Circuit Court for Prince George's County
Case No: CT191311X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 420

September Term, 2023

CHARLES EDWARD KELLY, JR.

v.

STATE OF MARYLAND

Arthur,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: March 13, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After a trial in the Circuit Court for Prince George's County, the jury found Charles Edward Kelly, Jr., appellant, guilty of first-degree premeditated murder, prohibited possession of a firearm, use of a firearm in the commission of a felony, use of a firearm in the commission of a crime of violence, and openly carrying a handgun with the intent to cause death or serious bodily injury.[1] A sentencing hearing was held on 5 April 2023. The court imposed the following sentence: life imprisonment without the possibility of parole for the first-degree murder conviction; a consecutive term of fifteen years for prohibited possession of a firearm; a consecutive term of fifteen years for use of a firearm in the commission of a felony; a term of fifteen years for use of a firearm in the commission of a crime of violence, to run concurrent to the sentence imposed for use of a firearm in the commission of a felony; and, a consecutive term of twenty years for openly carrying a handgun. On 21 April 2023, the court held another hearing at which the judge clarified that the twenty-year sentence imposed for openly carrying a handgun should have been a three-year sentence and corrected the sentence to reflect the three-year term of incarceration. The other sentences imposed at the hearing on 5 April 2023 remained unchanged. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following four questions for our consideration:

> I. Did the trial court err in violating appellant's constitutional right of confrontation?

[1] The parties stipulated that appellant was legally prohibited from possessing a regulated firearm.

II. Did the trial court err in allowing witnesses to offer improper lay opinion testimony that improperly invaded the province of the jury?

III. Did the trial court err in admitting the composite video?

IV. Should the conviction and/or sentence for one of the use of a firearm charges be vacated or merged?

For the reasons set forth below, we shall affirm the judgments of the circuit court as to all convictions, vacate the sentences, and remand for a new sentencing proceeding.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves the shooting death of Brianna Lillian Green, who was born on 29 April 1999. On 15 October 2019, Prince George's County Police Detective Brendan Taylor was assigned to investigate a homicide that occurred at 56th Avenue and K Street in Fairmount Heights. Upon arriving at the scene, he found a woman in the driver's seat of a gold Lexus who had been shot in the head. The woman was identified as Brianna Green.[2] An autopsy was performed at the medical examiner's office. According to the interim deputy chief medical examiner, Brianna suffered three gunshot wounds to the left side of her head. The cause of death was determined to be multiple gunshot wounds and the manner of death as a homicide.

Brianna worked in security at Union Station in Washington, D.C., from 11 p.m. to 7 a.m. each day. She was dating a man named Trent Lotridge. Prior to dating Lotridge, Brianna was in a relationship with appellant. Brianna's mother, Tonya Green, was introduced to appellant in 2018 and she saw him "[a]ll the time" at the apartment where

[2] Because Brianna, her sister, and her mother share the same last name, we shall refer to each of them by their first name for clarity.

she lived with Brianna. According to Tonya, appellant was called "man." He socialized with her family, taking them to restaurants and helping Brianna with the rent. Appellant drove a red or burgundy colored truck "[a]ll the time" and Tonya rode in it "[s]everal times." He had also a gold Lexus that he let Brianna use. Tonya testified that appellant took the Lexus back from Brianna whenever he got mad at her, which happened "[m]any of times."

In about September 2019, Brianna tried to end the relationship with appellant. Appellant did not accept that, and, on many occasions, he contacted Tonya to ask her to help "rekindle their relationship back together[.]" Tonya told appellant he had to deal with Brianna. Appellant called also Tonya's husband and daughters, Tequila and Mya, in an attempt to get in touch with Brianna, but Brianna would not speak with him. Tonya advised Brianna not to get back together with appellant and not to be alone with him.

On a Saturday in October 2019, Tonya, Brianna, and Tequila were in a nail salon. Appellant entered the salon and began arguing with Brianna. Appellant sat beside Tonya. She noticed that his mouth was trembling. He asked her to help him get back together with Brianna, but she declined. At one point, appellant and Brianna went outside and "were fussing." Tonya told appellant to leave her daughter alone. Appellant took Brianna's phone and refused to return it to her until the following day.

Thereafter, appellant continued calling Tonya's land-line phone and cell phone asking to speak with Brianna. On 15 October 2019, before Tonya left for work, she told Brianna not to go anywhere with appellant by herself. Brianna "kept calling" Tonya at work saying that appellant was calling her repeatedly. Tonya called appellant and asked

him to stop calling Brianna. Tonya did not speak with Brianna after 2 p.m. that day. Brianna was supposed to call Tonya to let her know she was on her way to work, but Tonya never heard back from her. Tonya called appellant who said he saw Brianna outside Tequila's house and gave Brianna his car "to go party with her girlfriend[.]" That night, Tonya called the police and reported Brianna missing. When the police arrived at Tonya's home, she called appellant and put a police officer on the call. Appellant sent a photograph of the car he had given to Brianna. Tonya saw that it was the gold Lexus.

In October 2019, Brianna's older sister, Tequila Green, lived at the Savannah Apartments on 13th Street in Southeast D.C. Although Brianna lived with their mother, she went to Tequila's house "[j]ust about every day." According to Tequila, Brianna met appellant at the "end of 2017" or "May 2018." Their relationship lasted for about one and a half to two years, according to Tequila. Appellant was never in Tequila's house, but he called her when he could not get in contact with Brianna. Appellant asked Tequila why Brianna wanted to be hanging outside with her friends so much. Tequila responded that she was twenty years old and asked appellant, "what do you expect her to do[?]" Tequila testified that appellant drove a "red truck." He had also a gold car, that he let Brianna drive, and a Porsche. Tequila said there were times when appellant would not let Brianna use the car. For example, he took the car back from her if she was going to be out late and if she was not answering her phone. Appellant did not like most of Brianna's friends and felt that "they weren't good for her."

The relationship between appellant and Brianna changed over time. Brianna told Tequila that he "had become more . . . stalkish." When she did not want to do something

he wanted, "he would get angry." Tequila testified that if Brianna "didn't want to go somewhere with him, he would be mad, he didn't want her to go anywhere." At one point when the relationship was ending, Tequila was at her mother's house with Brianna and appellant called repeatedly although they did not answer. At that time, appellant had Brianna's phone and she did not want to speak with him. Eventually, Tequila answered a call and told appellant Brianna did not want to talk to him. Appellant said, "just tell her to come outside[.] I just want to talk to her." Brianna went outside and got her phone back. Tequila described appellant on that occasion as "[a]gitated, angry, mad."

A couple of weeks prior to her death, Brianna told Tequila she did not want to be with appellant anymore and that she only wanted to be friends with him, although that was not what he wanted. At that point, Brianna started "talking to another guy" named Trent Lotridge. Brianna told Tequila that appellant was calling her phone and "popping up around places where she would be at, trying to make her leave[.]" Tequila told Brianna not to be alone with appellant. Tequila told also her mother that she or Brianna should get a restraining order against appellant because she was "scared that he would do something to her" and was scared for Brianna's life.

On 15 October 2019, Brianna was at Tequila's house early in the day. Brianna had to go to work that night. When she left Tequila's house at about 7:30 p.m., she was wearing her work uniform. She planned to see Lotridge at some point. Brianna asked Tequila to leave her door unlocked in the morning because she would be returning after she got off work. Tequila was not aware that Brianna had any plans to hang out with friends that day.

As Brianna was leaving Tequila's house, her phone rang, but Tequila did not know who called her. Later that night, Tonya called Tequila in an effort to locate Brianna.

Prince George's County Police Officer Keith Nick responded to Tonya's report of a missing person. While at Tonya's house, Officer Nick spoke on the phone with appellant and advised that he was investigating a report of a missing person. Appellant appeared cooperative. He told Officer Nick that he met Brianna at about 7:30 p.m. and dropped off his Lexus because she was going out to have fun with her friends. Officer Nick obtained appellant's name, date of birth, and the tag number and a photograph of the Lexus. Later, Officer Nick learned of an active homicide investigation. He looked into it and discovered that the tag number of the vehicle in which the shooting victim was found matched the tag number he obtained for appellant's Lexus. Officer Nick contacted the homicide unit and went to that office where he was asked to contact appellant again. Officer Nick asked appellant to go to the district police station to sign papers in reference to the vehicle, which he did.

