

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2435

September Term, 2024

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SEAN CLARK

v.

STATE OF MARYLAND

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Arthur,  
Ripken,  
Sharer, J. Frederick,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Ripken, J.

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Filed: May 13, 2026

In January of 2025, a jury in the Circuit Court for Carroll County found Sean Clark (“Appellant”) guilty of possession of a weapon in a place of confinement. Appellant was sentenced to a term of five years’ incarceration, to be served consecutively to the unrelated sentences he was already serving. Appellant filed the subject appeal, presenting the following issues for our review:<sup>1</sup>

- I. Whether this court should conduct plain error review of the trial court’s jury instructions or of the evidence the jury was permitted to review during deliberations.

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<sup>1</sup> Rephrased from:

1. Was it plain, reversible error for the trial judge, after having granted the motion for judgment of acquittal on the assault charge, explicitly finding that there was no evidence that [Appellant] was involved in the assault, to:
  - A) Repeat for the jury and instruct the jury to consider as “proven” “facts” the four stipulations specifically related to the dismissed assault charge and [the victim’s] injuries, all of which were highly prejudicial to [Appellant];
  - B) Allow the jury to take the photographs of the bloody body of the assault victim into the jury room, and not instruct the jury to disregard the photographs they had seen, but rather instruct the jury to consider all the exhibits as evidence;
  - C) Allow the jury to take into the jury room the video capturing the events of the dismissed assault charge, and not instruct the jury to disregard the video they had seen but rather instruct the jury to consider all the exhibits as evidence[?]
2. Did the trial judge commit reversible error by failing to grant the Motion for Judgment of Acquittal as to the contraband charge, and was there insufficient evidence for the jury’s verdict where the only evidence – from witnesses or otherwise – against [Appellant] was contradictory, internally inconsistent testimony from one witness, which differed from his previous, earlier sworn statements on the same, central topic[?]
3. Was each of these plain errors harmless beyond a reasonable doubt?
4. Is [p]lain [e]rror [r]eview appropriate here?

- II. Whether the evidence is sufficient to sustain Appellant’s conviction for possession of a weapon in a place of confinement.

For the reasons to follow, we shall affirm the judgment of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In June of 2024, an arrest warrant was issued for Appellant in relation to an incident that occurred in February of 2024 at the Central Maryland Correctional Facility (“CMCF”), where Appellant was serving sentences for convictions unrelated to the one at issue. During that time, correctional officers discovered an inmate, Kashif Brown (“the victim”), bleeding from the mouth and suffering from multiple stab wounds. After the victim was transported for medical treatment, correctional officers reviewed video footage and discovered what appeared to be a group of inmates assaulting the victim. When the officers approached the group of inmates, Appellant was observed walking away while discarding a “homemade weapon[.]” The weapon was described as a metal screw approximately five and half inches in length, with one end pointed and the other end wrapped in a purple latex glove.

In August of 2024, a jury indicted Appellant on one count of possession of a weapon while confined, and one count of second-degree assault against the victim. A jury trial was held in January of 2025.

The State called personnel from CMCF as witnesses to testify regarding the incident. Sergeant Sheikha Touray (“Sgt. Touray”) testified that on February 11, 2024, correctional officers reported via radio that they encountered the victim in a bloodied state. The victim was taken to receive medical treatment, where Sgt. Touray observed blood

coming out of the victim's upper back. The victim's injuries were photographed, and those pictures were later admitted into evidence.

Following the discovery of the victim, Sgt. Touray reviewed video surveillance footage depicting inside CMCF. This included video footage from two locations: a phone room and the housing unit where Appellant slept. The footage from both locations was admitted into evidence and played for the jury.

The footage from the phone room depicted a group of individuals approaching the victim and assaulting him. Other incarcerated individuals are also seen in the footage apparently observing the altercation. The angle of the camera does not capture a complete depiction of the assault. Sgt. Touray identified Appellant in the video; however, Sgt. Touray acknowledged on cross examination that the footage does not show Appellant striking the victim.

