosing to the jury that the odor of cannabis was the basis of the search of the vehicle.

On the first day of trial, a dispute arose regarding chain of custody of the firearm that Corporal Samuel found in the vehicle. The State attempted to introduce a document attached to the firearm into evidence. The document indicated that other officers, none of whom testified, handled the handgun prior to trial. Defense counsel objected to the admission of the document stating they never received that document during discovery, despite multiple requests. Defense counsel also objected to the admission of the handgun because of the State's failure to prove chain of custody of the handgun thus questioning its authenticity. Based on these two contentions, the defense also moved for dismissal of all charges. The trial court denied the request for dismissal because it did not believe that "the sanction of dismissal was warranted in this case." Instead, the trial court prohibited the State from introducing the document attached to the handgun into evidence, but allowed the defense to use the document in cross-examination if counsel wanted to. On the second day of trial, the State attempted to enter into evidence a second document relating to the chain of custody of the handgun. This document also had not been disclosed in discovery. Once again, the defense moved for dismissal. The court denied the motion to dismiss, but ruled that the document could not be entered into evidence.

After both sides rested, the defense moved for a motion for judgment of acquittal on the two charges related to the wear/carry/transport of a weapon and the possession of handgun under the age of twenty-one. The judge granted the judgment of acquittal for the count related to possession under the age of twenty-one and denied the others. A jury found Mr. Simms guilty of the rest of the charges: illegal possession of a regulated

firearm, loaded handgun in vehicle, carrying or transporting a handgun in a vehicle, and illegal possession of ammunition.

ANALYSIS

1. The motion to suppress

When reviewing a circuit court’s denial of a motion to suppress evidence under the Fourth Amendment, we consider:

only the facts generated by the record of the suppression hearing. We consider that evidence in the light most favorable to the party that prevailed on the issue raised as grounds for suppression.

Suppression rulings present a mixed question of law and fact. We recognize that the hearing court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses. Accordingly, we defer to the hearing court’s findings of fact unless they are clearly erroneous, but we do not defer to the hearing court’s conclusions of law. Instead, we review the hearing judge’s legal conclusions de novo, making out own independent constitutional evaluation as to whether the officer’s encounter with the defendant was lawful.”

Lockard v. State, 247 Md. App. 90, 101 (2020) (cleaned up).

Mr. Simms argues that the trial court erred in denying his motion to suppress. His argument is twofold. First, he argues that Corporal Samuel did not have probable cause to search the vehicle because it was not clear where the odor was emanating from. Second, he argues that because Corporal Samuel was unable to discern whether the odor was cannabis or hemp, the search was unlawful. We find these arguments unpersuasive.

A. Probable Cause

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. U.S. Const. Amend. IV. Courts have recognized certain exceptions to the Fourth Amendment’s prohibitions that permit law enforcement officers to search a person, home, or vehicle without first obtaining a warrant. *Bowling v. State*, 227 Md. App. 460, 467 (2016). One of those exceptions to the warrant requirement is the “automobile exception” also known as the “*Carroll* doctrine.” *Id.* In *Carroll v. United States*, the Supreme Court found that a police officer “may search an automobile without a warrant, if he or she has probable cause to believe it contains evidence of a crime or contraband goods.” 267 U.S. 132, 155-56 (1925). Maryland courts have applied the *Carroll* Doctrine to cases involving cannabis. Mr. Simms asserts that the *Carroll* Doctrine is inapplicable to this case for two reasons.

Mr. Simms argues that Corporal Samuel did not have probable cause to search his vehicle because he failed to specify in his police report where the odor of cannabis was emanating from. During the suppression hearing, Corporal Samuel was cross-examined about the details of his police report. Corporal Samuel conceded that he did not note in his police report from where the odor was emanating, but testified that the odor was coming from the vehicle. Based on these inconsistencies, Mr. Simms argues the trial court should have concluded Corporal Samuel did not have probable cause and suppress the evidence obtained as a result of the search. We disagree. As stated above, “we defer to the hearing court’s findings of fact unless they are clearly erroneous[.]” *Lockard v.*

State, 247 Md. App. 90, 101 (2020) (cleaned up). The suppression court found Corporal Samuel’s testimony to be credible, and Mr. Simms does not point to anything that would suggest that conclusion is clearly erroneous. Any variance between the report and Corporal Samuel’s testimony went to his credibility. Because the suppression court found that the officer was a credible witness, we have no basis to conclude that the court erred when it denied the motion to suppress.

