Circuit Court for Baltimore County
Case No. C-03-19-CR-004516

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2033

September Term, 2021

KIRAY WALKER

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Zic,

JJ.

Opinion by Wells, C.J.

Filed: June 13, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Kiray Walker, was charged with multiple counts related to three incidents involving armed robbery or attempted armed robbery, all occurring in the early morning hours of November 14, 2019. Following a three-day jury trial, the jury found Mr. Walker guilty of 12 counts, including armed carjacking, armed robbery, and attempted armed robbery. Mr. Walker was sentenced to 30 years in prison, with multiple sentences running concurrently. Mr. Walker timely noticed this appeal. On appeal, Mr. Walker presents three issues,[1] which we have slightly rephrased:

1. Was the evidence sufficient to support Mr. Walker's convictions of armed carjacking, armed robbery, and attempted armed robbery?

2. Did the trial court err or abuse its discretion in instructing the jury on the permitted inference of guilt from exclusive unexplained possession of recently stolen goods?

3. As applied to Mr. Walker, do Md. Code Ann., Criminal Law ("CR") § 4-203(a) and/or Public Safety ("PS") § 5-133(d) violate the Second Amendment?

[1] Mr. Walker's presented issues, verbatim, read:

1. Whether the State presented sufficient evidence of Mr. Walker's guilt beyond a reasonable doubt, when the State presented no evidence identifying Mr. Walker or establishing that he was in possession of any of the relevant stolen goods.

2. Whether a jury instruction inviting an inference of guilt based on possession of stolen property was misleading and prejudicial, when the State presented no evidence that Mr. Walker had possession of items stolen during the charged offenses.

3. Whether Mr. Walker's convictions under Maryland Public Safety Code Section 5-133 and Criminal Law Section 4-203(a)(1)(i) violated his rights under the Second Amendment.

For the following reasons, we decline to review Mr. Walker's unpreserved claims and affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

During the early morning hours of November 14, 2019, three incidents of attempted or completed armed robberies occurred in the Lansdowne area of Baltimore County.

First, there was an attempted robbery of Paul O'Toole sometime between 4:30 and 5:00 a.m.[2] Mr. O'Toole testified that on that morning, he was driving on Lansdowne Road when a car started following him. After Mr. O'Toole turned onto Hammonds Ferry Road, the car abruptly stopped in front of Mr. O'Toole's vehicle. Then, an individual—wearing a mask and holding a gun—stepped out of the driver's seat of the car. Sensing danger, Mr. O'Toole quickly "made a hard left" turn and drove away. It appeared to Mr. O'Toole that there were three people in the car when the incident occurred. He added that the individual outside of the car was wearing a "hood" and "might have been [] on the lanky side." He also described the gun as a "handgun," and the car as "small."

Second, there was a carjacking of Michael Blanch around 5:00 a.m. Mr. Blanch testified that on November 14, 2019, he left his house around 4:45 or 4:50 a.m. to drive to work.[3] After Mr. Blanch started his vehicle, a Chevrolet Monte Carlo (the "Monte Carlo"),

[2] Mr. O'Toole testified that he did not know the exact time the incident occurred, but thought it was "somewhere in the neighborhood of 4:30, 5:00" in the morning.

[3] Mr. Blanch usually left his home for work "around" 4:45 to 4:50 a.m. Immediately after the carjacking, Mr. Blanch called 911. A police officer testified that he arrived at Mr. Blanch's home and spoke with him at 5:20 a.m.

and began clearing the ice off his windshield, a four-door sedan with its bright lights on parked in front of his neighbor's house. Three people then exited the sedan. Although it was difficult for Mr. Blanch to see with the sedan's bright lights shining, it appeared all three individuals were wearing hoodies. One of the three approached Mr. Blanch, threatened to shoot him if he moved, and ordered him to turn over his wallet. With this individual a couple feet away from him and the porch light on, Mr. Blanch could see he was holding "a blueish-black, black gun" that "looked like a 9mm." However, Mr. Blanch could not see the individual's face because he was wearing a hood. In response, Mr. Blanch struck the individual with his ice scraper, but then the individual commandeered Mr. Blanch's Monte Carlo, and drove away with the sedan following behind. Mr. Blanch's work laptop was in the Monte Carlo. Following the altercation, Mr. Blanch immediately returned home and called 911.