After the State concluded its direct examination of Sgt. Touray, the prosecutor read to the jury the following which contained two stipulations agreed to by Appellant:

[T]he victim . . . was transported to [s]hock [t]rauma for medical treatment where he underwent surgery for his injuries and . . . [the victim] has never provided a statement regarding this incident to any staff at CMCF or to the State's Attorney's office.

The court then explained to the jury that “a stipulation between parties is a way of relieving the parties from bringing in a person to testify to that evidence. In other words, both sides agree to it. So[,] you should consider the stipulations as proven. They are undisputed.”

Officer Daisi Awe (“Ofc. Awe”) also provided testimony. He indicated that on the day of the February incident, a code was called which indicated officers were to respond. Based on camera review of the phone room, certain incarcerated individuals were identified to be “called in for questioning.” Among the individuals to be retrieved was Appellant. Two officers approached the housing unit, and Ofc. Awe followed. When the officers went into the housing unit, Ofc. Awe observed Appellant, who was standing between two bunks, retrieve a homemade weapon from his pocket and throw it on the ground away from his person. Ofc. Awe picked the weapon up from the floor, completed a chain of custody form, and deposited that weapon in a weapon locker. The chain of custody forms and the weapon were admitted as exhibits at trial. Pictures of the weapon were also admitted. The photographs depicted the weapon next to a ruler for scale, demonstrating the object to be approximately five and a half inches in length, with the sharpened end of a screw on one end, and purple handle on the other end.

Ofc. Awe escorted Appellant to the medical unit for evaluation. As they walked, incarcerated individuals at the other end of the hallway greeted Appellant. However, Appellant spoke to them and stated “that they f[\*\*\*]ed up, that they should have picked [up] the contraband, the weapon, when he threw it off.” In answering the court’s questions regarding this exchange, Ofc. Awe clarified that Appellant had indicated that he “threw that s[\*\*]t on the floor for them to pick up.”

The video footage from the housing unit was played for the jury. Ofc. Awe identified himself, Appellant, and the other officers depicted in the footage. The video footage showed correctional officers entering the room, and Appellant beginning to walk away

from them. After officers escorted Appellant from the area, the footage displays Ofc. Awe bending to the floor before departing the area with the correctional officers. On cross examination, the defense provided Ofc. Awe with a prior statement he made in which he described the weapon falling from Appellant’s pants rather than Appellant throwing the weapon. Ofc. Awe acknowledged the statement; however, in his view, the prior statement was not a discrepancy, as he asserted the pocket was part of the pants, and he recalled seeing Appellant throw the weapon.

In addition, the parties agreed to several stipulations that the State read to the jury. They stipulated that Appellant was lawfully detained at the CMCF on the date of the February incident; that the reason for his incarceration was irrelevant; and that the jury was not to investigate or speculate as to the reason for his incarceration. The parties further stipulated that “self-defense is not generated by the evidence” and “there was no consent to the assault” by the victim. Finally, in response to a comment made by Appellant’s counsel in opening argument,<sup>2</sup> the parties stipulated that “the other three incarcerated individuals who are alleged to be involved in the assault on [the victim] have all been charged.”

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<sup>2</sup> In opening argument, Appellant’s counsel indicated that the other individuals alleged to have been involved with the assault were not present. The State later argued that there should be a stipulation or curative instruction explaining that the other three involved individuals were criminally charged to avoid a suggestion that Appellant “is the one holding the bag and everybody else got away with it[.]” Appellant’s counsel argued that it was factually correct that the other three defendants would not be present. The court indicated that something needed to be put before the jury so they would not be misled, and requested the parties to provide input on how the court should remedy the issue. The parties agreed to present a stipulation.

After the State rested its case, Appellant moved for a judgment of acquittal, asserting that the State had not demonstrated that Appellant was involved in the assault, and that Ofc. Awe's testimony had been inconsistent related to the possession of a weapon in a place of confinement. The court granted the motion as to the second-degree assault charge, ruling that it did not "find that there is sufficient evidence that would enable this jury to do anything other than guess as to what took place off the video, and there is no firsthand account of what took place off the video." The court further observed that the video footage did not show "beating or cutting[,]" and while Appellant can be seen moving at the back of the group, the video did not depict contact between Appellant and the victim or concert of action between Appellant and the group. The court denied the motion for judgment of acquittal as to the possession of the weapon, noting that although there was an "impeaching phrase from a report[,]" the question of whether to believe Ofc. Awe's trial testimony was left to the jury.