B. An odor of hemp or an odor of cannabis?

Mr. Simms challenges the established case law that the odor of cannabis provides probable cause to search a vehicle. *See, e.g., Robinson v. State*, 451 Md. 94, 130 (2017). Prior to 2014, possession of less than ten grams of cannabis was a misdemeanor that carried a maximum penalty of ninety days of incarceration and a fine of \$500. *Id.* at 96. In 2014, the Maryland General Assembly passed a law which decriminalized, but did not legalize, the possession of small amounts of cannabis. *Id.* Possession of less than ten grams of cannabis became “a civil offense” instead of a crime. *Id.* In 2018, the General Assembly modified the definition of cannabis and specified which parts of cannabis plants constitute illegal cannabis. Md. Code Ann., Crim. Law § 5-101(r). Specifically, hemp is defined as “the plant *Cannabis sativa* L. and any part of that plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis” and is not categorized as illegal cannabis. Md. Code Ann., Agric. §14-1202. Mr. Simms asserts that the legalization of hemp and the

decriminalization of cannabis affects the theory of probable cause espoused by the State in this case.

At the suppression hearing, Corporal Samuel testified that he could not distinguish between the odor of cannabis and the odor of hemp. Because of the officer's concession, Mr. Simms argues that Corporal Samuel had no basis to believe, based on odor alone, that what he was smelling was contraband. Mr. Simms relies on *Bailey v. State*, 412 Md. 349 (2010), to support his argument. We read *Bailey* more narrowly than does Mr. Simms.

In *Bailey*, the Court held that the odor of ether emanating from a suspect, by itself and without any other evidence of criminal activity, was insufficient to establish probable cause for an arrest. 412 Md. at 386–87. But the *Bailey* Court also noted that “The odor of ether is distinguishable from the odor of contraband like marijuana because the strong odor of ether is as consistent with lawful activity as it is with criminal activity.” *Id.* at 378 (cleaned up) (quoting *State v. Ibarra*, 282 Kan. 530, 552, 147 P.3d 842, 849 (2006)).

After possession of small amounts of cannabis was decriminalized by the General Assembly in 2014, the Court of Appeals determined that, decriminalization notwithstanding, “a law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle.” *Robinson v. State*, 451 Md. 94, 125 (2017). The Court concluded:

Upon careful consideration of the Fourth Amendment jurisprudence of the Supreme Court, *Bowling*,^[1] and authority from other jurisdictions that have addressed the decriminalization—or, in one instance, the legalization—of marijuana, we conclude that a law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle.

Our logic is straightforward. Decriminalization is not the same as legalization. Despite the decriminalization of possession of less than ten grams of marijuana, possession of marijuana in any amount remains illegal in Maryland. To be sure, the amended marijuana statute changed the categorization of, and maximum penalty for, possession of less than ten grams of marijuana. Specifically, possession of less than ten grams of marijuana is now categorized as a civil offense rather than a crime, and it is punishable by a fine, participation in a drug education program, an assessment for substance abuse disorder, and possible substance abuse treatment, rather than a fine and/or a period of incarceration.

Decriminalization notwithstanding, however, the possession of less than ten grams of marijuana—i.e., the possession of any amount of marijuana—remains illegal.

451 Md. at 125.

Mr. Simms concedes that we re-affirmed in *Bailey* that cannabis is contraband and has a distinctive odor and therefore can give rise to probable cause. *Id.* at 376. Despite

¹ In *Bowling v. State*, 227 Md. App. 460, 476 (2016), we stated:

[W]e conclude that, although the Maryland General Assembly made possession of less than 10 grams of marijuana a civil, as opposed to a criminal, offense, it is still illegal to possess any quantity of marijuana, and marijuana retains its status as contraband. Accordingly, we hold that this legislation does not change the established precedent that a drug dog's alert to the odor of marijuana, without more, provides the police with probable cause to authorize a search of a vehicle pursuant to the *Carroll* doctrine.

this, Mr. Simms believes that the recent changes in cannabis law fatally weakens the State’s theory of probable cause in this case. He points out that, in *Bailey*, the Court of Appeals held that the odor of ether is irrelevant for Fourth Amendment purposes. Mr. Simms argues that we should treat the odor of hemp/cannabis in the same way.

There are two problems with this contention. First, in contrast to *Bailey*, Corporal Samuel testified that there were other factors supporting probable cause: namely, the registration for the vehicle that Mr. Simms was driving was suspended; and the two passengers in the automobile fled as soon as it was stopped.

Second, and without commenting on the merits of Mr. Simms’s contentions, the Court of Appeals’ decision in *Robinson* is binding precedent. It is not our role as an intermediate appellate court to overrule or modify decisions by the Court of Appeals.