Veronica Brown married appellant in 2015 or 2016. The marriage ended in 2017, but Brown testified that the divorce was not finalized until 2020. While they were married, appellant purchased a burgundy Chevy Tahoe and a gold Lexus, both of which were registered in her name. Appellant retained possession of the Tahoe after their divorce.

Sharita Artis began a romantic relationship with appellant in 2018. In May 2019, they began living together. According to Artis, during the time she was involved in a relationship with appellant, he was married to someone else. During their relationship, appellant drove a burgundy Tahoe that she saw "all the time." He had also a gold Lexus

that she saw "maybe two times[.]" She did not know where appellant kept the Lexus. Artis testified that, on 15 October 2019, she saw appellant at about 5 or 5:30 a.m. She spoke to him throughout the day, and she got home from work at about 5:15 p.m. She asked him to take her to drop off her rent and he agreed. Appellant told Artis that he would come to her house around 9 p.m. Artis called appellant at about 7:45 p.m. to remind him to be at her house at 9 p.m. He did not answer, but he called back within fifteen minutes. According to Artis, appellant arrived at her house at "9:00, ten after 10:00, somewhere around that time." He drove her to drop off her rent. At about 11 p.m., they stopped at a gas station. At trial, Artis identified a video recording showing appellant's vehicle and appellant at the gas station. At some point after leaving the gas station, appellant asked Artis what time the news came on. After returning home, they went to sleep.

At about 4 a.m., appellant woke up Artis and asked her to take him to the police station because a detective had called and asked him to turn himself in. Appellant and Artis drove Artis's truck to the police station. On the way to the police station, they stopped at appellant's cousin's house in Suitland. Appellant got out of the truck, knocked on the door, and then stood outside the door talking to his cousin. At that point in time, appellant had his phone with him. When he returned to the truck, appellant did not have his phone. He told Artis that he had given it to his cousin. They drove to the police station. Upon arriving at the station, but before entering it, appellant emptied his pockets and left his belongings in Artis's vehicle.

After Brianna's body was sent to the medical examiner, Detective Taylor canvassed the neighborhood interviewing neighbors, looking for witnesses and video recordings. He

obtained "Ring" video camera recordings from residences at 5529 and 5531 K Street. Detective Taylor obtained records for the Lexus from the Motor Vehicle Administration. Based on that information, he thought initially the shooting victim was Veronica Brown, who was the registered owner of the Lexus. After returning to his office, Detective Taylor was advised of Officer Nick's missing person case and the tag number that had been provided for the gold Lexus where Brianna's body was found. He learned also that appellant was married to Veronica Brown and he obtained an address for appellant. Detective Taylor reviewed the video recordings obtained from 5529 and 5531 K Street and observed a sport utility vehicle ("SUV") followed by a sedan traveling on K Street, making a U-turn on 56th Street and then parking on Eastern Avenue.

Detective Taylor located the burgundy Chevy Tahoe registered to Brown on Galveston Street in Washington, D.C., at Artis's residence. A search warrant was obtained for the Tahoe, and it was towed to a police facility. Detective Taylor and an evidence technician conducted a search of the vehicle. The interior and exterior of the Lexus was processed for fingerprints and DNA, but the evidence obtained was not sent for analysis. Detective Taylor also drove the route between the scene of the homicide and appellant's address on Fairhill Drive, in an effort to search for surveillance video. Ultimately, video recordings were obtained from a Discount Mart on Eastern Avenue, from the Hilltop Apartments on Eastern Avenue, and from an Exxon gas station. The detective interviewed Lotridge on 7 December 2019. As part of the homicide investigation, law enforcement officers examined also cell phone call records for two phone numbers and obtained a cell phone mapping report.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellant contends, in his Brief, that the circuit court violated his constitutional right to confrontation by preventing defense counsel's examination of Detective Taylor on the following subject areas: (1) his initial misunderstanding that the shooting occurred from the passenger side of the vehicle; (2) his delay in speaking to Trent Lotridge as a possible suspect; (3) his delay in getting cell phone mapping; and, (4) his failure to request forensic analysis of the fingerprint and DNA evidence. As we shall discuss in more detail, *infra*, appellant only presented in his brief argument in support of his fourth assertion, the failure to request forensic analysis. For that reason, we shall consider here that issue first.

Standard of Review

A defendant's right to meaningful cross-examination is secured by the Confrontation Clauses of the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights. The Sixth Amendment, made applicable to the States by the Fourteenth Amendment, *Pointer v. Texas*, 380 U.S. 400, 403 (1965), provides that: "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. Article 21 of the Maryland Declaration of Rights, which has been interpreted as in *pari materia* with the Confrontation Clause, provides "[t]hat in all criminal prosecutions, every man hath a right . . . to be confronted with the witnesses against him . . . [and] to examine the witnesses for

and against him on oath[.]" Md. Decl. of Rts. art. 21; *Craig v. State*, 322 Md. 418, 430 (1991) ("The two Confrontation Clauses are in *pari materia*."). "The 'main and essential purpose' of the Confrontation Clause is to ensure that the defendant has an opportunity for effective cross-examination of adverse witnesses, 'which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.'" *Taylor v. State*, 226 Md. App. 317, 332 (2016) (quoting *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974)). "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." *Davis*, 415 U.S. at 316.

"Compliance with our federal and state constitutions requires the trial judge to allow the defense a 'threshold level of inquiry' that puts before the jury 'facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.'" *Manchame-Guerra v. State*, 457 Md. 300, 309 (2018) (quoting *Martinez v. State*, 416 Md. 418, 428 (2010)). Consequently, within the confines of those matters raised during direct examination, a criminal defendant may cross-examine to "elucidate, modify, explain, contradict, or rebut testimony given in chief[,]" or to inquire as to "facts or circumstances inconsistent with testimony." *Smallwood v. State*, 320 Md. 300, 307 (1990).

Beyond these constitutional thresholds, however, a trial court is afforded considerable leeway in managing the testimony elicited at trial, particularly through cross-examination. *See Martinez v. State*, 416 Md. 418, 428 (2010) ("The ability to cross-examine witnesses, however, is not unrestricted."). In accordance with its duty and power to "exercise reasonable control over the mode and order of interrogating witnesses and

presenting evidence," Md. Rule 5-611(a),[3] a trial court may exercise its discretion to "impose reasonable limits on cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." *Martinez*, 416 Md. at 428. For example, under Maryland Rule 5-611(b)(1), "cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness." These limits do not infringe on a defendant's confrontation rights so long as the defendant has reached "the 'constitutionally required threshold level of inquiry.'" *Martinez*, 416 Md. at 428 (cleaned

[3] Maryland Rule 5-611 provides:

> (a) **Control by court.** — The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
>
> (b) **Scope of cross-examination.** —
>
> (1) Except as provided in subsection (b)(2), cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. Except for the cross-examination of an accused who testifies on a preliminary matter, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.
>
> (2) An accused who testifies on a non-preliminary matter may be cross-examined on any matter relevant to any issue in the action.
>
> (c) **Leading questions.** — The allowance of leading questions rests in the discretion of the trial court. Ordinarily, leading questions should not be allowed on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily, leading questions should be allowed (1) on cross-examination or (2) on the direct examination of a hostile witness, an adverse party, or a witness identified with an adverse party.

up) (quoting *Smallwood*, 320 Md. at 307). That is, so long as the defendant "has been 'permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness[.]'" *Id.* (quoting *Davis*, 415 U.S. at 318); *accord Manchame-Guerra*, 457 Md. at 309-10.