On the second day of trial, the defense rested its case without presenting evidence. Appellant renewed his motion for judgment of acquittal, which was denied. Prior to the court providing instructions to the jury, the State inquired regarding how the stipulations would be handled, as they were not listed within the jury instructions. The court indicated that it would read the stipulations during the instructions; however, the court would not send a list of stipulations to the jury room. No objection was made to this decision. The court then instructed the jury. The court included instructions relating to consideration of evidence:

During your deliberations, you must decide this case based solely on the evidence that you and your fellow jurors heard together in the courtroom. You must not do any outside research or investigation. Do not use any outside sources such as books, electronic devices, computers, or phones to do research about this case even if you believe the information would be helpful.

While you are deliberating, you cannot have in the jury room any computers, cell phones, or other electronic devices, and you must not communicate with anyone outside the jury room. If there are breaks in deliberation, I may allow you to communicate with your family or friends, but do not communicate about the case or your deliberations.

In making your decision, you must consider the evidence in this case. That is the testimony from the witness stand, any physical evidence or exhibits admitted into evidence, depositions, and the stipulations of the parties. In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

The following things are not evidence, and you should not give them any weight or consideration. Any testimony that I struck or told you to disregard, and any exhibits that I struck but did not admit into evidence, and questions that the witnesses were not permitted to answer and objections of the lawyers, and the charging document.

After the court instructed the jury on circumstantial and direct evidence, the court further explained that the jury should “consider all the evidence presented, whether direct or circumstantial. You may not convict [Appellant] unless you find that the evidence, when considered as a whole, establishes his guilt beyond a reasonable doubt.” The court then read the stipulations to the jury. At the conclusion of the stipulations, the court stated that “[t]hese facts are now not in dispute and should be considered proof.”

The court then explained that one of the charges against Appellant described at the beginning of the trial was no longer part of the case, and that the jury should not consider the second-degree assault charge.

After the court concluded its instructions, a brief bench conference ensued, during which Appellant’s counsel confirmed that there were “[n]o objections” to the instructions that the court had provided to the jury. The parties both presented closing arguments, in which each focused on the elements of the charge of possession of a weapon in a place of confinement and neither party addressed the second-degree assault charge. In closing argument, the defense urged the jury to “consider all the evidence that is presented before you, but also consider in your mind what more do you need to get over that reasonable doubt[.]”

Following closing arguments, the court inquired of the parties if they wanted the jury to be told “not to waste any time looking at what took place in the phone room[.]” The defense indicated that an instruction to that effect may be helpful and “might speed things along.” The State indicated that an instruction may draw the jury’s attention to that issue. The court indicated that it would remain silent and not bring up the topic, as “the less said, the better.” Neither party objected; nor did either party comment further regarding the topic.

The jury found Appellant guilty on the charge of possession of a weapon in a place of confinement. The court sentenced Appellant to five years’ incarceration, to run consecutively to the sentences he was currently serving. This timely appeal followed.

## DISCUSSION

### **I. WE DECLINE TO ENGAGE IN PLAIN ERROR REVIEW OF THE CIRCUIT COURT’S JURY INSTRUCTIONS OR OF THE EVIDENCE THE JURY WAS PERMITTED TO REVIEW DURING DELIBERATIONS.**

#### **A. Party Contentions**

Appellant asserts that the trial court committed plain error in several aspects related to the jury instructions.<sup>3</sup> First, Appellant contends that the court erred in reading all of the stipulations to the jury—including the stipulations he now claims related only to the assault—and in instructing the jury that the stipulated facts should be considered proven. Second, Appellant posits that the court erred in failing to give an instruction to the jury that it should not consider evidence concerning the assault. Finally, Appellant claims the court erred in allowing evidence relating to the assault to be provided to the jury during deliberations. Appellant contends that these alleged errors prejudiced him and impacted the jury’s decision.