2. The Discovery Violations

A. The first day of trial

On the first day of trial, the State attempted to enter into evidence a document titled “Property Book” that was attached to the firearm. The Property Book identified all of the police officers who handled the firearm after it was confiscated. Defense counsel objected claiming that they never received a copy of the Property Book prior to trial, and that the document indicated someone other than Corporal Samuel had handled the weapon. The State countered that the Property Book document was duplicative and contained the same information as the “Evidence Receipt and Property Receipt” that was

submitted to the defense during discovery. This led to the following exchange between the trial court and counsel:

[Defense counsel]: Your Honor, the firearm hasn't been admitted into evidence yet. There's document on that firearm that the State's Attorney has never shown me before that's attached to that firearm that related to how the firearm was stored and transported.

The Court: Counsel?

[Defense counsel]: It was never provided to me in discovery.

* * *

[Prosecutor]: So, Your Honor, that form is duplicitous [sic] to what has already been submitted to defense counsel.

[Defense Counsel]: No, it's not.

* * *

[Prosecutor]: I've already submitted the property logs to defense counsel, which replicates the information that's on that front sheet. Essentially what that property log is on the front is just a general log sheet of the –

The Court: So, you're saying you gave it to him?

* * *

[Prosecutor]: No. What I gave him were the property evidence receipts, which contains the same information that's on that sheet. Now, there's any issue in regards to the, I guess – any issues in regard to that document being attached, the State has no problem removing that.

* * *

[Defense counsel]: Your Honor, those are not the things that he gave to me. What he has there is a totally new document that he – that the State – if you ask him directly, that front sheet up there, did he provide it in discovery, the State would have to say no, he never provided that to me in discovery.

The Court: Okay. So, he's prepared to take it off.

[Defense counsel]: That's the evidence that I needed to see in order to prepare for trial.

[Prosecutor]: Your Honor, again, it's duplicitous [sic]. It has the same information that's already been given to defense counsel.

The defense moved to dismiss the matter because the Property Book document raised two problems: One a discovery violation and two, it called into question the chain of custody of the handgun. After hearing both sides, the trial court made its determination.

The Court: So, I received your request late yesterday to dismiss this matter for, number one, a discovery violation and, number two, an issue with the chain of custody of the handgun. I am denying both those motions, because I do not believe the sanction of dismissal is warranted in this case. The Court notes that the – there was a piece of paper that appeared to be a chain of custody log, but again, [The State] provided the Court with Section 10 of the Courts and Judicial Proceeding Article, which relates only to drug chain of custody.

The Court found there was a discovery violation, but decided that dismissing the case was too severe a sanction. Instead, the Court ruled:

Counsel, you are free to argue what you need to in terms of cross-examining the officer. I believe that that might be an appropriate sanction with respect to the fact that there is a name on this piece of paper. But, again, the whole point is to maintain the integrity of the evidence. And there's no suggestion one way or the other whether that gun had been tampered with in any way. So, for those reasons, I'm denying the motion.

Consistent with its ruling, the trial court did not allow the State to introduce the Property Book into evidence; instead, it allowed defense counsel to cross-examine Corporal Samuel about the document, and then the State could follow up with questions afterwards. The defense asked Corporal Samuel questions about the Property Book

document and introduced it into evidence as Defense Exhibit No. 2. The issue before us is whether the trial court should have granted his motion to dismiss the charges.²

The circuit court has broad discretion in administering discovery. *Alarcon-Ozoria v. State*, 477 Md. 75, 266 A.3d 313, 321 (2021) (quoting *Williams v. State*, 416 Md. 610, 698 (2010)). This Court “reviews for abuse of discretion of a circuit court’s decision to impose, or not to impose a sanction for a discovery violation.” *Dackman v. Robinson*, 464 Md. 189, 231 (2019) (citing *Beka Indus., Inc. v. Worcester County Bd. Of Educ.*, 419 Md. 194, 232 (2011)). If the circuit court “made no specific finding as a matter of law that the State violated the discovery rule, we exercise independent *de novo* review to determine whether a discovery violation occurred.” *Alarcon-Ozoria v. State*, 477 Md. at 321. Furthermore, we review any discovery violation for harmless error. *Id.* “If the trial judge erred because the State did in fact violate the discovery rule, we consider the prejudice to

² In his brief to this Court, Mr. Simms asserts that although his trial counsel “moved to ‘dismiss’ based on the State’s discovery violations. In context, it is apparent that counsel was moving for a mistrial.” We decline to engage in this fiction. The transcript is unambiguous—counsel wanted the charges against his client dismissed. And in any event, the authority that Mr. Simms cites, *Lee v. United States*, 432 U.S. 23, 29–30 (1977), is inapposite. The issue in *Lee* was whether the trial court’s order “dismissing” a case because the indictment omitted an element of the offense precluded re-prosecution under the Double Jeopardy Clause. The Court held that the term used by the trial court “dismissal” as opposed to “mistrial” was not dispositive and that the intent of the trial court was dispositive. *Id.* at 30. The record in the present case is clear as to defense counsel’s intent.

the defendant in evaluating whether such error was harmless. *Id.* (citing *Williams v. State*, 364 Md. 160, 169 (2001)).