The scope of cross-examination is a mixed question of law and fact. With respect to our review of a trial judge's exercise of authority over the scope of cross-examination, Maryland's Supreme Court explained:

> In controlling the course of examination of a witness, a trial court may make a variety of judgment calls under Maryland Rule 5-611 as to whether particular questions are repetitive, probative, harassing, confusing, or the like. The trial court may also restrict cross-examination based on its understanding of the legal rules that may limit particular questions or areas of inquiry. Given that the trial court has its finger on the pulse of the trial while an appellate court does not, decisions of the first type should be reviewed for abuse of discretion. Decisions based on a legal determination should be reviewed under a less deferential standard. Finally, when an appellant alleges a violation of the Confrontation Clause, an appellate court must consider whether the cumulative result of those decisions, some of which are judgment calls and some of which are legal decisions, denied the appellant the opportunity to reach the "threshold level of inquiry" required by the Confrontation Clause.

Peterson v. State, 444 Md. 105, 124 (2015).

Cross-Examination Relating to Detective's Failure to Request Forensic Analysis

On cross-examination, defense counsel questioned Detective Taylor about his decision not to request analysis of fingerprints and DNA evidence obtained from the Lexus. Although fingerprints were lifted from the vehicle, Detective Taylor explained that he did not request fingerprint or DNA analysis because appellant owned and drove the Lexus and,

therefore, he expected his fingerprints and DNA to be on or in the vehicle. Defense counsel continued this line of questioning as follows:

> [DEFENSE COUNSEL]: You didn't think it important to find if there was anyone else's fingerprints – by "anyone else's," I mean not Mr. Kelly, not Miss Green, if there were anyone else's fingerprints o[r] DNA on the outside of the vehicle.
>
> [DETECTIVE TAYLOR]: Again, based off the video surveillance, the vehicle pulled up, she gets shot, the vehicle takes off. It didn't appear that someone went in the vehicle. Ms. Green is found inside vehicle, Charles Kelly owns the vehicle.
>
> [DEFENSE COUNSEL]: So what I said was the "outside" of the vehicle?
>
> [DETECTIVE TAYLOR]: Again, with Charles Kelly owning the vehicle, I didn't think it was best practice to request for a DNA and fingerprints knowing that his DNA and Prince George's County Police was going to be found on the vehicle.
>
> [DEFENSE COUNSEL]: Well, could have been found on the vehicle, right?
>
> [DETECTIVE TAYLOR]: Could, could.
>
> [DEFENSE COUNSEL]: Just like someone else's, maybe a Trent Lotridge DNA could have formed fingerprints, could have been found on the outside of vehicle?
>
> [PROSECUTOR]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Nothing further.

Subsequently, in the defense's case, appellant called Detective Taylor as a witness. Again, the detective was questioned about his decision not to request fingerprint and DNA analysis. Detective Taylor acknowledged that, on 17 October 2019, he requested that the Lexus be processed for DNA and fingerprints on the exterior and interior and specifically

the interior and exterior of the "passenger-side window and door." Four fingerprints were recovered. Two were recovered from the exterior front driver's side door, above the handle, one from the exterior rear passenger-side door, above the window, and one from the exterior front passenger-side door above the door handle. Possible DNA was recovered also from the exterior of the passenger side door. Detective Taylor testified that he did not send the fingerprint lifts for analysis "[b]ecause Charles Kelly was my suspect." The detective acknowledged that, at the time he made the request for fingerprint processing, appellant was already his suspect.

On cross-examination by the prosecutor, the following exchange occurred:

> [PROSECUTOR]: The Lexus, when it was recovered, there was a [sic] blood inside f [sic] the vehicle; is that correct?
>
> [DETECTIVE TAYLOR]: That is correct.
>
> [PROSECUTOR]: And did you have that blood submitted for DNA analysis that was recovered within the vehicle?
>
> [DETECTIVE TAYLOR]: I did not.
>
> [PROSECUTOR]: And you didn't have it submitted because it was going to be Brianna Green's blood, based on the DNA; is that correct?
>
> [DETECTIVE TAYLOR]: That's correct.
>
> * * *
>
> [PROSECUTOR]: Is that – that's the same reason why you didn't have the car processed for fingerprint and DNA, because you knew that it was going to be Brianna Green or Charles Kelly's fingerprints on [sic] DNA – fingerprint and DNA on that vehicle?
>
> [DETECTIVE TAYLOR]: That's correct.

> [PROSECUTOR]: At any point in your investigation did you believe that Trent Lotridge's DNA and fingerprinting would be on that vehicle?
>
> [DETECTIVE TAYLOR]: Never, no.

Appellant contends, in his Brief, that, on re-direct examination, defense counsel was precluded from

> adducing from Detective Taylor that scientific evidence informs his beliefs and backs up his theories about a case; that he failed to have the analysis done to confirm his beliefs that the fingerprints would belong only to Mr. Kelly and Brianna; and that he wasn't interested in knowing if someone else's fingerprints were on the vehicle.

On re-direct examination, defense counsel questioned Detective Taylor as follows:

> [DEFENSE COUNSEL]: As a Detective, do you develop theories –
>
> [PROSECUTOR]: Objection.
>
> THE COURT: Overruled.
>
> [DETECTIVE TAYLOR]: Pertaining to what?
>
> [DEFENSE COUNSEL]: Let's say pertaining to a suspect.
>
> [DETECTIVE TAYLOR]: Theories pertaining to a suspect?
>
> [DEFENSE COUNSEL]: Yes.
>
> [DETECTIVE TAYLOR]: I wouldn't say theories.
>
> [PROSECUTOR]: Objection, Your Honor, objection.
>
> THE COURT: Overruled.
>
> [DEFENSE COUNSEL]: You can answer.
>
> [DETECTIVE TAYLOR]: So as a [sic] theories of a suspect, I wouldn't say develop theories.
>
> [DEFENSE COUNSEL]: You develop a belief?

[DETECTIVE TAYLOR]: Based off the evidence.

[DEFENSE COUNSEL]: Okay. I'm glad you said evidence, because evidence can be a number of things, right?

[DETECTIVE TAYLOR]: That's correct.

[DEFENSE COUNSEL]: And you use that evidence to, at times, to back up that theory – your beliefs?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: What is the role of evidence, specifically scientific evidence regarding your beliefs in a case?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: You stated earlier, when [the prosecutor] asked you, that you didn't have the analysis done because you, yourself, knew that Charles Kelly and Brianna Green's fingerprints were going to be found on the vehicle?

[DETECTIVE TAYLOR]: That's correct.

[DEFENSE COUNSEL]: Okay. You didn't see fit to have it tested, to have that confirmed, right?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: You didn't have it tested to see if someone else's fingerprints were on the vehicle?

[PROSECUTOR]: Objection.

THE COURT: Overruled.

> [DETECTIVE TAYLOR]: So I didn't have it tested, that is correct I, did not have it analyzed, the fingerprints.
>
> [DEFENSE COUNSEL]: You weren't interested in knowing if someone else's fingerprints were on that vehicle?
>
> [PROSECUTOR]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Nothing further.

Appellant maintains that Detective Taylor's decision to "ignor[e] the possibility of confirmatory evidence to support his theory after seeing fit to collect that evidence, and thereby ignoring the possibility of yielding contrary evidence which would indicate a different investigative direction (*i.e.,* prejudging the results), was crucial to [his] overall defense of a faulty police investigation." We are not convinced.

The four questions to which the trial judge sustained the State's objection were: (1) "And you use that evidence to, at times, to back up that theory – your beliefs?" (2) "What is the role of evidence, specifically scientific evidence regarding your beliefs in a case?" (3) "You didn't see fit to have it tested, to have that confirmed, right?" and, (4) "You weren't interested in knowing if someone else's fingerprints were on that vehicle?" As the State notes, those questions, posed on the defense's direct examination of Detective Taylor, were leading, lacked foundation, and called for speculation. The trial court did not violate appellant's right to confrontation by exercising reasonable control over the mode of interrogating Detective Taylor and the presentation of evidence so as to make the interrogation and presentation of evidence effective for the ascertainment of the truth, to

avoid needless consumption of time, and to protect witnesses from harassment. *See* Md. Rule 5-611(a).