The State responds that plain error review is not available because Appellant affirmatively waived the argument he now propounds. Moreover, the State asserts that the court gave instructions in accordance with the law and allowed the jury to consider admitted evidence, and therefore did not commit error. The State contends that Appellant did not demonstrate prejudice or unfairness, and therefore, the elements required before plain error review may be conducted are not met.

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<sup>3</sup> Appellant did not object before the trial court when these alleged errors occurred, and he does not contend that he preserved his arguments in this regard.

## **B. Analysis**

Plain error review is an infrequent discretionary exception to the preservation requirement in Maryland Rule 8-131(a)<sup>4</sup> and is “reserved for those errors that are compelling, extraordinary, exceptional[,] or fundamental to assure the defendant of a fair trial.” *Newton v. State*, 455 Md. 341, 364 (2017) (internal citation and quotation marks omitted). “[A]ppellate review under the plain error doctrine ‘1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.’” *White v. State*, 223 Md. App. 353, 403 n.38 (2015) (quoting *Hammersla v. State*, 184 Md. App. 295, 306, *cert. denied*, 409 Md. 49 (2009)). Appellate discretion to consider unpreserved issues should be exercised only “rarely,” as our system ordinarily requires that all challenges to the trial court’s action be in the first instance presented to that court, so that “(1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.” *Kelly v. State*, 195 Md. App. 403, 431 (2010) (citations and quotations omitted).

Before an appellate court can exercise discretion under the plain error doctrine, four conditions must be met:

1. There must be a legal error that has not been intentionally relinquished or abandoned by the appellant.
2. The error must be clear or obvious, and not subject to reasonable dispute.
3. The error must have affected the appellant’s substantial rights, which in the ordinary case means that it affected the outcome of the proceedings.

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<sup>4</sup> Ordinarily, an appellate court will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a).

4. If the previous three parts are satisfied, the appellate court has discretion to remedy the error, but it should exercise that discretion only if the error affects the fairness, integrity[,] or reputation of judicial proceedings.

*Winston v. State*, 235 Md. App. 540, 567 (2018) (citing *Newton*, 455 Md. at 364) (further citations omitted). Even if the conditions are satisfied and plain error is established, appellate review is discretionary, not mandatory. *Morris v. State*, 153 Md. App. 480, 507 (2003) (an appellate court’s declination to conduct plain error review is sufficient to dispose of such a request, as “the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation”).

Because each of the four conditions is “a necessary condition for plain error review,” an appellate court “may not review the unpreserved error if any one of the four [conditions] has not been met.” *Winston*, 235 Md. App. at 568. Similarly, the appellate court’s analysis “need not proceed sequentially through the four conditions; instead, the court may begin with any one of the four and may end its analysis if it concludes that [the] condition has not been met.” *Id.*

We commence our analysis with examination of whether the alleged error was clear and obvious rather than subject to reasonable dispute. *See Beckwitt v. State*, 477 Md. 398, 464–65 (2022) (citing *Newton*, 455 Md. at 364). In relation to the stipulations, Appellant contends it was clear and obvious error for the court to read them to the jury because they were “irrelevant and prejudicial” and were unduly emphasized. Appellant claims the photographs of the victim’s injuries and the video of the phone room were also irrelevant and prejudicial because they related only to the assault charge that was no longer before

the jury. Appellant claims that it was error 1) for the court to instruct the jury to consider the stipulations as established facts; 2) for the court to “fail to instruct the jury to disregard” the photographs and the phone room video and to instruct the jury to consider the photographs and phone room video along with the other admitted evidence; and 3) for the court to allow the jury to have the photographs and phone room video during deliberations.

*Instructions on Stipulations*

“Maryland appellate courts strongly favor the use of pattern jury instructions.” *Rainey v. State*, 480 Md. 230, 270 n.14 (2022). “Although the use of a pattern jury instruction does not insulate a conviction against review, it is a factor in our analysis.” *Yates v. State*, 202 Md. App. 700, 723 (2011), *aff’d*, 429 Md. 112 (2012). “[A] circuit court’s use of a pattern jury instruction, without objection, weighs heavily against plain error review of the instructions given.” *Id.* at 724.