First, we consider whether there was a discovery violation in the first place.

Maryland Rule 4-263(d)(9) provides that

without the necessity of a request, the State’s Attorney shall provide to the defense . . . the opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State’s Attorney intends to use at a hearing or at trial[.]

Returning to the case before us, it is clear that the State failed to adhere to the discovery guidelines. The trial court recognized this and imposed two sanctions on the government: the first, forbidding the State from asking Corporal Samuel questions about the Property Book, but allowed the defense to use the document on cross-examination, and two, forbidding the State from entering a different chain of custody document into evidence. On appeal, Mr. Simms argues that the sanctions for the discovery violations were too lenient. The belated disclosure of the chain of evidence document that took place mid-trial compromised the defense’s ability to prepare for trial. Because the discovery violation was so severe, Mr. Simms believes either suppressing the firearm or declaring a mistrial were the only appropriate remedies. Since the trial court did not do either, Mr. Simms believes the trial court abused its discretion. We disagree.

Maryland Rule 4-263 gives trial courts great leeway in imposing appropriate sanctions. If there is a discovery violation, a trial court could “order that party to permit

the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable *continuance*, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances.” Md. Rule 4-263(n) (emphasis added).

The *fons et origo* of Maryland’s well-developed body of caselaw as to how trial courts should address discovery violations is Judge Rodowsky’s opinion for the Court in *Taliaferro v. State*, 295 Md. 376, 390-391 (1983). See, e.g., *7222 Ambassador Rd., LLC v. Nat’l Ctr. on Institutions & Alternatives, Inc.*, 470 Md. 66, 73 (2020) (“[T]he factors governing the imposition of discovery sanctions [are] often referred to as the “*Taliaferro* factors.”); *Warehime v. Dell*, 124 Md. App. 31, 45 (1998); see also *Shelton v. Kirson*, 119 Md. App. 325, 331 (“stating that “the *Taliaferro* guidelines apply in civil cases as surely as they do in criminal cases”), *cert. denied*, 349 Md. 236 (1998);

The *Taliaferro* Court explained that

Principal among the relevant factors which recur in the opinions are whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

295 Md. at 390-391.

The first factor considers *whether the disclosure violation was technical or substantial*. The Property Book indicates that an officer other than Corporal Samuel handled the firearm after it was recovered from the automobile. The weapon was

introduced into evidence. The failure to disclose the Property Book was a substantial violation of the State’s discovery obligations.

The timing of the disclosure weighs against the State. It was only during trial that the discovery violation was revealed to the court. Furthermore, the government provided no explanation as to how or why the violation occurred. However, Mr. Simms did not argue during the trial nor to this Court that the violation was intentional. The record suggests that negligence—as opposed to a deliberate intention to obtain an unfair advantage—was the reason why the State failed to disclose the information on a timely basis.

In our view, *the degree of prejudice to Mr. Simms* was not significant. The evidentiary threshold for authenticating physical evidence is not high—the proffering party need only show that the item is “in substantially the same condition that it was in at the time of the crime and must be properly identified.” *Best v. State*, 79 Md. App. 241, 249–50 (1989) (cleaned up) (quoting *Amos v. State*, 42 Md. App. 365, 370 (1979)). Because “controlled substances are more vulnerable to being tampered with than other types of evidence,” the chain of custody standards are much higher for controlled substances than for other types of evidence.” *Irwin Indus. Tool Co. v. Pifer*, 478 Md. 645, 675 (2022); *see* Courts & Jud. Proc. §§ 10-1001–03 (setting out specific standards for chain of custody evidence relating to controlled dangerous substances).

In the present case, the item in question, a firearm, is not susceptible to the sort of tampering that can arise with controlled dangerous substances. Corporal Samuel testified that the firearm that was introduced into evidence was the one that he had collected from

Mr. Simms's vehicle. Therefore, Corporal Samuel's testimony was enough to admit the firearm into evidence. The Property Book document, if admitted into evidence as part of the State's case, would have only bolstered this testimony.