Even though the questions asked were objectionable, appellant was not prevented from arguing to the jury his "overall defense of a faulty police investigation." In closing argument, defense counsel stated that Detective Taylor did not ask for "the fingerprints that he specifically requested . . . to be analyzed[.]" He argued that the "entire police investigation [cannot] be trusted because in all of the missteps, . . . all of the cutting of corners, it simply can't be trusted." He then argued extensively about Detective Taylor's decision not to request analysis on the fingerprints that were lifted from the Lexus and the DNA, stating that he cannot "100 percent make sense of it," that Detective Taylor did not send the fingerprints of DNA for analysis "[b]ecause he has his theory, and he doesn't want anything else, he doesn't want anything else to go against that." Defense counsel argued that the importance of having the analysis performed was to test the detective's theory and evaluate it. He stated:

> You have [a] theory, let's test it and see, because what we'll never know is whether or not there was some other person's fingerprints, DNA on the exterior passenger door, right, outside passenger door and on the trunk, right? That Detective Taylor has this theory that he's full speed ahead on, right, and he doesn't bant [sic] these fingerprints, DNA to come back, right, and it be not Charles, not Brianna, but be another person, be a Trent whoever, answer any name, right, and then you look and investigation [sic] that person and see, hey, you're [sic] fingerprints came back, do you know anything about this vehicle. You see whether their phone was in the area, you see whether they live in that area or have some association. You further see, all right, because remember we talk about the video, if this is someone Brianna would have trusted, right? If they had a similar vehicle, if she – if there is someone that she would have trusted enough to drive behind when these odd things occurred. But none of that ever happened. And to be honest with you, that's wild. That is a travesty. And it's honestly so unfortunate, because it's not

> only incredibly unfair, . . . not only incredibly unfair to Charles, but it's incredibly unfair to Brianna and her family as well.

The record makes clear that the trial court exercised properly its discretion in regulating the examination of Detective Taylor regarding his decision not to request forensic analysis of the fingerprints and DNA recovered from the Lexus. Further, defense counsel argued thoroughly the defense theory that the police investigation could not be trusted because of all the missteps and cutting of corners and because it was faulty, sloppy, and unfair. Appellant's constitutional rights to confrontation were not violated.

Adequacy of Argument Presented

Although appellant mentioned in his Brief four other areas of inquiry on which he sought to examine Detective Taylor, he presented argument about only one; that is, Detective Taylor's failure to request forensic analysis of the fingerprint and DNA evidence. Nowhere in his Brief does appellant offer any argument in support of other issues, specifically Detective Taylor's delay in speaking to Lotridge, his delay in getting the cell phone mapping, and his misunderstanding that the shooting occurred from the passenger side of the vehicle.

An appellant is required to articulate and argue adequately in his initial brief all issues he desires the appellate court to consider. Maryland Rule 8-504(a)(6) provides that a party's brief shall include "[a]rgument in support of the party's position on each issue." For noncompliance with that Rule, we "may dismiss the appeal or make any other appropriate order with respect to the case[.]" Md. Rule 8-504(c). We have adhered consistently to the view that "if a point germane to the appeal is not adequately raised in a

party's brief, the court may, and ordinarily should, decline to address it." *DiPino v. Davis*, 354 Md. 18, 56 (1999); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); *Moosavi v. State*, 355 Md. 651, 660-61 (1999) (quoting *DiPino*, 354 Md. at 56). We shall adhere to that view here and shall refrain from mining the record in search of support for appellant's other confrontation challenges.

II.

Appellant contends that the trial court erred in allowing Tequila Green and Detective Taylor to identify vehicles depicted in video recordings as appellant's Tahoe and Lexus. He argues that their testimony constituted improper lay opinion testimony that invaded the province of the jury. We disagree.

Tequila Green's Identification

During direct examination in the State's case-in-chief, Tequila testified that every time she saw appellant, he drove a "red truck." She saw the truck "over 15, 20 times[,]" and she had "driven in his truck with him before." Tequila was shown photographs identified as State's Exhibits 5-8 and, without objection, she identified the vehicle depicted in each photograph as appellant's truck. She testified also that appellant owned "a gold car" and a Porsche. She was shown photographs identified as State's Exhibits 11-14 and, without objection, she identified the vehicle depicted as the "gold car that he would let my sister drive." She stated that appellant let her drive the gold car once and let her sister drive it multiple times.

Later, Tequila was shown a photograph identified as State's Exhibit 10, a still photograph taken from the surveillance video obtained from the Discount Mart, which was admitted as State's Exhibit 24. She testified, without objection, that the vehicle depicted was appellant's "red truck" that she had seen him drive multiple times. When the State sought to admit Exhibit 10, defense counsel objected to certain text on the screenshot. The court determined that Tequila could say that "this is his car, it looks like his car," but could not estimate the time and place, and the State would have to redact the time stamp.

When the prosecutor asked Tequila to view State's Exhibit 24, the video recording from the Discount Mart (admitted previously in evidence), defense counsel objected on the ground that whether the vehicle depicted in the video was appellant's truck was an issue for the jury to determine. Defense counsel maintained that Tequila was in no better position than the jury to determine whether the vehicle depicted was appellant's truck and argued that she had only seen the truck fifteen to twenty times. In addition, defense counsel observed that the video was of a "grainy nature" and that there was no license plate depicted in it. The State countered that Tequila had familiarity with the truck sufficient for her to identify it.

The court overruled appellant's objection and found that Tequila was "competent to testify regarding the identity of the alleged vehicle" in the video, noting that she had seen appellant's truck at least fifteen times and had ridden in it herself. The court stated that the matter presented a question of fact for the jury and that defense counsel would be able to cross-examine Tequila about her identification.

Tequila, after viewing State's Exhibit 24, testified that the vehicle depicted in the video was "the car I seen [appellant] driving, the car he allowed me to drive in also." Immediately thereafter, the following exchange occurred:

> [PROSECUTOR]: Ms. Green, you testified that you recognized the truck that was depicted on the screen was the same truck that you observed the defendant driving on several occasions. Do you recognize the car that is driving right behind that red truck?
>
> [TEQUILA GREEN]: Yes.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: Same one regarding the case law discussed at the bench.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: Do you recognize the car that's shown on the screen behind the red truck?
>
> [TEQUILA GREEN]: Yes.
>
> [PROSECUTOR]: What car is that?
>
> [TEQUILA GREEN]: That would be the car that [appellant] allowed me to drive in before and let my sister drive.

Detective Taylor's Identification

At trial, the State played a video recording identified as State's Exhibit 25. Without objection, Detective Taylor identified a vehicle in that video recording as "the red Tahoe that Charles Kelly drives." Detective Taylor reviewed also State's Exhibit 24, the video recording from the Discount Mart. When asked by the prosecutor if he recognized the vehicle on the screen, defense counsel objected on the ground that the detective was being

asked to intrude upon the province of the jury, that he was not in any better position than the jurors to opine on that question, and that he did not "have the requisite experience and knowledge with the vehicle" to be able to offer a conclusion. The prosecutor countered that the detective had familiarity with the vehicles, that he observed the gold Lexus on the scene of the homicide, and was present when both vehicles were processed. The court overruled appellant's objection, finding the detective competent to testify based on his prior contact with the vehicles and that "you don't need . . . an expert to identify a particular car brand[,] model[,] et cetera." Detective Taylor proceeded to identify the vehicles in the video as the "red Tahoe" and "the gold Lexus."

Detective Taylor viewed also a video that was included in State's Exhibit 24 and identified as camera 14. Over the same objection raised previously by appellant, the detective identified vehicles depicted on "camera 14" as "the red Tahoe" followed by "the gold Lexus." Detective Taylor was shown previously State's Exhibit 10, a still photograph taken from the Discount Mart video. Again, over objection, he identified "the red Tahoe."

When Detective Taylor was called to testify in the defense case, he was cross-examined by the prosecutor about his investigation into the vehicles recovered:

> [PROSECUTOR]: And you then identified a burgundy Tahoe as being the vehicle involved in the murder of Brianna Green; is that correct?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Basis?
>
> [PROSECUTOR]: Can we approach?
>
> THE COURT: Okay.