Third, and finally, next-door neighbors, Thomas Eitel and James Miller were simultaneously robbed that same morning between 5:30 and 5:45 a.m. Around that time, the two neighbors exited their homes and began to scrape the ice off their car windows before driving to work. While they were scraping the ice off their respective cars, two individuals approached them with guns. The individual who approached Mr. Eitel held a silver or chrome gun, and demanded Mr. Eitel's money and phone, which he handed over. Meanwhile, the other individual grabbed Mr. Miller from behind, pointed a small black

gun at him and demanded Mr. Miller's wallet, cellphone, and phone password.[4] After some resistance, the individual took Mr. Miller's phone and wallet. Mr. Miller testified that it appeared the two assailants were wearing masks and dark clothing, but he was not "a hundred percent" sure. He also thought the individual who approached him was about the same height as him, 5'7", but again, he was not certain. Afterwards, the two assailants walked to a dark-colored vehicle and drove off.[5] Mr. Eitel returned home, where he and his wife called the police.

Shortly thereafter, at around 6:00 a.m., Detective Timothy Zombro of the Baltimore County police was notified that Mr. Blanch's Monte Carlo had been taken at gunpoint by three individuals. About 20 or 30 minutes later, Detective Zombro was notified that another vehicle, a silver Honda Civic (the "Honda Civic") that was reported stolen earlier that same morning, had been located on Marbourne Avenue, nearby Janice Avenue and Elizabeth Avenue, in Baltimore City.[6] Soon after Detective Zombro and his partner found the Honda Civic, they also noticed the Monte Carlo parked close-by. No one was in either vehicle.

[4] Mr. Miller said the gun looked like a .22 or a .25 caliber and called it a "Saturday night special" because "it's easy to be concealed."

[5] On direct examination, Mr. Miller testified that "[t]he two suspects went in the backside of each car. So that kind of tells me there was a possibility of a third person. There's a, quote, unquote, getaway driver." However, on cross examination, Mr. Miller conceded that from where he was standing, he could not tell whether it was a two-door or a four-door car.

[6] Officer Earl Owings testified that he found the Honda Civic at about 7:00 a.m. and notified the detectives.

After another 20 or 30 minutes, two individuals approached from Janice Avenue; one, later identified as Devon Bynum, entered the driver's seat of the Monte Carlo, while the other, later identified as Malik Brooks, entered the Honda Civic. The brake lights of both vehicles turned on. The driver of the Monte Carlo then exited the vehicle and walked back towards Janice Avenue—disappearing from the officers' view for "just a minute or two"—before returning and getting back into the Monte Carlo. Then, a third individual, later identified as Mr. Walker, approached from Janice Avenue and sat in the front passenger's seat of the Honda Civic. The Honda Civic backed up closer to the Monte Carlo, and Mr. Walker stepped out and had a "brief," ten or 15 second conversation with the driver of the Monte Carlo before returning to the Honda Civic.

Shortly thereafter, the two cars drove off together, with police following. But when police tried to stop them, the cars separated and the drivers led officers on separate police chases, striking other cars in their attempts to escape. Mr. Bynum eventually bailed out of the Monte Carlo and continued to flee on foot before police ultimately apprehended him. Mr. Brooks and Mr. Walker also bailed out of the Honda Civic and fled on foot before police ultimately apprehended them as well.

When arrested, all three men were wearing "caps" or "masks."[7] Officers also found a loaded, black nine-millimeter handgun in Mr. Walker's pants. Additionally, a police inventory sheet indicated that officers recovered $51 from Mr. Walker and returned the money to Mr. Miller via his wife.[8] Another police report showed that $63 and an iPhone were recovered from Mr. Bynum and returned to Mr. Eitel's wife.[9] Finally, police found Mr. Blanch's work laptop on the backseat of the Honda Civic.