Finally, whether the prejudice could have been cured by a postponement is not relevant in this case because Mr. Simms did not seek this relief—he asked the court to dismiss the charges against him.

As a general rule, “in fashioning a sanction [for a discovery violation], the court should impose the least severe sanction that is consistent with the purpose of the discovery rules.” *Thomas v. State*, 397 Md. 557, 571–72 (2007) (cleaned up). The purpose of the discovery rules is to avoid unfair surprise at trial. The trial court did not abuse its discretion when it ordered that the prosecution could not introduce the Property Book document into evidence and that the defense could use it as a basis for cross-examining Corporal Samuel.

B. The second day of trial

Another discovery dispute arose on the second day of trial. During his cross-examination, Corporal Samuel referred to another document relating to the chain of custody of the handgun. Defense counsel objected to the admission of that document and the Court sustained that objection. Defense counsel then renewed their motion to dismiss as a sanction for the State's discovery violation. To this Court, Mr. Simms argues that he was prejudiced by the untimely disclosure of the document's existence and the court erred in denying his motion to dismiss the charges against him.

One problem with this contention is that we cannot establish the significance of the document referred to by Corporal Samuel because it is not in the record nor was its contents described in any detail at trial or on appeal. All we know is that the trial court ruled that the State could not introduce the document into evidence. In light of the paucity of information in the record relevant to Mr. Simms’s contention, we are not convinced that the trial court abused its discretion by imposing a sanction on the State that fell short of dismissal of the charges against him.³

3. Mr. Simms did not preserve his claim that the State failed to prove Mr. Simms possessed the firearm.

Finally, Mr. Simms asserts that the evidence introduced at trial was insufficient to sustain his conviction. Specifically, he argues that the State’s evidence connecting Mr. Simms to the firearm in the vehicle amounted to nothing more than evidence that he was in proximity to the firearm, which, he contends is insufficient to establish possession of a firearm. In its brief, the State suggests that Mr. Simms did not preserve the contention for appellate review. We agree.

“In a jury trial, the only way to raise and preserve for appellate review the issue of the legal sufficiency of the evidence is to move for a judgment of acquittal *on that*

³ Mr. Simms also contends that, had he known that the Property Book existed prior to trial, he “may very well have” accepted a plea bargain offered by the State prior to trial. But this argument was never raised to the trial court and is not preserved for appellate review. Md. Rule 8-131(a).

ground.” *Starr v. State*, 405 Md. 293, 303 (2008) (emphasis added), quoting *Fraidin v. State*, 85 Md. App. 231, 244-45 (1991)). When moving for a judgment of acquittal, Maryland Rule 4-324(a) requires a defendant to “state *with particularity all reasons why the motion should be granted.*” (Emphasis added.) A defendant is required to inform the trial court of “the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient.” *Stanley v. State*, 248 Md. App. 539, 563 (2020) (quoting *Fraidin*, 85 Md. App. 244-45; accord *Arthur v. State*, 420 Md. 512, 522 (2011)).

Mr. Simms was charged with illegal possession of a regulated firearm, possession of a regulated firearm being under twenty-one, loaded handgun in vehicle, carrying or transporting a handgun in a vehicle, and illegal possession of ammunition. Mr. Simms raised four issues as to why his judgment for acquittal should have been granted: (1) the State’s failure to show the gun’s operability at trial; (2) the State’s failure to present evidence that Mr. Simms was under the age of twenty-one when he was arrested;⁴ (3) the lack of chain of custody for the weapon; and (4) the arresting officer’s failure to document the firearm’s serial number for later identification. These contentions, whether considered separately or collectively, do not amount to an assertion that the evidence presented by the State was inadequate as a matter of law.

⁴ The trial court granted the motion as to that count.

In his reply brief, Mr. Simms argues that he preserved the possession claim through his motion for judgment of acquittal at the close of the State’s case and again after the defense rested. Specifically, he asserts that “in challenging the evidence, defense counsel was, in fact, challenging among other elements the possession of the firearm. The possession argument was implicit in counsel’s argument regarding the chain of custody.” We find Mr. Simms’s reasoning unpersuasive. Although a defendant may “present the appellate court with a more detailed version of the argument advanced at trial,” trial courts need not “imagine all reasonable offshoots of the argument actually presented to them.” *Starr*, 405 Md. at 303.

In order to preserve a claim that the evidence presented at trial was insufficient as a matter to law to prove the charges against him, Mr. Simms was required to clearly communicate this contention to the trial court. He did not do so. We decline to consider his sufficiency contentions for the first time on appeal.

**THE JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY ARE AFFIRMED.
APPELLANT TO PAY COSTS.**