(Counsel approached the bench and the following ensued:)

[DEFENSE COUNSEL]: It's same [sic] one from the earlier ones regarding – I know Your Honor ruled on them – regarding him identifying – him specifically identifying the vehicle, specifically based on the quality of the, the quality of the vehicle, so to say – our point is to say that he specifically identified a burgundy Tahoe, and my client's burgundy Tahoe as the vehicle that's [sic] was involved in the homicide is improper. If he says a vehicle that looked like it could have been or a red truck, anything of that nature, that's different that's just, but to just specifically say that vehicle, our position is improper – or we maintain that to be improper.

THE COURT: State.

[PROSECUTOR]: Your Honor, I'm asking him specifically questions about his investigation. He developed a burgundy Tahoe as the suspect vehicle as part of his investigation.

[DEFENSE COUNSEL]: And further he most of the times calls it a red Tahoe.

THE COURT: Overruled.

Detective Taylor testified thereafter that he developed a burgundy Tahoe as the suspect vehicle in Brianna's murder, that he learned that appellant owned a burgundy Tahoe, and that, from the video recovered from the Discount Mart, he observed a gold Lexus following a burgundy Tahoe proceeding down Eastern Avenue. Defense counsel's objection to the detective's testimony about what he observed on the Discount Mart video was overruled. Detective Taylor was allowed to testify that he observed on the video "the burgundy Tahoe was being followed by the gold Lexus down Eastern, toward where Ms. Green was ultimately killed at."

Analysis

Appellant argues to us that vehicles are not unique generally, and the identification of a generic vehicle from a video recording should be regarded with suspicion. Appellant's argument focuses on Tequila's testimony identifying vehicles depicted in State's Exhibit 24, the video from the Discount Mart, and State's Exhibit 10 (the still shot taken from State's Exhibit 24). His argument as to Detective Taylor's testimony focuses on his identification of vehicles in State's Exhibit 24 and State's Exhibit 25, the video recording obtained from an Exxon gas station. He maintains that the lay opinions offered by Tequila and Detective Taylor were based improperly on speculation and conjecture, amounting to mere conclusions or inferences that the jury was capable of reaching on its own. According to appellant, neither Tequila nor Detective Taylor were in a better position than the jury to determine whether the vehicles in the videos were the same vehicles at issue in the case, "particularly in light of the poor quality of the videos, which did not show license plate numbers." For that reason, appellant argues that their testimony invaded improperly the province of the jury.

Preservation

As the State points out properly, certain aspects of appellant's arguments have not been preserved for our consideration. Maryland Rule 4-323(c) provides that, "[f]or purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." A party opposing the admission of certain evidence bears the responsibility of objecting at

each specific instance it is offered. *DeLeon v. State*, 407 Md. 16, 31 (2008). A party may request also a continuing objection, which ultimately preserves the issue for appeal, in the absence of several contemporaneous objections. Md. Rule 4-323(b). A party may forfeit appellate review of evidence if he/she fails to comply with the requirements of Rule 4-323. *See Huggins v. State*, 479 Md. 433, 447 (2022) ("[U]nder Rule 4-323, the failure to object to the admission of that same evidence would . . . result in a waiver of any objections."). When a party does not object to the same or similar evidence, the issue is waived, and the error cannot be reviewed. *DeLeon*, 407 Md. at 31 ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." (citing *Peisner v. State*, 236 Md. 137, 145-46 (1964))).

Here, appellant did not request any continuing objections. As to State's Exhibit 10, Tequila identified the red truck depicted in that exhibit without objection. For that reason, no issue pertaining to the admission of State's Exhibit 10 is before us. As to State's Exhibit 24, Tequila testified initially, over objection, that the exhibit showed both the red truck and the gold car. Later, viewing State's Exhibit 24, she testified (without objection) that the vehicle depicted was the "car" she saw appellant driving, which car he allowed also her to drive in. Based on her prior testimony, the vehicle Tequila observed appellant drive (which he allowed her to ride) in was the truck. Defense counsel objected to a question about the car that was driving behind the truck, but the court overruled the objection. Thereafter, Tequila testified that the car behind the red truck in the video was "the car that [appellant] allowed me to drive in before and let my sister drive." Based on the record before us, the

only challenge that is preserved, with respect to Tequila's testimony, is her identification of the gold Lexus in State's Exhibit 24.

As for Detective Taylor's testimony, appellant's arguments focus on his identification of the vehicles depicted in State's Exhibit 25, the video obtained from the Exxon gas station, and State's Exhibit 24, the video from the Discount Mart. With respect to State's Exhibit 25, Detective Taylor testified (without objection) that he recognized the vehicle in the video clip as "the red Tahoe that Charles Kelly drives." Accordingly, appellant's arguments with respect to State's Exhibit 25 are not before us. With respect to State's Exhibit 24, the transcript indicates that defense counsel objected to the detective's identification of the red Tahoe and the gold Lexus depicted in the video. That is the only argument we shall consider with respect to Detective Taylor's testimony.

Analysis

Generally, rulings on the admissibility of lay opinion evidence are subject to an abuse of discretion standard. *Paige v. State*, 226 Md. App. 93, 124 (2015); *Warren v. State*, 164 Md. App. 153, 166 (2005). "'[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.'" *Alexis v. State*, 437 Md. 457, 478 (2014) (emphasis omitted) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)). "Rather, [a] court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* (quotation marks and citations omitted).

Lay opinion testimony is governed, in part, by Maryland Rule 5-701, which provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

"The rationale for the standard set by Rule 5-701 is two-fold: the evidence must be probative; in order to be probative, the evidence must be rationally based and premised on the personal knowledge of the witness." *State v. Payne*, 440 Md. 680, 698 (2014). In *Robinson v. State*, 348 Md. 104, 118 (1997), Maryland's Supreme Court stated that "[a] trial court should, within the sound exercise of its discretion, admit lay opinion testimony if such testimony is derived from first-hand knowledge; is rationally connected to the underlying facts; is helpful to the trier of fact; and is not barred by any other rule of evidence." The "'prototypical example'" of lay opinion testimony "'relates to the appearance of persons or things[.]'" *Ragland v. State*, 385 Md. 706, 718 (2005) (quoting *Asplundh Mfg. Div. v. Benton Harbor Eng'g*, 57 F.3d 1190, 1196 (3rd Cir. 1995)).

Here, the trial court did not abuse its discretion in permitting Tequila and Detective Taylor to identify the vehicles depicted in State's Exhibit 24. Tequila had prior personal knowledge of the red Tahoe and the gold Lexus. She saw earlier the Tahoe fifteen to twenty times, had driven the Lexus on one occasion, and had been a passenger in both vehicles. In addition, she identified, without objection, both vehicles in photos and other video recordings. Detective Taylor first encountered the Lexus at the scene of the homicide and was present when it was processed. As for the Tahoe, he was present for the search and

observed both the interior and exterior of the vehicle. Tequila and Detective Taylor had first-hand knowledge of the vehicles and identified them in the videos based on their perceptions. Their testimony could be characterized as helpful to the jury in identifying vehicles that were depicted in various exhibits. The circuit court noted properly that appellant's concerns about the poor video quality and the fact that the license plate was not visible went to the weight of the evidence, not its admissibility.

Even were we persuaded that the circuit court erred in admitting the testimony of Tequila and Detective Taylor, we would find such error to be harmless beyond a reasonable doubt. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (stating that the harmless error standard requires a showing that the error was harmless beyond a reasonable doubt and did not influence the outcome of the case). Exhibit 24 was admitted in evidence without objection. Its admissibility is not challenged here. Other evidence including photographs, video recordings, and testimony about the Tahoe and Lexus was admitted. For example, Artis identified appellant and his vehicle in State's Exhibit 25. Brianna's mother, Tonya, testified that appellant drove a red or burgundy colored truck "all the time" and that he had also a gold Lexus that he let Brianna use. Veronica Brown testified that appellant purchased a burgundy Chevy Tahoe and a gold Lexus. Detective Taylor testified about State's Exhibit 28, which was a zoomed-in video recording from a residential camera that captured the shooting. He referred to the Tahoe and Lexus without objection. Tequila testified, without objection, that the vehicle depicted in State's Exhibit 10 was appellant's red truck. She identified also the vehicles, depicted in photographs admitted as State's Exhibits 5 through 8 and 11 through 14, as appellant's truck and his gold car. The jurors were free to view the

videos themselves and judge the accuracy of Tequila's and Detective Taylor's testimony. *See Harrod v. State*, 261 Md. App. 499, 539 (2024) (stating that the jury was free to view the videos and judge themselves the accuracy of the detectives' descriptions).