In relation to stipulations, this Court has observed that by consenting to a stipulation of fact, a defendant relieves the State of its obligation to prove that fact. *Smith v. State*, 225 Md. App. 516, 528 (2015). Moreover, a defendant suffers no prejudice when that stipulation is presented to the jury by the court instead of the prosecutor. *See id.* Further, the Maryland Pattern Jury Instructions offer the following pattern instruction in relation to stipulations of fact: “The State and the defense have agreed that [agreed facts]. These facts are now not in dispute and should be considered proven.” MPJI-Cr 3:02A.

Here, after the State read the first stipulations into the record, the court explained to the jury that “a stipulation between parties is a way of relieving the parties from bringing in a person to testify to that evidence. In other words, both sides agree to it. So[,] you should

consider the stipulations as proven. They are undisputed.” At the conclusion of the State’s case, the court explained the following: “As I previously explained to you, matters of stipulation are timesavers. You should consider the matters of the stipulations to be true. They are not contested by either party.” Finally, in instructing the jury, the court read the stipulations and then stated, “These facts are now not in dispute and should be considered proof.” The language of these explanations and instructions closely tracks the language of this Court in *Smith* and in the pattern jury instruction. *See* 225 Md. App. at 524–25, 528; *see also* MPJI-Cr 3:02A. They are also consistent with this Court’s previous explanation of the function and effect of a factual stipulation. *Barnes v. State*, 31 Md. App. 25, 35 (1976) (“Under an agreed statement of facts both State and the defense agree as to the ultimate facts. Then the facts are not in dispute, and there can be, by definition, no factual conflict. The trier of fact is not called upon to determine the facts as the agreement is to the truth of the ultimate facts themselves. There is no fact-finding function left to perform.”).

We further observe that immediately after reading the stipulations, the court instructed the jury that

[a]t the beginning of the trial, I described the charges against [Appellant]. One of those charges is no longer a part of this case. You should not consider that charge or the reason that that charge is no longer before you. The only charge left for you to consider is the possession of a weapon while confined and detained. The second[-]degree assault charge is no longer a part of this case, and you should not consider that charge[,] for that charge is no longer before you. The only charge left for you to consider is the possession of a weapon while confined and detained.

Appellant cites no authority establishing that a trial court must, as a matter of law, abstain from reading stipulations to the jury if those stipulations relate to charges for which

a defendant has been acquitted. Instead, Appellant cites two cases—*Wisneski v. State*, 169 Md. App. 527 (2006) and *Sherman v. State*, 288 Md. 636 (1980)—to support his assertion that it was plain error for the trial court to read the stipulations concerning the dismissed assault charge. Neither case is apposite. In *Wisneski*, this Court reviewed a preserved claim of error involving a trial court’s decision to reopen evidence following the close of the defendant’s case to allow the State to present stipulations to the jury. 169 Md. App. at 534. In that case, the stipulations were read once by the trial court to avoid unnecessary emphasis. *Id.* This Court held that the trial court did not abuse its discretion in reopening the evidence. *Id.* at 555. *Wisneski* bears little resemblance to the present case, as the analysis there concerned a trial court’s discretion to reopen evidence over objection and allow evidence out of order, whereas here, the court did not reopen evidence and instructed the jury regarding treatment of factual stipulations. *See id.* at 552–56.

Likewise, *Sherman* has little application to the present case. In *Sherman*, over the defendant’s objection, the trial court allowed a jury to take with it to the jury room during deliberations the indictment which contained two charges for which the defendant had been acquitted. 288 Md. at 638. At the time, the rule governing what items jurors could take with them to the jury room for deliberations specified that jurors could “take into the jury room all exhibits which have been admitted into evidence and *charging documents which reflect only the charges upon which the jury is to deliberate*[.]” *Id.* at 639 (emphasis added) (quoting former Md. Rule 758(a)). An indictment reflecting an acquitted charge that was also prohibited by rule from being sent with the jury is dissimilar to the present case, where

the trial court re-read a stipulation that was already admitted into evidence and which was not prohibited from consideration by rule.