B. Procedural Background

The State initiated proceedings against Mr. Walker on November 15, 2019. On March 3, 2020, Mr. Walker filed a motion for speedy trial, noting that he had been incarcerated for 107 days. Shortly thereafter, the court postponed proceedings due to the COVID-19 pandemic. During the course of the postponement, the parties were unable to reach a plea agreement, and the court set a trial date of April 19, 2021. On April 19, the court again postponed the trial until early August 2021, due to the pandemic.

[7] Officer Owings, who was involved in the apprehension of Mr. Brooks, testified that Mr. Brooks was wearing a "mask" on his head like a "hat," but when his partner pulled it off, "you could see that it was a mask." Detective Ryan Anderson, who observed the search of Mr. Walker, described Mr. Walker as wearing what "appeared to be a black knit cap." Detective Brian Hauer, who apprehended Mr. Bynum, testified that he was wearing what appeared to be a "ski cap" or a "ski mask." Finally, Detective Andrew Melnyk, who packaged the exhibits, described all three items as "black face mask[s]."

[8] Although there was no testimony about how much money was taken from him, Mr. Miller did testify that "one of the officers showed up later . . . with the money. I was lucky to get my money back."

[9] Police recovered all of Mr. Eitel's stolen property, except for one dollar.

Following voir dire, trial was held from August 3-6, 2021. The State presented the four victims, who each testified about what happened to them on the morning of November 14, 2019. Then, the State presented 11 police officers and detectives who testified as to what they observed and discovered while following and ultimately apprehending the three suspects. At the close of the State's case, defense counsel moved for a judgment of acquittal as to all counts, adding "at this time I would simply submit on that motion and . . . do not wish to be heard in argument." The circuit court denied the motion. The defense did not present any witnesses, but entered a stipulation that Mr. Walker's sister—if called as a witness—would have testified that at the time of the incident, Mr. Walker lived on Janice Avenue. At the close of all evidence, defense counsel did not move for acquittal.

After the defense rested, the court read the jury instructions including, most relevant here, the following:

> [E]xclusive possession either alone or with others of recently stolen property, unless reasonably explained, may be evidence of robbery and/or carjacking.
>
> If you find that the Defendant was in possession of the property shortly after it was stolen and the Defendant's possession is not otherwise explained by the evidence, you may, but are not required to, find the Defendant guilty of robbery and/or carjacking.
>
> Possession means knowingly having the property on one's person or knowingly having the property within one's control or at one's disposal.
>
> In deciding whether the Defendant's possession was sufficiently close in time to the theft to be evidence of participation in a theft, you should consider all the surrounding circumstances, including such factors as the type of property stolen, how the Defendant may have come into possession, and the amount of time between the theft and the Defendant's possession.

The defense did not object to this instruction.[10]

On August 6, 2021, the jury returned a guilty verdict on twelve counts related to the three incidents: (1) attempted armed robbery, (2) conspiracy to commit armed robbery, and (3) use of a firearm during the commission of a crime of violence, with respect to Mr. O'Toole; (4) armed carjacking, (5) conspiracy to commit armed carjacking, and (6) use of a firearm in the commission of a crime of violence, with respect to Mr. Blanch; (7) armed robbery and (8) use of a firearm during the commission of a crime of violence, with respect to Mr. Eitel; (9) armed robbery and (10) use of a firearm during the commission of a crime of violence, with respect to Mr. Miller; and (11) possession of a firearm while under the age of 21 and (12) carrying a handgun on his person. The jury found Mr. Walker not guilty on two counts: (1) attempted armed carjacking against Mr. O'Toole, and (2) conspiracy to commit armed carjacking against Mr. O'Toole.

The court sentenced Mr. Walker to 30 years in prison for the one count of armed carjacking, and between three and ten years for the remaining counts, all of which were to run concurrently with the 30-year sentence. Mr. Walker timely appealed his convictions.

Additional facts will be provided as necessary to support our analysis of the issues.

DISCUSSION

I. We Will Not Reach Mr. Walker's Sufficiency Claim Because He Did Not Raise an Objection at the Close of the State's Evidence.

[10] At the close of the State's case, defense counsel reviewed the trial court's proposed jury instructions and stated that he had "no objections" to the instructions. Further, after the jury instructions were read, the court asked the parties "is there anything to address with the Court" to which defense counsel answered, "No, Your Honor."