III.

Appellant contends that the trial court erred in admitting State's Exhibit 27, a composite video assembled by FBI digital evidence expert, William Hinton. That video, and the raw video footage from which it was assembled, showed the shooting of Brianna. Before addressing appellant's contention, we shall recite the factual background of the videos from which the composite video was assembled and Hinton's testimony about how he constructed the composite video.

Video from 5529 K Street

Tiyln Miller, who resided at 5529 K Street, testified that she was at home at 8 p.m. on 15 October 2019. Police investigating the shooting arrived at her house and asked for the video footage from her security system camera facing the front of her residence, her driveway, and K Street. According to Miller, her security camera "captured some cars going by, it captured a car going up the hill and shots." Miller complied with the request of the police by emailing them the video recording, which also included sound. At trial, she identified State's Exhibit 22 as the video recording she provided to the police. It was entered in evidence without objection and played for the jury. Miller viewed the recording, identified her driveway, and confirmed that it was the video she had provided to the police.

Video from 5531 K Street

Prince George's County Police Corporal Ashley Ryder, who worked in the video analysis unit for the police department's crime scene investigation division, testified that, on 15 October 2019, she responded to 5531 K Street in Fairmount Heights to recover video evidence. Homicide investigators had reviewed already the footage and asked her to recover video from 8:07 to 8:15 p.m. She confirmed that she was retrieving footage for the correct time. She explained:

> [CORPORAL RYDER]: So I determined once I was – I figured out that the time frames were, in fact, the local time. The file names corresponded to the Universal – coordinates to the universal time, so it was indicated on that with a "Z". So it's the start and end of the time frame that is covered. It's just – it was showing that it was four hours ahead of time.
>
> [PROSECUTOR]: So the "Coordinated Universal Time" is four hours ahead of the actual time?
>
> [CORPORAL RYDER]: Yes, on that date it was.
>
> [PROSECUTOR]: And the "Z" signifies what?
>
> [CORPORAL RYDER]: "Zulu".
>
> [PROSECUTOR]: And "Zulu" signifies the same thing and the coordinated Universal Time?
>
> [CORPORAL RYDER]: Yes, it's used synonymously, usually the military.

After verifying that she had captured the video for the requested time period, Corporal Ryder took a disk of the video to her lab, downloaded it on a USB thumb drive, and transferred it "to a secured server." Without objection, the video recording collected by Corporal Ryder from 5531 K Street, which did not have any sound, was admitted in evidence as State's Exhibit 23 and played for the jury. At trial, Corporal Ryder confirmed

that Universal Coordinated Time, or Zulu time, is four hours ahead of actual local time and that the video depicted what occurred between 8:07 and 8:15 p.m. local time on 15 October 2019.

Dionna Davis testified that, at about 8 p.m. on 15 October 2019, she was inside her boyfriend's home at 5531 K Street. She looked out a window and saw two vehicles parked across the street, alongside 56th Street. She did not hear any arguing. One of the vehicles was a car and the other was a dark colored truck. As she walked into the kitchen, Davis heard "two or more" gunshots. She looked out a window and saw and heard the truck "skirting off up the hill." She called 911 at "about eightish," which was "[n]o more than a minute, probably less" from when she observed the truck speed off. At trial, Davis was shown State's Exhibit 23. She confirmed that the video depicted what she observed on 15 October 2019.

The Composite Video Assembled by Hinton

At trial on 19 January 2023, Hinton testified as an expert in forensic examination of digital evidence. Hinton was asked by the Prince George's County Police Department to review the video recordings obtained from the residences located at 5529 and 5531 K Street in Prince George's County and create a time line. One of the video recordings had video and audio, and it was "focused on the driveway[.]" The other had only video, but "a more diverse view of the whole neighborhood." Hinton testified that "the videos occurred during the time from midnight to about 12:15[.]" To put the videos together, he explained he used visual cues from one video and synchronized it to the other without altering the content of the video recordings in any way. He "put a whole bunch of clips together so that you can

see all the events that occurred[,]" "almost like what you do with a Tik Tok video[.]" To accomplish that, Hinton utilized Adobe Premier software.

Hinton identified State's Exhibit 27 as "the time line video that [he] created[,]" which had the recording with audio and video combined with the recording without audio. Hinton prepared a report on how he completed the process of assembling the composite video. That report was marked as State's Exhibit 29. When the State sought to admit in evidence Exhibits 27 and 29, defense counsel objected. When asked to state the basis of his objection, defense counsel stated, "[r]elevance at this point." At a bench conference that followed, defense counsel stated:

> So by relevance what I mean is when what he testified to just now is that the videos that he reviewed and created were from midnight to 12:15. The time frame that we're dealing with, the State does whatever based on that, fine, but the time frame we're dealing with is roughly 8:07 to about – so let's say 8:00 to 8:15. But he said midnight to 12:15, making whatever this is – that's why I said at this point, but not relevant.

The prosecutor responded that the issue could be clarified "very quickly." The court struck the prior admission of the evidence and permitted the State to question Hinton further. Hinton explained that the time of midnight to 12:15 was shown "on the meta data of the videos" or time stamp of the videos he received. When asked if he was familiar with whether the time stamp was "Eastern Standard Time as opposed to Zulu time[,]" Hinton said, "[r]ight, I don't know exactly, no." Over objection, the court admitted State's Exhibits 27 and 29.

Preservation

The record makes clear that appellant's objection to the admission of the composite video, State's Exhibit 27, was based on his contention that the video was not relevant because it did not depict the time at which the shooting was alleged to have occurred. Before this Court, appellant asserts that "[t]he composite video failed to meet the threshold foundational requirement necessary to support its authenticity[.]"

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Maryland Rule 4-323(a) provides that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." "It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg*, 355 Md. at 541; *see also Gutierrez v. State*, 423 Md. 476, 488 (2011) ("'[W]hen an objector sets forth the specific grounds for his objection the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified.'" (cleaned up) (quoting *Sifrit v. State*, 383 Md. 116, 136 (2004))).

Although an appellant may present an appellate court with a more detailed version of an argument made at trial, the Supreme Court of Maryland refuses to require trial courts "'to imagine all reasonable offshoots of the argument actually presented to them before making a ruling on admissibility.'" *Starr v. State*, 405 Md. 293, 304 (2008) (quoting *Sifrit*, 383 Md. at 136). In *Sifrit*, the Supreme Court held that, when the defendant's theory of

relevance on appeal was different from the theory he presented to the trial court, the theory advanced on appeal was not preserved. *Sifrit*, 383 Md. at 136. *See also Klauenberg*, 355 Md. at 541 (stating that an objection to testimony limited to relevance did not preserve an appellate argument that the testimony was improper bad acts evidence); *Jeffries v. State*, 113 Md. App. 322, 340-42 (stating that appellate argument that evidence was unduly prejudicial improper other crimes evidence was not preserved when the objection below was only that the evidence was irrelevant), *cert. denied*, 345 Md. 457 (1997).

Here, appellant's sole objection in the trial court was that the composite video was irrelevant. For that reason, his argument on appeal that the video was not authenticated is waived. As appellant does not argue on appeal that the trial court erred in rejecting his claim that the composite video was irrelevant, that issue is also not before us. Even if the issue of authentication had not been waived, and even if appellant had challenged the trial court's determination on relevance, he would fare no better here.