As the above analysis demonstrates, there is at minimum a reasonable basis to suggest that the court’s instructions regarding the stipulations were correct. Thus, any alleged error regarding the stipulations and surrounding instructions was not clear or obvious and rather is subject to reasonable disagreement. *See Beckwitt*, 477 Md. at 464–65. Therefore, the circumstances of this case do not satisfy the conditions for plain error review of this issue. *See id.*

*Instructions on Consideration of Evidence*

As explained *supra*, “Maryland appellate courts strongly favor the use of pattern jury instructions.” *Rainey*, 480 Md. at 270 n.14. “Although the use of a pattern jury instruction does not insulate a conviction against review, it is a factor in our analysis.” *Yates*, 202 Md. App. at 723. “[A] circuit court’s use of a pattern jury instruction, without objection, weighs heavily against plain error review of the instructions given.” *Id.* at 724.

The Maryland Pattern Jury Instructions regarding what constitutes evidence reflects the following:

In making your decision, you must consider the evidence in this case; that is (1) testimony from the witness stand; and (2) physical evidence or exhibits admitted into evidence; and (3) stipulations; and (4) depositions. . . .

In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

The following things are not evidence, and you should not give them any weight or consideration: (1) any testimony that I struck or told you to disregard and any exhibits that I struck or did not admit into evidence; and

(2) questions that the witnesses were not permitted to answer and objections of the lawyers; and (3) the charging document.

MPJI-Cr 3:00 (brackets omitted).

Here, the trial court's jury instructions closely tracked the pattern instruction:

In making your decision, you must consider the evidence in this case. That is the testimony from the witness stand, any physical evidence or exhibits admitted into evidence, depositions, and the stipulations of the parties. In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

The following things are not evidence, and you should not give them any weight or consideration. Any testimony that I struck or told you to disregard, and any exhibits that I struck but did not admit into evidence, and questions that the witnesses were not permitted to answer and objections of the lawyers, and the charging document.

During the instructions, the trial court also emphasized to the jury that one of the charges described at the beginning of trial was no longer a part of the case, and the only charge remaining for the jury to consider was the charge of possession of a weapon while confined and detained.

These instructions, to which there was no objection, closely tracked the pattern instructions and accurately described the law. Moreover, the court's instruction to the jury regarding the remaining charge in the case provided guidance to the jury that they were not to consider the second-degree assault charge. Appellant provides no authority to support his claim that it was clear and obvious error for the court to thus instruct the jury, nor for his claim that it was clear and obvious error in that the court did not *sua sponte* instruct the jury to disregard certain admitted evidence. Appellant likewise contends that the court's

failure to instruct the jurors that they should not consider evidence pertaining to the second-degree assault was clear and obvious.

As with the stipulations, there is at minimum a reasonable basis to suggest that the court's instructions regarding the consideration of evidence was correct. Thus, any alleged error regarding these instructions was not clear or obvious and rather is subject to reasonable disagreement, and the circumstances of this case do not satisfy the conditions for plain error review of this issue. *See Beckwitt*, 477 Md. at 464–65.

*Allowing Admitted Evidence into the Jury Room*

Maryland Rule 4-326(b) provides that unless the trial court makes a discretionary ruling that good cause exists to withhold evidence from the jury room, exhibits admitted into evidence may be taken into the jury room by the jury during deliberations. The Supreme Court of Maryland has ruled that where “evidence has been admitted and the trial judge has not made a good cause determination as to its appropriateness to be taken into the jury room, the trial judge abuses his or her discretion when he or she thereafter denies the jury the right to review that evidence in the jury room.” *Adams v. State*, 415 Md. 585, 589 (2010). More recently, this court has observed that a presumption exists that an exhibit admitted into evidence will go into the jury room, unless the court for good cause orders otherwise. *Robson v. State*, 257 Md. App. 421, 466–68 (2023). A trial court's determination that good cause prevents admitted evidence from going to the jury room is a discretionary ruling. *Id.* at 471.

Here, the photographs of the victim's injuries and the video of the phone room assault were exhibits that the court had already admitted into evidence. When the jury

retired for deliberations, the court allowed the jury to take with it the admitted evidence in the case, including the photos of the victim’s injuries and the video footage from the phone room. It is not clear or obvious that the trial court should have prevented the jury from considering that admitted evidence, and, absent a discretionary finding of good cause, would have been an abuse of the trial court’s discretion had it done so. *See Adams*, 415 Md. at 589. Thus, the circumstances of this case do not satisfy the conditions for plain error review of this issue. *See Beckwitt*, 477 Md. at 464–65.

Appellant has failed to establish that any of the alleged errors were clear and obvious and not subject to reasonable dispute, and therefore, a prerequisite necessary for this court to undertake plain error review is not present. *See Newton*, 455 Md. at 364. Because each of the four conditions is “a necessary condition for plain error review,” and at least one of the four conditions has not been met, we will not review Appellant’s unpreserved claim of error. *Winston*, 235 Md. App. at 568.

## **II. THE EVIDENCE IS SUFFICIENT TO SUSTAIN APPELLANT’S CONVICTION FOR POSSESSION OF A WEAPON IN A PLACE OF CONFINEMENT.**

### **A. Party Contentions**

Appellant contends that the evidence presented at trial was insufficient to support his conviction for possession of a weapon in a place of confinement. Appellant claims that the State’s evidence on this charge relied entirely on the testimony of Ofc. Awe, and that Ofc. Awe’s testimony was not credible in light of inconsistency with his prior statement. Appellant asserts that Ofc. Awe’s testimony was “contradictory and internally

inconsistent,” and therefore the jury “did not have sufficient evidence to go beyond speculation or conjecture to convict [Appellant].”<sup>5</sup>

The State responds that the evidence, viewed in a light most favorable to the State, was sufficient to convict Appellant. The State contends that when there are questions of credibility or competing rational inferences available, such issues are left for the determination of the jury, not the reviewing court.

### **B. Analysis**

Appellate courts review sufficiency of evidence rulings based on whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. McGagh*, 472 Md. 168, 194 (2021) (quoting *State v. Manion*, 442 Md. 419, 430 (2015), in turn quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). The question is not whether the reviewing court would have believed the evidence at trial established guilt beyond a reasonable doubt; rather, the only concern of the reviewing court is “whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the

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<sup>5</sup> As an additional basis for asserting the evidence was insufficient, Appellant also points to a juror note in which a juror asked whether there were “[a]ny other statements from [the other] two officers stating they saw [Appellant] throw the object?” This note was submitted prior to the State’s submission of the stipulations, and prior to Appellant’s motion for acquittal. Appellant made no mention of this note as a basis for acquittal; now on appeal, he asserts this note demonstrates that “[a]fter the State presented its witnesses and all its evidence, at least one juror retained a fundamental question about the proof against [Appellant][.]” Because Appellant did not make this argument in his motion for acquittal, it is unpreserved for our review, and we decline to address the contention. *Thompson v. State*, 229 Md. App. 385, 412–13 (2016) (citation omitted) (“[I]f a defendant fails to present a particularized argument as to an offense, ordinarily it is not preserved for our review.”).

defendant’s guilt of the offenses charged beyond a reasonable doubt.” *Id.* (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)).

This deferential standard recognizes the better position held by the trier of fact to “assess the evidence and credibility of the witnesses.” *Id.* (citing *Smith v. State*, 415 Md. 174, 184–85 (2010)). Accordingly, we conduct this review with the understanding that it is the role of the fact finder, rather than the reviewing court, to choose among differing inferences that arise in a factual situation. *Smith*, 415 Md. at 183. In conducting a review of a claim of insufficient evidence, we do not “re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Id.* at 185 (citations omitted). Rather, we review the evidence and “all reasonable inferences deducible from the evidence in a light most favorable to the State.” *Id.* at 185–86 (citing *Allen v. State*, 402 Md. 59, 77 (2007)).