A. Parties' Contentions

Mr. Walker argues that "there was no evidence demonstrating that [he] was involved in any of the three incidents at issue in his trial." In support of his argument, he points out that none of the victims "identified [him] or provided a description of the perpetrator that could indicate his involvement." For example, he notes that the witnesses gave "inconsistent descriptions of the hoods or masks the perpetrators were wearing and . . . of the guns used." Further, Mr. Walker claims that he "never possessed" the stolen goods, asserting rather that "[t]he only evidence the State put forward to tie [him] to these incidents was his subsequent proximity to the stolen goods and several other possible suspects." Thus, he argues that the State's "speculation based on proximity is insufficient to support a conviction."[11]

The State argues that we should decline to even address Mr. Walker's sufficiency claim for two reasons: "first, because he articulated no particular basis for acquittal; and second, because he failed to move for acquittal at the close of all evidence." However, even if we were to consider Mr. Walker's sufficiency claims, the State argues that we should reject them because "[t]he evidence permitted a rational factfinder to find Walker's involvement in each of the three incidents at issue."[12]

B. Standard of Review

[11] We will address Mr. Walker's specific arguments as to each incident in more detail below.

[12] We will also address the State's specific arguments in more detail below.

The standard of review of the sufficiency of the evidence to support a criminal conviction is well established: "the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Purnell v. State*, 250 Md. App. 703, 711 (cleaned up), *cert. denied*, 476 Md. 252 (2021). "The purpose of our review is not to engage in a 'review of the record that would amount to, in essence, a retrial of the case.'" *State v. Morrison*, 470 Md. 86, 105 (2020) (quoting *Titus v. State*, 423 Md. 548, 557 (2011)). "Circumstantial evidence may support a conviction if the circumstances, taken together, do not require the trier of fact to resort to speculation or conjecture, but circumstantial evidence which merely arouses suspicion or leaves room for conjecture is obviously insufficient." *Beckwitt v. State*, 477 Md. 398, 429 (2022) (quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

C. Analysis

Mr. Walker Did Not Preserve his Sufficiency Claim

Maryland Rule 4-324(a) provides in pertinent part:

> A defendant may move for judgment of acquittal on one or more counts . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted.

"The language of the rule is mandatory, and review of a claim of insufficiency is available only for reasons given by the defendant in his motion for judgment of acquittal." *Peters v. State*, 224 Md. App. 306, 353 (2015) (quoting *Whiting v. State*, 160 Md. App. 285, 308 (2004)) (cleaned up). "Choosing to 'submit' without articulating reasons to support

acquittal is a waiver of any appellate challenge to the sufficiency of the evidence." *Id.* (quoting *Garrison v. State*, 88 Md. App. 475, 478 (1991)). Here, after the State rested, Mr. Walker's defense counsel moved for acquittal, stating:

> At this point, I would move for judgment – judgment of acquittal as to all counts. I know the State isn't even going to be submitting all of them. I – at this time I would simply submit on that motion and not – not – do not wish to be heard in argument.

By choosing to "submit" his motion without articulating reasons to support acquittal, Mr. Walker waived the right to challenge the sufficiency of the evidence on appeal.[13]

II. We Decline to Review the Challenged Jury Instruction for Plain Error.

A. Parties' Contentions

Mr. Walker argues that the court's instruction to the jury concerning an inference from possession of recently stolen property was not generated by the evidence. Further,

[13] We note that in *Joppy v. State*, where trial counsel moved for acquittal on the grounds that there was insufficient evidence to support his conviction for possession of cocaine, we treated the motion "as sufficient to challenge whether the State has met the single, linear, one-on-one requirement of offering some evidence of guilt of the core crime charged," believing that, "in this case, . . . a holding of non-preservation would be a bit harsh." 232 Md. App. 510, 545 (2017) ("We will permit a generic motion for acquittal to preserve for appellate review the question of generic legal sufficiency. We will not, however, indulge a generic motion more broadly than that."). However, since *Joppy*, we have nonetheless repeatedly held that, under Rule 4-324(a), the defendant must state with particularity all the reasons why the motion for judgment of acquittal should be granted in order to preserve such arguments for appellate review. *See e.g.*, *Schiff v. State*, 254 Md. App. 509, 527-28, *cert. denied*, 479 Md. 81 (2022); *Belton v. State*, 253 Md. App. 403, 454-57 (2021), *cert. granted*, 478 Md. 511 (2022); *Redkovsky v. State*, 240 Md. App. 252, 261-62 (2019); *Wallace v. State*, 237 Md. App. 415, 432-34 (2018) (noting that under Rule 4-324(a), "[a] generic motion for acquittal will not suffice." Because Mr. Walker failed to give *any* reasons for granting his motion for judgment of acquittal, we do not believe, in this case, a holding of non-preservation would be too harsh.

Mr. Walker contends that the instruction was misleading and prejudicial because it invited "an inference of guilt from prior (unrelated) bad acts." Finally, although Mr. Walker concedes he did not object to the jury instruction at trial, he asserts that we should review it nonetheless because it constitutes plain error.

The State points out that, at trial, Mr. Walker did not object to the court's jury instruction regarding the permitted inference of guilt from the exclusive possession of recently stolen property, which tracked the relevant criminal pattern instruction. As such, Mr. Walker failed to preserve this claim. Additionally, the State argues that we should not review the court's instruction for plain error because the evidence presented at trial met the threshold for giving the instruction, and Mr. Walker "fails to show an appreciable risk that the instruction misled the jury."

B. Analysis

In general, "the failure to object to a jury instruction at trial results in a waiver of any defects in the instruction, and normally precludes further review of any claim of error relating to the instruction." *State v. Rose*, 345 Md. 238, 245-46 (1997). *See* Md. Rule 4-325(f). Nonetheless, an appellate court has discretion to recognize "plain error" that is "material to the rights of a defendant, even if the matter was not raised in the trial court." *Brown v. State*, 169 Md. App. 442, 457 (2006). *See* Md. Rule 4-325(f). "Plain error review is reserved for errors that are 'compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Yates v. State*, 429 Md. 112, 130-31 (2012) (quoting *State v. Hutchinson*, 287 Md. 198, 203 (1980)). However, appellate courts should "rarely" exercise this discretion because it does not afford an opportunity for a proper record to be

made with respect to the challenge, nor does it give the other parties and the trial judge a fair opportunity to consider and respond to the challenge. *Wiredu v. State*, 222 Md. App. 212, 223-24 (2015) (citing *Chaney v. State*, 397 Md. 460, 468 (2007)). Moreover, we have held a trial court's "use of a pattern jury instruction, without objection, weighs heavily against plain error review of the instructions given." *Yates v. State*, 202 Md. App. 700, 724 (2011), *aff'd*, 429 Md. 112, 132 (2012) (noting that "[t]he Court of Special Appeals gave appropriate weight to the pattern jury instructions").

Here, the challenged jury instruction tracks almost identically with Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 4:32.3.[14] Mr. Walker did not object to this instruction. Because Mr. Walker failed to preserve this claim, we decline to review the challenged instruction for plain error.

[14] *Theft—Inference from Exclusive Unexplained Possession of Recently Stolen Goods*

> Exclusive possession [either alone or with others] of recently stolen property, unless reasonably explained, may be evidence of theft. If you find that the defendant was in possession of the property stolen, and the defendant's possession is not otherwise explained by the evidence, you may, but are not required to, find the defendant guilty of theft.
>
> Possession means knowingly having the property of one's person or knowingly having the property within one's control or at one's disposal. In deciding whether the defendant's possession was sufficiently close in time to the theft to be evidence of participation in the theft, you should consider all the surrounding circumstances, including such factors as the type of property stolen, how the defendant may have come into possession, and the amount of time between the theft and the defendant's possession.

MPJI-Cr 4:32.3.

Mr. Walker also argues that the instruction was "misleading and prejudicial" because it may have invited the jury to infer Mr. Walker's guilt from the fact that the Honda Civic was stolen.[15] We disagree. On review, jury instructions

> must be read together, and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate. Reversal is not required where the jury instructions, taken as a whole, sufficiently protect[ed] the defendant's rights and adequately covered the theory of the defense.

Cost v. State, 417 Md. 360, 369 (2010) (quoting *Fleming v. State*, 373 Md. 426, 433 (2003)).

Reading almost directly from MPJI-Cr 4:32.3, the court explained to the jury that "[i]f you find that the Defendant was in possession of the property shortly after it was stolen and the Defendant's possession is not otherwise explained by the evidence, you may, but are not required to, find the Defendant guilty of robbery and/or carjacking." Further, in deciding whether Mr. Walker's possession of the stolen property was close enough in time to the theft to establish his participation, the court instructed the jury to consider "such factors as the type of property stolen, how the Defendant may have come into possession, and the amount of time between the theft and the Defendant's possession." In light of the specific charges brought against Mr. Walker in this trial—including the armed carjacking of Mr. Blanch's Monte Carlo—and the numerous witnesses at trial who spoke to this issue, compared to the lack of charges and minimal evidence regarding the Honda Civic, the jury

[15] Before the trial began, the parties agreed to exclude details regarding the theft of the Honda Civic from the trial beyond the fact that it was reported stolen that morning and officers were looking for it.

likely knew that "carjacking" as stated in the instruction, referred to the theft of Mr. Blanch's Monte Carlo, not the Honda Civic. This interpretation is further supported by the prosecutor's discussion of the instruction in her closing argument.

> This Defendant wants you to believe that just because he's in possession of a *Monte Carlo* that was taken just hours beforehand, that he had no idea, that he wasn't there. The main -- *it was in the jury instructions, and it's called recent possession of stolen property*. *Recent possession of stolen property is the legal understanding that when you are in recent possession of that property, you can infer that that person committed that crime. If that property was taken in a robbery, if that property was taken in a carjacking, you all can infer that he committed those crimes.* And this is not the scenario where he's in the car the next day or he's got the laptop the next day, this is just hours after this happened.
>
> And there has been no evidence whatsoever to rebut that. There's been no evidence presented whatsoever to make a reasonable explanation for why *this Defendant would have in his possession that stolen Monte Carlo, to have Mr. Blanch's laptop, cash that belongs to one of the -- to Mr. Miller.* And of course he's also with his accomplices as well. All three of them together from start to finish.

(emphasis added). Even if there was any confusion to the jury, this statement clearly linked the recently stolen property discussed in the instruction specifically to Mr. Blanch's Monte Carlo, Mr. Blanch's laptop, and Mr. Miller's money. As such, we hold that the challenged jury instruction regarding recently stolen property was not misleading or prejudicial to Mr. Walker, and therefore, decline to exercise plain error review of this issue.

III. We Decline to Review Mr. Walker's Unpreserved, As-Applied Second Amendment Challenges to his Firearm-Related Convictions Under CR § 4-203 and PS § 5-133(d).

A. Parties' Contentions

Finally, Mr. Walker raises as-applied Second Amendment challenges to his convictions for possessing a regulated firearm while under the age of 21, under PS § 5-

133(d), and carrying a handgun in public without a license, under CR § 4-203(a)(1)(i). Relying on *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), Mr. Walker argues that neither of his convictions for handgun possession can be justified by history and tradition. Anticipating the State arguing that Mr. Walker lacks standing to challenge CR § 4-203(a)(1)(i) because there is no evidence indicating that he applied for a permit, Mr. Walker essentially argues that his application would have been futile "because he was under 21 and due to Maryland's unconstitutional 'good and substantial reason' requirement." Additionally, Mr. Walker asserts that he "did not have the opportunity to raise a Second Amendment challenge to his possession charges at trial" because *Bruen* was not decided until after his judgment of conviction was entered. And, prior to *Bruen*, the Court of Appeals had held that CR § 4-203(a)(1)(i) was outside the scope of the Second Amendment. *Williams v. State*, 417 Md. 479, 499 (2011). In light of this change in the law, Mr. Walker urges us to exercise our discretion to review the merits of these unpreserved issues.

The State argues that we should not consider Mr. Walker's Second Amendment claims because they were not raised or decided in the trial court. The State points out that the United States Supreme Court granted certiorari in *Bruen* in April 2021, "signal[ing] a live issue months before Walker's trial" in early August 2021. With respect to CR § 4-203(a)(1)(i), the State claims that Mr. Walker lacks standing to make an as-applied challenge to Maryland's permitting scheme because "[t]he record contains no evidence that Walker applied for, and was denied, a permit. Nor does it contain evidence that Walker would have qualified for a permit but for the 'good and substantial reason' requirement."

Moreover, the State argues that the plain text of the Second Amendment does not protect Mr. Walker's conduct in this case, which involved firearm possession during the commission of multiple violent crimes. Finally, the State, *arguendo*, analyzes the historical scope of the Second Amendment and concludes that age-based restrictions are "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2130.

B. Standard of Review

"The proper scope of a constitutional right, and its application to a particular set of facts, are issues of law." *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 339 (2020). As such, "we review such questions de novo." *Id.* (citing *Schisler v. State*, 394 Md. 519, 535 (2006)).

C. Analysis

In general, we do 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). In the interest of fairness and the orderly administration of justice, counsel must raise their client's position before the trial court so that the court can decide, and possibly correct any errors. *Lopez-Villa v. State*, 478 Md. 1, 19-20 (2022). This general rule also applies to constitutional issues. *See Pietruszewski v. State*, 245 Md. App. 292, 309-10, *cert. denied*, 471 Md. 127 (2020). While we *may* exercise our discretion to review issues that have not been raised at trial "when there is a relevant post-trial [U.S.] Supreme Court or [Supreme Court of Maryland] ruling changing the legal standard concerning the issue" *see McCain v. Smith*, 194 Md. App. 252, 277-78 (2010), we are not required to do so. For example, recently, the Supreme Court of Maryland issued a ruling that changed the law regarding certain jury voir dire questions.

Kazadi v. State, 467 Md. 1, 35-36, 47-48 (2020) (holding that during voir dire, upon request, a trial court must ask whether any potential jurors are unwilling or unable to comply with the jury instructions regarding burden of proof, presumption of innocence, and the right not to testify). Most relevant for our purposes, the Court also held that this ruling applied retroactively to any case that was currently pending on appeal, so long as "the relevant question ha[d] been preserved for appellate review." *Id.* at 54. One such appeal that was pending when *Kazadi* was decided involved a trial court's denial of a defendant's proposed voir dire questions related to burden of proof and presumption of innocence. *Lopez-Villa*, 478 Md. at 5-9. In *Lopez-Villa*, defense counsel submitted written, proposed voir dire questions, but did not raise any objection when the court declined to read his proposed questions during voir dire. *Id.* at 5-7. Although the Court acknowledged that the law had changed regarding such requests *after* petitioner's trial and while his appeal was pending, the Court, nonetheless, declined to exercise its discretionary review because petitioner failed to properly preserve his claim, as required by *Kazadi*. *Id.* at 8, 19-20.

Here, Mr. Walker concedes that no Second Amendment claims were raised or decided at trial. Instead, Mr. Walker asserts that he did not have the opportunity to raise a Second Amendment challenge at trial because *Bruen* was not decided until after his judgment of conviction was entered. But, as *Lopez-Villa* illustrates, this alone does not compel us to review the merits of Mr. Walker's Second Amendment claims. The fact that there was a post-trial ruling that changed the legal standard concerning the issue does not mean that we must review appellant's unpreserved claim. Further, as the State points out,

the U.S. Supreme Court granted certiorari in *Bruen* on April 26, 2021, more than three months before Mr. Walker's trial began. *New York State Rifle & Pistol Ass'n, Inc. v. Corlett*, 141 S. Ct. 2566 (2021). Theoretically, this could have signaled to Mr. Walker that there was a live issue regarding his convictions related to his firearm possession.

Under these circumstances, because Mr. Walker raises these issues for the first time on appeal, we decline to exercise our discretion to review Mr. Walker's unpreserved, as-applied Second Amendment challenges to his convictions under CR § 4-203 and PS § 5-133(d).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.