Authenticity

We review "for abuse of discretion a trial court's determination as to whether an exhibit was properly authenticated." *Mooney v. State*, 487 Md. 701, 717 (2024). *Accord Sykes v. State*, 253 Md. App. 78, 90 (2021). Maryland Rule 5-901(a) provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Ultimately, "[w]hat matters is that the proponent of the video must demonstrate that the evidence is sufficient for a reasonable juror to find by a preponderance of the evidence that the video is what it is claimed to be." *Mooney*, 487 Md. at 730. The

threshold for authentication is "slight." *Jackson v. State*, 460 Md. 107, 116 (2018). "Video footage can be authenticated in different ways under the rules governing authentication, including through the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1), circumstantial evidence under Maryland Rule 5-901(b)(4), or a combination of both[.]" *Mooney*, 487 Md. at 730.

Here, the State leapt over the low threshold for establishing authenticity. As stated previously, the video recordings obtained from the residences on K Street were admitted previously in evidence without objection. Miller testified that she was at home at 8 p.m. on 15 October 2019, and that her security camera "captured some cars going by, it captured a car going up the hill and shots." Davis testified that she called 911 at "about eightish," which was "[n]o more than a minute, probably less" from when she observed the truck speed off. Corporal Ryder was asked to recover video from 5531 K Street covering the time from 8:07 to 8:15 p.m. At trial, she explained how the file names corresponded to the universal time which was indicated with a "Z" for Zulu time. Corporal Ryder confirmed that Universal Coordinated Time, or Zulu time, was four hours ahead of actual local time and that the video depicted what occurred between 8:07 and 8:15 p.m. local time on 15 October 2019. Lastly, Hinton testified that he was able to link the videos together, demonstrating that they captured a continuous period of time. Even if the evidence showed that only the video recovered by Corporal Ryder captured the period from 8:07 to 8:15 p.m., Hinton's ability to connect the videos constitutes circumstantial evidence that they encompassed the same time frame. For that reason, Hinton's lack of knowledge as to whether the time on the video was local time or Universal Coordinated/Zulu Time was

immaterial because his work, based on previously admitted evidence, and his expertise showed a relationship between the videos. Although appellant did not challenge the authenticity of either the raw footage collected from the residences on K Street or the composite video assembled by Hinton, a reasonable juror could have been persuaded by a preponderance of the evidence that the video was what it purported to be; that is, a fair and accurate video of the shooting and events immediately surrounding it.

Relevance

The threshold question of evidentiary relevance is reviewed *de novo*. *Montague v. State*, 471 Md. 657, 673 (2020). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Montague*, 471 Md. at 674 (cleaned up) (quoting *Williams v. State*, 457 Md. 551, 564 (2018)). Generally, "all relevant evidence is admissible." Md. Rule 5-402.

Here, the raw video recordings that Hinton relied upon were admitted without objection. As we noted already, there was ample evidence that they depicted events that occurred during the pertinent time period. They were relevant because they tended to prove the movement and location of appellant and Brianna at the time the crime was alleged to have been committed. Hinton's composite video was no different. Hinton took relevant video evidence and assembled it in a way that made it more easily understood. For those reasons, even if the issues of authenticity and relevance were before us properly, reversal would not be warranted.

IV.

Appellant contends that the conviction and/or sentence for one count of use of a firearm in the commission of a crime of violence or any felony must be vacated or merged. We agree that merger is required.

Background

Appellant was charged by way of an indictment that included seven counts, among which were Count 3, use of a firearm in the commission of a felony, and Count 4, use of a firearm in the commission of a crime of violence, both in violation of § 4-204(b) of the Criminal Law ("CR") Article of the Maryland Code.[4] The parties do not dispute that the murder of Brianna was the sole crime upon which both charges were based.

When discussing the jury instructions, the judge asked defense counsel and the prosecutor whether the two charges would merge if appellant was convicted of both, and both answered in the affirmative. Counsel advised the court that the verdict sheet included only one question that included a "slash" separating "felony" and "crime of violence." There was an extensive conversation about how the crimes should be phrased on the verdict sheet.

[4] Section 4-204(b) of the Criminal Law Article provides:

> (b) A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.

Under § 5-101(c)(11) of the Public Safety Article of the Code of Maryland, the phrase "crime of violence" is defined to include, among other crimes, "murder in the first or second degree[.]" The parties do not dispute that both the crime of violence and the felony that formed the basis of Counts 3 and 4 of the indictment was murder.

The trial judge instructed the jury, in part, as follows:

> The defendant is charged with murder and use of the handgun in the commission of a felony and in the commission of a crime of violence. You must consider each charge separately and return a separate verdict for each charge with the following exception. Do no contract [sic] charge of use of handgun in the commission of felony or commission of crime of violence until you have reach [sic] a verdict on the charge of murder. Only if your verdict on that charge is guilty should you consider whether the defendant is guilty or not guilty of use of a handgun in the commission of felony and in the commission of a crime of violence. If, however, your verdict on that charge is not guilty, you must find the defendant not guilty of use of a handgun in the commission of felony and in the commission of crime of violence.
>
> * * *
>
> The defendant is charged with the crimes of firearm in the commission of a felony and crime of violence. The felony and crime of violence in this case is murder. In order to convict the defendant, the State must prove that the defendant committed a murder and that the defendant used a firearm in the commission of the murder.

In closing argument, the prosecutor referred once to the crimes charged, stating, "[u]se of a firearm in the commission of a felony or a crime of violence. [Appellant] murdered Brianna Green and he used a firearm to do it." The jury found appellant guilty of use of a firearm in the commission of a felony and use of a firearm in the commission of a crime of violence. The verdict sheet reflected the following:

> 4. Use of a Firearm in the Commission of a Felony, we the jury, find the Defendant
>
> Not Guilty _____ Guilty ___X___
>
> 5. Use of a Firearm in the Commission of a Crime of Violence, we the jury, find the Defendant
>
> Not Guilty _____ Guilty ___X___

When the verdict was returned, the clerk asked the jury foreperson, "[a]s to question four, use of firearm in the commission of a felony crime of violence, you the jury find the defendant not guilty or guilty?" The jury foreperson responded, "[g]uilty." Immediately thereafter, the clerk questioned the jury foreperson about "question five, openly carry a handgun with the intent to cause death or serious bodily injury[.]" The jury was polled and then the clerk harkened the jury to its verdict declaring, in part, "as to question four, use of a firearm in the commission of a felony crime of violence, you the jury find the defendant guilty; as to question five, openly carrying a handgun with the intent to cause death or serious bodily injury, you the jury find the defendant guilty."

At the sentencing hearing, there was discussion about the sentencing guidelines calculations:

> THE COURT: Just a second. Okay. So the guidelines worksheet has – sorry – for the first degree murder it has life to life; for possession of a regulated firearm by someone who's prohibited it has a mandatory minimum of 5 years to 10 years; and for the crime of use of handgun and a crime of violence has the mandatory minimum of 5 years to 10 years; for overall guidelines of life plus 20 years.
>
> [PROSECUTOR]: Thank you, Your Honor.
>
> THE COURT: It has a wear, carry transport as 3 years to 3 years. And it's just one count of crime of violence?
>
> [PROSECUTOR]: We just kind of merged them I thought at the –
>
> THE COURT: The worksheet has unlawful use of a firearm in the commission of a felony or crime of violence –
>
> [PROSECUTOR]: Right.
>
> THE COURT: – 20 to 20 years, overall guidelines life plus 20. Are you ready to go forward?

[PROSECUTOR]: Yes, Your Honor.

[DEFENSE COUNSEL]: Yes.

Thereafter, the prosecutor requested the following sentence:

> Your Honor, the only sentence that is appropriate for the Defendant in this case with regards to the first degree murder is life without the possibility of parole. And that's what the State is recommending in this case, that's what we're asking for in this case.
>
> The Defendant also was convicted of the possession of a handgun by a prohibited person. The State is going to ask that he gets sentenced to the 15 years, the maximum penalty, for that charge for the use of handgun during the commission of a felony, crime of violence. We ask that the Court sentences the Defendant to 20 years, the maximum penalty, for that charge. And we're going to ask that these sentences run consecutively, Your Honor. There is no reason for this Defendant to ever have another opportunity to be released, to be out in the community, and that's what the State recommends and that's the appropriate sentence in this case.