For the jury to find Appellant guilty of possession of a weapon in a place of confinement, the State was required to prove that Appellant knowingly possessed a weapon, and that Appellant’s knowing possession occurred while he was confined in a correctional facility. *See* Md. Code (2002, 2021 Repl. Vol.), § 9-414(a)(4) of the Criminal Law Article (“CL”). In addition, under the statute, a “weapon” is defined as a “gun, knife, club, explosive, or other article that can be used to kill or inflict bodily injury.” CL § 9-410(h); *see also Vanison v. State*, 256 Md. App. 1, 11 (2022).

Here, viewed in a light most favorable to the State, there was sufficient evidence in the record from which the jury could have found Appellant guilty of possession of a weapon in a place of confinement. There was evidence, in the form of Ofc. Awe’s testimony, that the object Appellant was charged with possessing could be used to attack

or kill another person. Also in evidence were photographs of the weapon, from which the jury could observe its features. In the pictures, the weapon was depicted next to a ruler for scale, demonstrating the object to be approximately five and a half inches in length, with the sharpened end of a screw on one end, and purple handle on the other end.

Moreover, there was evidence from Ofc. Awe that he observed Appellant retrieve a homemade weapon from his pocket and throw it on the ground away from his person. There was testimony that when Ofc. Awe escorted Appellant to the medical unit for evaluation, Appellant spoke to other incarcerated individuals along the way, stating “that they f[\*\*\*]ed up, that they should have picked [up] the contraband, the weapon, when he threw it off.” In answering the court’s questions regarding this exchange, Ofc. Awe clarified that Appellant had indicated that he “threw that s[\*\*]t on the floor for them to pick up.”

In addition, the video footage from the housing unit was played for the jury, depicting Ofc. Awe, Appellant, and the other officers. The video footage depicted correctional officers entering the room, and Appellant beginning to walk away from them. After officers walked out with Appellant, the footage displayed Ofc. Awe bending to the floor before walking out with the correctional officers.

Finally, the State presented a stipulation entered by the parties establishing that Appellant was lawfully detained at the CMCF on the date of the February incident; that the reason for his incarceration was irrelevant; and that the jury was not to investigate or speculate as to the reason for Appellant’s incarceration.

This evidence, viewed in a light most favorable to the State, was sufficient to establish the essential elements of the crime and to demonstrate that Appellant knowingly

possessed a weapon while incarcerated in place of confinement. *See* CL § 9-414(a)(4); *see also McGagh*, 472 Md. at 194.

Appellant essentially argues that the jury could not have relied on Ofc. Awe’s testimony for evidence to support the conviction because it was not credible. This argument ignores that deciding credibility is a fundamental task for the jury. *See Smiley v. State*, 138 Md. App. 709, 719 (2001) (“Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency.”); *Rothe v. State*, 242 Md. App. 272, 283 (2019) (“[T]he assessment of testimonial credibility has always been the fundamental responsibility of the factfinder, jury or trial judge, as a matter of fact.”); *Bohnert v. State*, 312 Md. 266, 277 (1988) (“In a criminal case tried before a jury, a fundamental principle is that the credibility of a witness and the weight to be accorded the witness’[s] testimony are solely within the province of the jury.”). We have further observed that “[d]amaged credibility is not necessarily inherent incredibility.” *Rothe*, 242 Md. App. at 285. “Trial testimony frequently is replete with contradictions and inconsistencies, major and minor[,]” and therefore, it is “at the very core of the common law trial by jury . . . to trust in its fact finders, after full disclosure to them, to assess the credibility of the witnesses and to weigh the impact of their testimony.” *Id.* at 278 (quoting *Bailey v. State*, 16 Md. App. 83, 93–94 (1972)) (emphasis omitted).

Appellate courts do not “weigh the evidence or judge the credibility of the witnesses, as that is the responsibility of the trier of fact.” *Pryor v. State*, 195 Md. App. 311, 329 (2010). We decline to usurp the jury’s credibility assessment here.

The evidence is therefore sufficient to sustain Appellant's conviction for possession of a weapon in a place of confinement.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR CARROLL COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**