The court sentenced appellant stating, in pertinent part:

> To Count III, use of a firearm in the commission of a felony will be 15 years.
>
> With regard to Count IV, use of a crime of violence – use of a firearm in a crime of violence – Count III was felony – 15 years.
>
> Count V, carrying a dangerous and deadly weapon with intent to injury, 20 years.
>
> * * *
>
> Count IV will run concurrent with Count III. And Count V will be consecutive to Counts III and IV.

After the sentence was imposed, the following occurred:

[DEFENSE COUNSEL]: I'm sorry. What was the sentence for V, one more time?

> THE COURT: Count V, carrying a dangerous and deadly weapon with intent to injure, 20.
>
> [DEFENSE COUNSEL]: Isn't that III?
>
> THE COURT: That's wear, carry, and transport. So. Right? It says carrying – I'm looking at the guidelines worksheet. Use of a firearm in the commission of a felony subsequent – they have a subsequent crime of violence. I have it under 4-204(c)(2). Yeah, 4-204(c)(2), this falls under persons prohibited from using a firearm in the commission of a crime of violence. C, it says, "A person who violates this section Is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence of felony [sic], shall be sentenced to imprisonment for not less than 5 and not exceeding 20."
>
> [DEFENSE COUNSEL]: Okay. I'll track down and file any appropriate (indiscernible – 11:49:42).

Analysis

Appellant argues that in light of "the confusing nature of the trial court's instructions in relation to the two counts that appeared on the verdict sheet, it is impossible to discern which of the two offenses or charges the jury convicted on[.]" He maintains that "the ambiguity favors the defendant and neither conviction can stand, or one conviction must merge." He argues further, "in the alternative, because the offense was based solely on the single underlying crime of murder, one of the two convictions and sentences must be merged." The State asserts that, because both convictions were based on the same murder, "but violated only one statute, prohibiting a person from using 'a firearm in the commission of a crime of violence . . . or any felony[,]"' we should remand the case with instructions for the circuit court to vacate one of appellant's convictions, but amend the language of the other to reflect that appellant was convicted of using a firearm in the commission of a

"crime of violence or felony." Alternatively, the State posits that, under the rule of lenity, the sentences must merge.

The elements of use of a firearm, put simply, are (1) the defendant used a firearm; and (2) the defendant did so in the commission of a felony or crime of violence (the "predicate crime"). *Hallowell v. State*, 235 Md. App. 484, 507 (2018). Use of a firearm is what is commonly referred to as a "compound crime," that is, a crime that has another crime (that we are calling the predicate crime) as one of its elements. *McNeal v. State*, 426 Md. 455, 468 n.10 (2012). As to both charges in the instant case, use of a firearm in the commission of a felony and use of a firearm in the commission of a crime of violence, the predicate crime was the murder of Brianna Green.

In *Garner v. State*, 442 Md. 226 (2015), the defendant was convicted of several crimes, including, attempted first-degree murder, attempted robbery with a dangerous weapon, and two counts of use of a handgun in the commission of a crime of violence or any felony under CR § 4-204(b).[5] *Garner*, 442 Md. at 233 & n.2. He was sentenced to thirty years' imprisonment for attempted first-degree murder, a consecutive term of twenty years for use of a handgun (the first five years to be served without the possibility of parole), a concurrent term of fifteen years for attempted robbery with a dangerous weapon, and a consecutive term of one year for the second use of a handgun conviction. *Id.* at 233-34. Before the Supreme Court of Maryland, Garner argued that separate consecutive

[5] The Court noted that, although CR § 4-204(b) prohibits the use of a handgun in the commission of a crime of violence or any felony, for brevity, it would refer to the offense as "use of a handgun in the commission of a crime of violence." *Garner*, 442 Md. at 233 n.2.

sentences for two convictions for use of a handgun are prohibited where one handgun is used to commit two crimes against one victim in one criminal transaction. *Id.* at 235. He maintained that the victim, not the underlying crime of violence, was the unit of prosecution for the crime of use of a handgun in the commission of a crime of violence or any felony. *Id.* Alternatively, he argued that if the unit of prosecution was the underlying crime of violence or felony, his second conviction for that crime must merge for sentencing purposes under the required evidence test, the rule of lenity, or the principle of fundamental fairness. *Id.*

The Supreme Court recognized that "'[w]hether a particular course of conduct constitutes one or more violations of a single statutory offense . . . turn[s] on the unit of prosecution of the offense[, which] is ordinarily determined by reference to legislative intent.'" *Id.* at 236 (quoting *Purnell v. State*, 375 Md. 678, 692 (2003)). After considering the legislative intent of CR § 4-204, the Court held that:

> imposition of separate consecutive sentences for two convictions for use of a handgun in the commission of a crime of violence is permissible where a defendant uses one handgun to commit two separate crimes of violence against one victim in one criminal transaction because the unit of prosecution is the crime of violence, not the victim or criminal transaction.

Id. at 241. The Court explained:

> [A] defendant may be convicted of, and sentenced for, use of a handgun in the commission of a crime of violence corresponding to each underlying felony or crime of violence of which the defendant is convicted. [CR] § 4-204(b)'s plain language demonstrates the General Assembly's intent to permit multiple convictions and sentences for each violation of [CR] § 4-204; in other words, [CR] § 4-204(b)'s plain language leads to the inescapable conclusion that [CR] § 4-204 authorizes a separate conviction and sentence for each felony or crime of violence.

Id. at 242.

The Court also explained its holding as follows:

> Obviously, where there are multiple victims, multiple convictions and sentences for use of a handgun in the commission of a crime of violence are permissible. Whether there are multiple victims or only one victim, however, the unit of prosecution – the crime of violence – does not change. Stated otherwise, the unit of prosecution for the crime of use of a handgun in the commission of a crime of violence is the crime of violence, be there one victim, two victims, or a hundred victims. As a corollary, because the unit of prosecution is the crime of violence, it follows that, if more than one crime of violence is committed against one victim, there may be multiple convictions and sentences for use of a handgun in the commission of a crime of violence for each separate crime of violence or felony committed against the victim.

Id. at 243-44.

As we have stated, appellant was charged with and convicted of two counts – one for use of a firearm in the commission of a felony and one for use of a firearm in the commission of a crime of violence. The predicate crime for each was the murder of Brianna Green. The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Due Process Clause of the Fourteenth Amendment, provides that no individual shall be tried or punished more than once for the same offense. *See* U.S. Const. amend. V. Merger is the common law principle that derives from the protections afforded by the Double Jeopardy Clause. *Brooks v. State*, 439 Md. 698, 737 (2014). It is the mechanism used to "protect[] a convicted defendant from multiple punishments for the same offense." *Id.* For two or more convictions to be merged for sentencing purposes, the convictions must be based on the same act or acts. *State v. Frazier*, 469 Md. 627, 641 (2020). If so, we then examine whether the offenses

meet one of the three principles of merger recognized in Maryland: (1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness. *Koushall v. State*, 479 Md. 124, 156 (2022). The parties do not argue that merger is required under the required evidence test or principles of fundamental fairness.

In this case, it is our view that merger of appellant's sentence is required under the rule of lenity. "The rule of lenity is a common law doctrine that directs courts to construe ambiguous criminal statutes in favor of criminal defendants." *Alexis v. State*, 437 Md. 457, 484-85 (2014). The rule, which is "applicable only where a defendant is convicted of at least one statutory offense, requires merger when there is no indication that the legislature intended multiple punishments for the same act." *Potts v. State*, 231 Md. App. 398, 413 (2016). "'[I]f we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in effect, give the defendant the benefit of the doubt and hold that the crimes do merge.'" *Koushall*, 479 Md. at 161 (quoting *Monoker v. State*, 321 Md. 214, 222 (1990)). That is the case here. From *Garner*, we know that the unit of prosecution is the murder of Brianna Green. For that reason, we grant appellant the benefit of the doubt and hold that the crimes of use of a firearm in the commission of a crime of violence and use of a firearm in the commission of a felony should have merged for sentencing purposes.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED AS TO ALL CONVICTIONS; SENTENCES VACATED; CASE REMANDED FOR A NEW SENTENCING PROCEEDING NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLANT.