Circuit Court for Wicomico County
Case No. C-22-CR-17-000455

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1912

September Term, 2021

RYAN CHRISTOPHER HOLDEN

v.

STATE OF MARYLAND

Nazarian,
Tang,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 27, 2023

*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).

On May 8, 2018, after a two-day trial, a jury in the Circuit Court for Wicomico County found Ryan Holden guilty of first-degree felony murder, use of a firearm in the commission of a felony violent crime, first-degree assault, second-degree assault, attempted robbery, attempted armed robbery, and conspiracy to use a firearm in the commission of a felony violent crime. Mr. Holden was sentenced to life imprisonment without the possibility of parole. The circuit court granted Mr. Holden the right to a belated direct appeal, and now he challenges the trial court's denial of his motion suppress and several evidentiary rulings. We affirm the judgments of the circuit court.

I. BACKGROUND[1]

Around 1:00 a.m. on June 10, 2017, Anthony Cropper was watching television with his stepdaughter, J,[2] at his home in Salisbury when he heard a knock at the door. Mr. Cropper stood up, walked past J, and swung the door open wide. Three men stood outside, including a man wearing a red-rimmed hat and a blue bandana that covered his face—he was pointing a pistol. J testified that when she peered through the door and caught a glimpse of the man, she knew him from school and recognized him from an encounter earlier that night. The man yelled, "Give me all your money," and when Mr. Cropper replied that he had no money to give, the man on the doorstep fired his pistol and ran. The bullet struck

[1] We recount the facts describing the events of June 9–10, 2017 that led to Mr. Holden's arrest and the search of his home as they were adduced at trial. We view the evidence in the light most favorable to the State as the prevailing party. *See State v. Krikstan*, 483 Md. 43, 63–64 (2023).

[2] We will refer to the stepdaughter, a minor, by an initial to protect her privacy.

and killed Mr. Cropper, who was pronounced dead at the scene.

One of the three men, John Lee Schoolfield, testified against Mr. Holden at trial as part of a plea deal. He testified that the events culminating in Mr. Cropper's death had been set in motion only hours earlier. The afternoon before the shooting, Mr. Holden, Courtlen Coston, and Mr. Schoolfield gathered in a nearby abandoned house to plan "what [they] were going to do that night." The three men agreed they needed money, so when an acquaintance[3] offered a tip that there was a large sum of cash at "108 Middle Neck Drive," they hatched a plan. According to Mr. Schoolfield, it was Mr. Holden who proposed that the group meet up around midnight that evening to rob the house.

As Mr. Schoolfield described it, their plan was barebones at best and included little more than a street address and Mr. Holden's handgun. The three men took a taxi to the Middle Neck neighborhood around midnight and began casing the block in search of house number 108. Unable to locate their mark, they approached three or four houses in the area and knocked hard on the door of each, frightening neighbors in the process. At that point, the group spotted J and thought to ask her for directions.

J had just left a party at her uncle's house and was walking home when she spotted the three men standing on the corner of her block, in front of her next-door neighbors' house. J testified that one of the men wore a hat with a "red lining" around the rim and she recognized one of them from high school. The group approached J and asked if she knew

[3] Mr. Schoolfield testified that it was a friend of Mr. Holden's, also present at the abandoned house, who gave them the tip.

where they could find house number 108. She told them that Middle Neck Drive "was a four-digit street," and that "there was no [house number] 108 on that street." Mr. Schoolfield testified that after J answered their question, "she went in that house that we robbed."

According to Mr. Schoolfield, the men agreed that Mr. Schoolfield would knock on the door and Mr. Holden would point his gun. In preparation for his role, Mr. Holden took a blue bandana from his pocket and tied it over his face as a mask. The plan was to rob the house, but when Mr. Holden shot his gun, he and Mr. Coston fled.

Sergeant Kyle Clark of the Maryland State Police Homicide Unit, the lead investigator in the case, interviewed J. J gave officers as much detail as she could, and she asked for a high school yearbook to help her identify the shooter. J was able to identify Mr. Holden as the shooter with absolute confidence:

> [COUNSEL FOR THE STATE:] And based on a request that she made to you, what item did you show her?
>
> [SERGEANT CLARK:] A yearbook, numerous yearbooks.
>
> [COUNSEL FOR THE STATE:] And was she able to pick anybody out of those yearbooks?
>
> [SERGEANT CLARK:] She was.
>
> [COUNSEL FOR THE STATE:] Who did she pick out?
>
> [SERGEANT CLARK:] Ryan Holden.
>
> [COUNSEL FOR THE STATE:] Do you remember what she said when she saw him, what the exact words [were] that she said?
>
> * * *
>
> [SERGEANT CLARK:] Something to the effect of that was him who shot [the victim].
>
> [COUNSEL FOR THE STATE:] Did she indicate how sure

she was to you?

[SERGEANT CLARK:] Yes, one hundred percent.

She described the shooter as "a black male wearing a dark blue hoodie with a dark baseball cap and a blue bandana mask covering his face." Sergeant Clark concluded that officers should start looking for "a blue bandana, a dark-colored hat, and white shoes."

Sergeant Clark also requested and received surveillance video from two nearby businesses, including a Valero gas station located one-third of a mile away from the house. In the video provided by Valero, captured at 1:11 a.m. on June 10th, "a black male with a blue hoodie style coat with jeans and white shoes" is seen "running at a fast pace from the area of 1106 Middle Neck Drive through the Valero gas station after the shooting occurred." Later that morning, after reviewing the video and canvassing the area in the presumed "flight path" of the shooter, police found a blue bandana in a nearby parking lot. The blue bandana was sent to the Maryland State Police Crime Lab for analysis.

After a search of Mr. Holden's home[4] that yielded, among other items, twenty-five rounds of .38-caliber ammunition, he was charged with first-degree murder, use of a firearm in the commission of a felony or crime of violence, first-degree assault, second-degree assault, conspiracy, armed robbery, attempted home invasion, attempted first-degree burglary, illegal possession of a regulated firearm, possessing a regulated firearm under the age of 21, and related charges.

On July 11, 2017, Mr. Holden filed a motion to suppress evidence and a request for

[4] We'll describe below the full sequence of events leading up to the search.

a hearing. The motions hearing was held on November 3, 2017, and one week later, the circuit court denied the motion. The circuit court agreed that no exigent circumstances existed to justify the initial warrantless search but found that the independent source doctrine applied because "any items seized were taken pursuant to a validly issued search warrant based on information independent of any information obtained as a result of the seizure of the residence."

The case was tried before a jury on May 7–8, 2018. J and Mr. Schoolfield both testified and identified Mr. Holden as the shooter directly. Nate Knierim, a friend of Mr. Holden's, also testified that he gave Mr. Holden and two friends a ride in the early morning hours of June 10, 2017. Police searched Mr. Knierim's phone and retrieved a video of Mr. Holden brandishing a handgun that was played for the jury over objection. The State presented social media evidence purporting to connect Mr. Holden, Mr. Coston, and Mr. Schoolfield to the shooting. And the State presented DNA evidence linking Mr. Holden to the blue bandana retrieved from the flight path of the shooter. We'll discuss all of this evidence below.

Ultimately, Mr. Holden was convicted of first-degree felony murder, use of a firearm in the commission of a felony violent crime, first-degree assault, second-degree assault, attempted robbery, attempted armed robbery, and conspiracy to use a firearm in the commission of a felony violent crime. The court sentenced him on July 18, 2018. On September 24, 2021, Mr. Holden filed a motion for leave to file a belated appeal and request for a hearing, which the court granted. After the court's order, he filed a belated notice of

appeal on February 7, 2022. We discuss additional facts as necessary below.

II. DISCUSSION

This appeal presents six issues for our review, which we have reworded:[5]

[5] Mr. Holden phrased his Questions Presented as follows:

1. Did the motions court err in denying the motion to suppress?
2. Did the trial court err in admitting the "Facebook" evidence and testimony?
3. Did the trial court err in admitting unauthenticated and/or irrelevant and otherwise prejudicial and/or impermissible "other crimes" or "bad acts" evidence?
4. Did the trial court err in admitting other irrelevant and otherwise prejudicial evidence of other crimes, wrongs, or acts?
5. Did the trial court violate Holden's right of confrontation and otherwise err in admitting impermissible hearsay from the DNA expert that served to improperly bolster her own testimony and conclusions?
6. Did the trial court err in allowing the prosecutor to engage in leading questioning of the DNA expert, thus misleading the jury, and to engage in misleading and otherwise improper closing argument?

The State phrased its Questions Presented as follows:

1. Did the motions court correctly deny the motion to suppress, and was any error harmless?
2. Did the trial court correctly exercise its discretion in admitting properly authenticated evidence about certain Facebook communications, and was any error harmless?
3. To the extent preserved, did the trial court properly exercise its discretion in admitting a video that showed Holden holding a handgun, and was any error harmless?

Continued . . .

(1) whether the motions court erred in denying Mr. Holden's motion to suppress; (2) whether the trial court abused its discretion in admitting evidence and testimony concerning Facebook communications; (3) whether the trial court abused its discretion in admitting a video that showed Mr. Holden holding a handgun; (4) whether the trial court abused its discretion in admitting testimony that law enforcement officials obtained Mr. Holden's phone number from "Parole and Probation"; (5) whether the trial court abused its discretion in admitting testimony that an expert's work was reviewed and approved by two colleagues; and (6) whether the trial court abused its discretion in allowing the prosecutor to restate an expert's testimony during direct examination and closing argument.

A. The Motions Court Did Not Err In Denying Mr. Holden's Motion To Suppress Because The Independent Source Doctrine Applied.

Mr. Holden argues *first* that the motions court relied improperly on the independent source doctrine to excuse the warrantless search of his home. When reviewing a trial court's ruling on a motion to suppress, we rely "solely upon the record developed at the suppression hearing." *Whittington v. State*, 474 Md. 1, 19 (2021) (cleaned up). We view

4. Did the trial court properly exercise its discretion in admitting Detective Miller's passing comment that Holden's phone number was obtained from "Parole and Probation," and was any error harmless?
5. Did the trial court properly exercise its discretion in admitting testimony that an expert's work was reviewed and approved by two people, and was any error harmless?
6. To the extent preserved, did the trial court properly exercise its discretion in permitting the prosecutor to restate Spessard's testimony, and in permitting her later comments in closing, and was any error harmless?

the evidence and any inferences "in the light most favorable to the party who prevails on the motion." *Id.* at 20. "We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the court's application of the law to its findings of fact." *Pacheco v. State*, 465 Md. 311, 319 (2019) (cleaned up). And when a party raises a constitutional challenge to a search or seizure, we make "our own independent constitutional appraisal of the suppression court's ruling, by applying the law to the facts found by that court." *Raynor v. State*, 440 Md. 71, 81 (2014).

At the suppression hearing, Sergeant Clark and Master Trooper Chris Snyder testified that shortly after 1:00 a.m. on June 10, 2017, Sergeant Clark responded to the scene of the shooting. Within hours, Sergeant Clark had interviewed eyewitnesses and determined that Mr. Holden was the prime suspect. J, who was already familiar with Mr. Holden, identified him as the shooter in a photo lineup and described his physical appearance at the time of the shooting as "[a] dark male with blue mask over his face, a dark colored baseball cap with a possible Arby's logo, and a blue hoody style shirt." Based on surveillance video of a suspect in clothing that fit that description, Sergeant Clark noted that the suspect was also wearing white shoes.

Sergeant Clark verified Mr. Holden's address, obtained an arrest warrant, and began applying for a warrant to search Mr. Holden's home. The scope of the search warrant was limited to the specific articles of clothing described by the eyewitness and observed in the surveillance video—"the firearm[,] . . . [and] anything that may have been used in the crime itself." The warrant was constrained to "cellular phones belonging to Ryan Holden, [a] blue

hoodie style shirt, [a] dark colored baseball hat, any firearm/handgun or ammunition located within the residence, [a] blue bandana or mask, white shoes, and other piece[s] of evidence that [are] relevant to the crime of First Degree Murder." Police then traveled to the residence to secure it in anticipation of the pending search warrant.

Within an hour of receiving the arrest warrant, Trooper Snyder traveled to Mr. Holden's home to arrest him. Upon arriving, Trooper Snyder spoke to Mr. Holden's mother, who indicated that Mr. Holden was not at home but that he had returned to the house twice since the time of the shooting. Mr. Holden's mother was informed that a search warrant would be executed on the home. Even after learning the graveness of the situation, Mr. Holden's mother was "[v]ery cooperative," according to Trooper Snyder, who testified that "she actually called Mr. Holden to get him to come back to the residence."

Officers then began to secure the house for officer safety and to prevent evidence tampering and destruction. According to Trooper Snyder, the purpose of securing a residence is to ensure "scene security" and to prevent "destruction of evidence." During this time, officers checked each room in the house to confirm there was no threat to their safety, although Trooper Synder testified that no room was searched and no evidence was manipulated. Trooper Snyder testified that the process of securing Mr. Holden's home involved cursory inspection rather than invasive searching:

> [COUNSEL FOR THE STATE:] How did you secure this house?
>
> [TROOPER SNYDER:] You want my specific role?
>
> [COUNSEL FOR THE STATE:] Yes.
>
> [TROOPER SNYDER:] My specific role at that time, I was

> actually still conducting the fugitive investigation. Other members, they would look through the residence just to make sure there were no other, you know, any threats to us or to make it secure for, as you stated, for scene security or the destruction of evidence.
>
> [COUNSEL FOR THE STATE:] During that period of time did anyone actually search the residence?
>
> [TROOPER SNYDER:] No.
>
> [COUNSEL FOR THE STATE:] Did anyone manipulate any evidence within the residence?
>
> [TROOPER SNYDER:] No.
>
> [COUNSEL FOR THE STATE:] During that [time,] are rooms looked in?
>
> [TROOPER SNYDER:] Correct.
>
> [COUNSEL FOR THE STATE:] To see if there's anybody else in there?
>
> [TROOPER SNYDER:] That's correct. Or any threats on officer safety.

Although the Trooper conceded that he did not enter the house, he clarified that his description of the securing process represented the standard procedure:

> [COUNSEL FOR THE STATE:] Did they go systematically through the rooms to make sure nobody was in there?
>
> [TROOPER SNYDER:] That's correct. That's normally how we operate; you would have to ask whoever did that. I wasn't one of the ones that actually went in there, I was speaking with Mr. Holden's mother.
>
> [COUNSEL FOR THE STATE:] Did you go into the house?
>
> [TROOPER SNYDER:] I did not.

Mr. Holden was dropped off at his home by a taxi around 9:00 p.m., and he was arrested immediately. In the meantime, officers looked for a judge to sign the search

warrant, but due to an unforeseen complication,[6] it could not be signed until 10:38 p.m. About one hour later, signed warrant in hand, Sergeant Clark arrived to execute the search, and several items were seized:

> 25 rounds of .38-caliber ammunition. Three pieces of mail with Ryan Holden's address. Three white pairs of tennis shoes, one black Champion hoody, one pair of Levi blue jeans, one Giant grocery store name plate displaying the name Ryan, one Samsung flip cellular phone, one Giant grocery store hat and one skull face mask.
>
> * * *
>
> [COUNSEL FOR THE STATE:] And were those all within the p[a]r[a]meters of the search warrant?
>
> [SERGEANT CLARK:] Yes.

He stated that the items were within the parameters of the search warrant and taken from "[n]umerous locations [throughout] the house. Most of them were taken in Ryan Holden's bedroom." The time between securing the residence and formally executing the warrant was almost five hours (from 5:50 p.m. until 10:38 p.m.).

Mr. Holden moved to suppress the evidence. He argued *first* that there was no exigency or threat of evidence destruction at the time police officers entered the house, so the officers' warrantless entry was premature, baseless, and presumptively unlawful. *Second*, Mr. Holden argued that the house could have been secured lawfully from the

[6] Sergeant Clark explained that he was unable to reach any judges because of an "administrative conference up in Annapolis and the majority of judges were up there that week." Another officer located a judge in Ocean City who agreed to sign the warrant. It was driven to Ocean City to be signed, and then driven back to Wicomico County and delivered to Sergeant Clark.

outside. *Third*, Mr. Holden argued that by failing to proffer testimony from any officer who took part in securing the house,[7] the State could not prove that evidence was not manipulated or collected, nor could the State assert that the search warrant was untainted by information and evidence obtained during the warrantless search. *Finally*, Mr. Holden argued that the search warrant application contained facts or allegations that were obtained while officers were "around or inside" the house, and so it could not be said that the warrant was obtained independently of evidence seen or seized during the warrantless entry period.

At the motions hearing, the court agreed with Mr. Holden that "the seizure of the house under the facts and circumstance[s] that have been presented . . . was not justified." The court reserved on the issue of whether the independent source doctrine excused the warrantless seizure and permitted both sides to file supplemental memoranda on the topic. On November 14, 2017, the motions court applied the independent source doctrine and denied Mr. Holden's motion to suppress:

> Following a hearing, the court finds that no exigency existed to warrant seizure of the residence but that any items seized were taken pursuant to a validly issued search warrant based on information independent of any information obtained as a

[7] Mr. Holden also argued that he was prejudiced unfairly by the State's failure to produce evidence or testimony explaining what occurred inside the house. Without such evidence or testimony, Mr. Holden says, his mother—who had been identified as a witness and sequestered—had nothing to rebut and was not able to refute the State's "speculat[ion] as to what happened inside." We note, however, that uncontradicted testimony at the suppression hearing placed Mr. Holden's mother outside the house for nearly the entire evening.

> result of the seizure of the residence. As a result, the motion to suppress is denied.

The Fourth Amendment, which applies to the states via the Fourteenth Amendment in *Mapp v. Ohio*, 367 U.S. 643 (1961), "guarantees individuals the right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *Whiting v. State*, 389 Md. 334, 346 (2005) (cleaned up); U.S. Const. amends. IV, XIV. A warrantless search or seizure is presumptively unreasonable. *Grant v. State*, 449 Md. 1, 16–17 (2016) (*citing Katz v. United States*, 389 U.S. 347, 356–57 (1967)). A warrantless search may be justified, but "'the burden is on the government to demonstrate [that there existed] exigent circumstances [sufficient to] overcome the presumption of unreasonableness that attaches to all warrantless home entries.'" *Dunnuck v. State*, 367 Md. 198, 203 (2001) (*quoting Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984)). In the absence of exigent circumstances, "evidence . . . obtained in violation of the Fourth Amendment . . . will ordinarily be inadmissible in a state criminal prosecution pursuant to the exclusionary rule." *Thornton v. State*, 465 Md. 122, 140 (2019) (*citing Bailey v. State*, 412 Md. 349, 363 (2010)).

The "independent source" doctrine presents an exception to this rule and applies to "evidence [that is] initially discovered during, or as a consequence of, an unlawful search, but [is] later obtained independently from activities untainted by the initial illegality." *Murray v. United States*, 487 U.S. 533, 537 (1988). The State asserts that this exception applies because "there was no evidence obtained from the initial securing of the house, and the warrant did not reference or rely on anything police learned from securing the house."

The motions court agreed:

> And it does seem to me, *I think I can make a factual finding* in this case based on what's been presented here and taking judicial notice of the search warrant that's filed in the case . . . *that the search warrant does not incorporate any facts that would have come to the attention of law-enforcement as a result of their initial entry into the house.*

(Emphasis added.)

We review this finding of fact for clear error. *See* Md. Rule 8-131(c) (this Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses"). And "'[w]e view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion,'" *State v. Johnson*, 458 Md. 519, 532 (2018), in this instance the State. Mr. Holden claims that the affidavit supporting the warrant application was tainted by information collected during the unlawful entry. The offending information, he explains, was "that the police made contact with Holden's mother at the house and confirmed that it was Holden's residence where he stayed the previous night." This contention is not supported by the record developed at the suppression hearing. Trooper Snyder testified that his conversation with Mr. Holden's mother took place while he was standing outside the house. Trooper Snyder's testimony establishes that he was, at all times, outside the house during his conversation with Mr. Holden's mother. Any information derived from that conversation wasn't the product of a warrantless entry.

There was no testimony specifying when or from what source investigators learned

that Mr. Holden had stayed at the house the previous night. Viewing the record in the State's favor, as we must, the information about Mr. Holden staying at the house the previous night and returning to the house twice after the shooting would have been elicited during Trooper Snyder's outdoor conversation with Mr. Holden's mother. Because none of the details in the supporting affidavit referenced by Mr. Holden were a product of the warrantless entry, the motions court's conclusion was not clearly erroneous.

Mr. Holden also contends that the State "failed to meet its burden . . . to show . . . that the officers' decision to seek the warrant was not prompted by what they learned upon the illegal entry." Here again, Mr. Holden's argument stretches the suppression hearing record. *First*, Sergeant Clark testified that the eyewitness gave a specific description of the shooter, namely, "[a] dark male with a blue mask over his face, a dark colored baseball cap with a possible Arby's logo, and a blue hoody style shirt." Sergeant Clark also described how the surveillance video supplemented the investigators' understanding of Mr. Holden's outfit, namely, the "white shoes." These two sources of information gave investigators virtually everything they needed to seek a warrant, and Mr. Holden points to no evidence in the record that suggests that the warrant was prompted by anything seen within Mr. Holden's home. Mr. Holden also refers to "illegally seized clothing," but the items of clothing seized under the warrant accord with the eyewitness description and the surveillance video. The motions court applied the independent source doctrine properly and did not err in denying Mr. Holden's motion to suppress.

B. The Trial Court Did Not Abuse Its Discretion In Admitting Adequately Authenticated Evidence And Testimony About Facebook Communications.

Detective Jay Miller, the Salisbury Police Department's social media specialist, testified about the social media presence of, and various social media communications between, Mr. Holden, Mr. Coston, Mr. Schoolfield, Mr. Knierim, and Jayonna Best. As part of Detective Miller's investigation, he compiled publicly available Facebook account information as well as private data provided by Facebook in response to a warrant. During Detective Miller's direct examination, the State attempted to introduce three social-media-related exhibits. Only one was entered into evidence: State's Exhibit 31, a CD containing the totality of the data provided by Facebook in satisfaction of a warrant seeking information on the subjects listed above. After State's Exhibit 31 was entered into evidence, Detective Miller testified about communications between Mr. Holden and Mr. Schoolfield within about an hour of the shooting.

Mr. Holden argues here that the trial court abused its discretion in admitting the Facebook evidence over defense counsel's objections as to authentication, foundation, relevance, hearsay, and lack of expert testimony. The State counters *first* that two of the exhibits Mr. Holden opposes as improper—State's Exhibits 32 and 34—were not actually admitted. *Second*, the State argues that State's Exhibit 31 was tamper-proof, reliable, and authenticated adequately, and therefore admitted properly. *Finally*, the State asserts that during Mr. Schoolfield's testimony, the prosecutor laid the necessary foundation to permit Detective Miller to testify about the communications between Mr. Holden and Mr.

Schoolfield. We agree with the State.

"Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court." *Donati v. State*, 215 Md. App. 686, 708 (2014). A trial court abuses its discretion when "no reasonable person would take the view adopted by the trial court," or when the court acts "without reference to any guiding rules or principles." *King v. State*, 407 Md. 682, 697 (2009) (cleaned up) (*quoting North v. North*, 102 Md. App. 1, 13 (1994)). In other words, "[t]he decision under consideration has to be . . . beyond the fringe of what that court deems minimally acceptable." *North*, 102 Md. App. at 14. Even if we find that the trial court abused its discretion, we still may affirm the trial court's decision if we are "able to conclude, beyond a reasonable doubt, that the error in no way influenced the verdict." *Newman v. State*, 384 Md. 285, 312 (2004).

Under Maryland Rule 5-901(a), evidence must be authenticated or identified before it may be admitted, but this requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The rule gives examples of how to authenticate evidence under subsection (b):

> By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:
>
> (1) Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> * * *
>
> (4) Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.

Md. Rule 5-901(b). This doesn't require the court to "find that the evidence is necessarily what the proponent claims, but only . . . that the *jury* ultimately might do so. The threshold of admissibility is, therefore, slight." *Jackson v. State*, 460 Md. 107, 116 (2018) (citation omitted). For social media evidence in particular, this burden is satisfied if "there is sufficient evidence for a reasonable juror to find that it is more likely than not" that the evidence is what the proponent claims. *State v. Sample*, 468 Md. 560, 598–99 (2020).

As Mr. Holden points out, one method of authenticating social media evidence is to "'obtain information directly from the social networking website'" that "link[s] together the profile and the entry to the person, or persons, who had created them." *Sublet v. State*, 442 Md. 632, 663 (2015) (*quoting Griffin v. State*, 419 Md. 343, 364 (2011)). Here, State's Exhibit 31 contained the complete results of the search warrant issued to Facebook. These unmodifiable results were compiled by Facebook and were downloaded directly from Facebook's secure website for verified law enforcement personnel. For each of the accounts specified in the search warrant, the results contained images, messages, and phone calls placed through Facebook Messenger, IP addresses, log-in times, and other data not available to the public.

Detective Miller testified that he identified the accounts included in the warrant using information available to the public on Facebook, including pictures of the subjects. He also testified that each account had an associated phone number belonging to its respective subject and apparent creator of the account. Detective Miller retrieved phone numbers belonging to Mr. Holden and Mr. Knierim from databases available to law

enforcement personnel and confirmed the Facebook account connections for each. Detective Miller also authored a search and seizure warrant, delivered to the Sprint Wireless Database, requesting cellular telephone records for those two phone numbers. Sergeant Clark reviewed these phone records to identify calls between Mr. Holden and Mr. Knierim. These records verified that the phone numbers for Mr. Holden and Mr. Knierim that Detective Miller associated with Facebook accounts did indeed belong to Mr. Holden and Mr. Knierim.

In addition, Mr. Schoolfield testified that he communicated most commonly with Mr. Holden and Mr. Coston through Facebook Messenger, and that Mr. Holden contacted him via Facebook not long after the shooting. Detective Miller was able to confirm Mr. Schoolfield's testimony by inspecting the Facebook messages and records of calls placed through Facebook Messenger in the hours after the shooting. Again, the court need not find that the Facebook evidence "is necessarily what the proponent claims." *Jackson*, 460 Md. at 116. It is enough that a reasonable juror might have found it more likely than not that the evidence was authentic. *See Sample*, 468 Md. at 598–99. The trial court did not abuse its discretion in admitting evidence and testimony concerning Facebook communications.

C. The Trial Court Did Not Abuse Its Discretion In Admitting A Video Showing Mr. Holden Holding A Handgun.

Mr. Holden argues *next* that the trial court abused its discretion by admitting a video showing Mr. Holden holding a handgun. He cites three reasons. *First*, he contends the State failed to authenticate the video properly. *Second*, Mr. Holden asserts that the video was irrelevant because "there was no relationship between the gun in the video and the crime

charged." *Finally*, Mr. Holden contends that the video constituted unfairly prejudicial "other crimes" or "bad acts" evidence. The State counters that Mr. Holden's "bad acts" argument isn't preserved, that the video was authenticated by Mr. Knierim's testimony that Mr. Holden sent it to him and that Mr. Holden was shown in the video, and that the video was relevant because it showed that Mr. Holden "was looking for and, at least at one point, had found a firearm not long before the murder." We agree with the State.

As with the evidence and testimony concerning Facebook communications discussed above, we review a trial court's evidentiary rulings for abuse of discretion. *Donati*, 215 Md. App. at 708. But even if we find that the court abused its discretion, we may still affirm the trial court's decision if we determine, beyond a reasonable doubt, that the error had no effect on the verdict. *Newman*, 384 Md. at 312.

The evidence at issue was introduced during Mr. Knierim's trial testimony. On the morning of the shooting, Mr. Knierim picked up Mr. Holden, Mr. Schoolfield, and Mr. Coston from Mr. Schoolfield's home at around 2:30–3:00 a.m. and dropped them off at another location at around 3:00 or 4:00 a.m. About a month later, police contacted Mr. Knierim. He testified that he gave police permission to go through his phone, and when they did, they discovered a video of Mr. Holden holding a handgun. According to Mr. Knierim, he received the video via text message about a month before the shooting. He testified that the text containing the video was sent by a contact listed as "6 0 Chipo," a

moniker used by Mr. Holden.[8] When the State prepared to publish the video to the jury, defense counsel objected, arguing that it had not been authenticated properly and it was irrelevant. The court overruled the objections and the video was admitted.

1. The video was authenticated by the combination of circumstantial evidence and Mr. Knierim's testimony.

Mr. Holden suggests that because Mr. Knierim did not take the video and because there was no evidence to establish the circumstances of the video's creation or its source, reliability, or integrity, it was not authenticated satisfactorily and should have been excluded. But again, the burden to establish authenticity is slight, and this burden is satisfied if a reasonable juror could find it more likely than not that the evidence is what the proponent claims. *Jackson*, 460 Md. at 116; *Sample*, 468 Md. at 598–99. Additionally, both direct and circumstantial evidence can serve as proof of authentication, *Sublet*, 443 Md. at 667; Md. Rule 5-901(b)(4), *i.e.*—the "pictorial testimony theory of authentication" and "the 'silent witness' theory of authentication." *Prince v. State*, 255 Md. App. 640, 652 (2022) (*quoting Washington v. State*, 406 Md. 642, 652 (2008)). "[T]he 'silent witness' theory 'authenticates a photograph as a mute or silent independent photographic witness because the photograph speaks with its own probative effect.'" *Id.* (*quoting Washington*, 406 Md. at 652).

"Silent witness" authentication was met in this case. The video was authenticated

[8] Mr. Schoolfield testified that Mr. Holden sometimes went by "6 0 Chipo." Mr. Knierim testified that Mr. Holden's phone number was saved in his contacts under that name. In addition, Detective Miller testified that "6 0 Chipo" was "the username moniker assigned to Ryan Holden's Facebook account."

through Mr. Knierim's testimony that (a) he received the video in a text message sent from "6 0 Chipo," confirmed by Mr. Knierim to be Mr. Holden; and (b) the person in the video was, in fact, Mr. Holden. Mr. Holden notes correctly that Mr. Knierim didn't take the video himself and that there was no evidence of the circumstances under which it was recorded, but the slight burden to establish authenticity is satisfied if a reasonable juror could find it is more likely than not that the video is what the State claims. *Sample*, 468 Md. at 598–99. This was a "simple videotape" from one camera, *see Prince*, 255 Md. App. at 654, and was sent from one cell phone to another, with no evidence that the video had been altered. "Given that the threshold of admissibility is slight," *id.* (cleaned up), the State met this burden and the trial court did not abuse its discretion in overruling Mr. Holden's authenticity objection.

2. The video was relevant because it showed that Mr. Holden had access to a firearm in the weeks leading up to the shooting.

Under Maryland Rule 5-401, 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 . . . ." A trial court has no discretion to admit irrelevant evidence. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 620 (2011). Although a trial court's "factual finding that an item of evidence does or does not have 'probative value'" is reviewed for clear error, a trial court's "conclusion of law that the evidence at issue is or is not of consequence to the determination of the action" is reviewed *de novo*. *Id.* (cleaned up).

Mr. Holden argues that "[t]he video showing Mr. Holden with a .38 caliber firearm

had no tendency to make the existence of any fact of consequence to this case 'more probable' because the ballistic evidence showed that [Mr.] Cropper[] was shot with a .22." But the threshold required to show relevance "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). And under Rule 5-406, "[e]vidence that a person has a habit of doing something is relevant to show that the person engaged in the conduct on a particular occasion." *Ware v. State*, 360 Md. 650, 676 (2000).

Here, the State elicited testimony that Mr. Holden had been carrying a handgun "every day" for "months." The video supports the evidence that Mr. Holden "was in the habit of carrying a gun" and therefore it was "more likely that he had a gun on the day of the [shooting]." *Id.* This issue is closer than the others, but the video meets the "very low bar" of relevance and the trial court did not abuse its discretion in overruling Mr. Holden's objection.

3. Mr. Holden did not preserve an "unfair prejudice" or "other crimes, wrongs, or acts" argument, but neither basis would have compelled the video's exclusion.

Finally, Mr. Holden contends that the video should have been excluded because it was "minimally relevant and otherwise highly prejudicial." "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 v. State*, 355 Md. 528, 541 (1999). Mr. Holden did not raise an objection under either Rule 5-403 or 5-404, and the issue isn't preserved for appellate review. *See* Md. Rule 8-131(a). But even if Mr. Holden had preserved these objections, neither rule would have

compelled the video's exclusion.

First, under Rule 5-403, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." Mr. Holden argues that the video was unfairly prejudicial and should have been excluded. We disagree. As discussed above, the video was relevant evidence that Mr. Holden was in the habit of carrying a gun. Moreover, by this point in the trial, Mr. Schoolfield had already testified that Mr. Holden had been carrying a gun every day for months. Given Mr. Schoolfield's cumulative testimony, the probative value of the video was not "substantially outweighed by the danger of unfair prejudice." Md. Rule 5-403.

Second, Mr. Holden claims that the video was an example of impermissible character evidence of "other crimes, wrongs, or acts." Subsection (b) of Rule 5-404 describes the purposes for which such evidence is admissible, including proof of preparation or a common scheme or plan:

> Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident.

A "prior bad act" is "an activity or conduct, not necessarily criminal, that tends to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit." *Klauenberg*, 355 Md. at 549. In *Klauenberg v. State*, the Supreme Court of Maryland held that evidence of the appellant's possession of two guns and

ammunition, "without more, does not constitute a bad act." *Id.* at 551. The Court explained that "[t]here was no indication that these firearms were obtained or possessed illegally. No evidence was offered at trial that appellant's guns were going to be used in the murder." *Id.* Mr. Holden cites *Smith v. State*, 218 Md. App. 689, 705 (2014), but there, the court admitted evidence of *multiple* firearms in the defendant's apartment. Again, the video corroborated Mr. Schoolfield's testimony and Mr. Knierim's testimony about the video did not indicate whether the gun held by Mr. Holden was "obtained or possessed illegally," nor did it suggest anything about Mr. Holden's character. As this Court opined in *Wheeler v. State*, "We . . . fail to see how showing someone a gun is 'other crimes' evidence. Showing someone a gun, without more, is, as far as we know, not a crime unless a criminal statute is violated." 88 Md. App. 512, 527 n.10 (1991). The trial court didn't abuse its discretion in admitting the video.

D. The Trial Court Did Not Abuse Its Discretion In Admitting Testimony That Investigators Obtained Mr. Holden's Phone Number From "Parole And Probation."

Mr. Holden argues *next* that the trial court abused its discretion in allowing testimony that investigators obtained his phone number from "Parole and Probation." While Detective Miller was on the stand, the State showed him a list of Facebook accounts included in the Facebook data that the State sought to admit as Exhibit 34. Detective Miller testified that he relied upon two methods to identify the accounts: (1) searching through information publicly available on Facebook, including photos in which the subjects appeared together; and (2) entering the subjects' phone numbers into Facebook's search

module, which returned all accounts associated with each number. The State moved to admit State's Exhibit 34 but defense counsel objected, suggesting that Detective Miller was not qualified to link Facebook accounts to individuals because there was no way of knowing who actually created the accounts. That objection was sustained. The State countered that the list was not being offered to validate the connection between accounts and individuals, but rather as an intermediary evidentiary link to support the Facebook search warrant. The prosecutor then asked Detective Miller for Mr. Holden's phone number, resulting in the exchange that Mr. Holden now appeals:

> [COUNSEL FOR THE STATE:] What's the phone number of Ryan Holden?
>
> [COUNSEL FOR MR. HOLDEN]: Objection.
>
> THE COURT: Overruled.
>
> [DETECTIVE MILLER[9]]: The one obtained through Parole and Probation contact was 443—
>
> [COUNSEL FOR MR. HOLDEN]: Objection, Judge.
>
> THE COURT: Overruled.
>
> [COUNSEL FOR MR. HOLDEN]: Through Parole and Probation.
>
> THE COURT: Overruled.

Mr. Holden argues that the comment was not relevant and shouldn't have been allowed, that it implies some history of criminal conduct and qualifies as Rule 5-404(b) "other crimes, wrongs, or acts" evidence that does not fall into one of the exceptions, *and*

[9] The trial transcript lists the source of the "Parole and Probation" comment as counsel for the State, but both Mr. Holden's brief and the State's brief indicate it was Detective Miller. Because both parties agree that Detective Miller made the comment, we'll treat the discrepancy in the trial transcript as an error.

that it was unfairly prejudicial. The State agrees with Mr. Holden that the reference to "Parole and Probation" wasn't relevant but argues that the only fact that can be derived from the comment is *how* law enforcement found Mr. Holden's phone number; the statement otherwise carried no information indicating that Mr. Holden was on parole or probation or any suggestion that Mr. Holden had a criminal history. As a "passing reference," the State argues, it was not unduly prejudicial.

We review a trial court's evidentiary decisions for abuse of discretion. *Donati*, 215 Md. App. at 708. A trial court abuses its discretion when "no reasonable person would take the view adopted by the trial court," or when the court acts "without reference to any guiding rules or principles." *King*, 407 Md. at 697 (cleaned up). Because we generally leave evidentiary determinations "to the sound discretion of the trial court," a finding that the court abused its discretion would imply that allowing the reference to "Parole and Probation" without additional context was "beyond the fringe of what [we deem] minimally acceptable." *Donati*, 215 Md. App. at 708; *North*, 102 Md. App. at 13–14. That's not the case here.

Hall v. State, 69 Md. App. 37, 51 (1986), points to the answer. In *Hall*, "the appellant had objected to the admission into evidence of his fingerprint card, which was dated November 8, 1977 and contained the notations 'recidivist' and 'burglary.'" *Id.* The trial court ruled that the card would not be admitted with that information but permitted a police officer to testify about processing the appellant's fingerprints "as long as he does not bring out . . . even a suggestion of any kind of a prior arrest." *Id.* (cleaned up). During the police

officer's testimony, however, he made "certain comments . . . indicating generally that fingerprint cards were processed in connection with criminal arrests and specifically that [the officer] had processed the appellant's fingerprints on November 8, 1977." *Id.* The appellant argued that these comments were evidence of "prior crimes or bad conduct." *Id.* at 51–52. We explained that "the State's purpose in presenting the officer's testimony was to establish a foundation for the subsequent testimony" of a witness who matched latent prints at the scene of a crime with one of the appellant's known prints, *id.* at 52 (cleaned up), and concluded that it was not error to admit the police officer's comments because they were not revealing enough to cause undue prejudice:

> The State had a legitimate need for testimony linking the appellant to the latent print taken from the crime scene. In order for the appellant to have been prejudiced by the officer's testimony, the jury would have had to infer that the appellant's prior arrest record was evidence of a criminal disposition. We consider it unlikely that the jury drew such an inference based on the statements made by the officer. The officer's testimony did not reveal the appellant's involvement in any particular crime, let alone a crime similar to those for which the appellant was on trial.

Id. at 53 (cleaned up).

The situation in this case hews closely to *Hall*. When State's Exhibit 34 was excluded, the State needed to lay the foundation both for the Facebook warrant and a potential second attempt to admit Exhibit 34, so the State asked about Mr. Holden's phone number—a verifiable point of data connecting State's Exhibit 34 to the Facebook warrant. Much like *Hall*, "[t]he State had a legitimate need for testimony linking" Mr. Holden to the account or accounts attributed to Mr. Holden in the Facebook search warrant. *Id.* And

as in *Hall*, Detective Miller's testimony "did not reveal [Mr. Holden's] involvement in any particular crime, let alone a crime similar to those for which [Mr. Holden] was on trial." *Id.*

In this case, Detective Miller's reference to "Parole and Probation" was even more attenuated than the police officer's comments in *Hall*, which necessarily implied that the appellant had a prior arrest record. *Id.* at 51. This Court concluded that "[i]n order for the appellant to have been prejudiced . . . the jury would have had to infer that the appellant's prior arrest record was evidence of a criminal disposition." *Id.* at 53. Detective Miller's reference to "Parole and Probation" was less suggestive of a "criminal disposition" than in *Hall*. The trial court did not abuse its discretion in overruling defense counsel's objection.

E. The Trial Court Did Not Abuse Its Discretion In Allowing References To The DNA Report Being Reviewed By Others.

This next issue arose when Ms. Spessard, a forensic scientist with the Maryland State Police and the State's expert in the field of forensic DNA analysis, testified. After Ms. Spessard described DNA, DNA profiles, Short Tandem Repeat ("STR") DNA analysis, and the lab protocols in place to protect the integrity of the evidence, the State asked Ms. Spessard whether her scientific findings were reviewed by others:

> [COUNSEL FOR THE STATE:] And is your—is your finding reviewed in any capacity?
>
> [MS. SPESSARD:] Yes, it is.
>
> [COUNSEL FOR THE STATE:] How?
>
> [MS. SPESSARD:] *My case file gets a tech review and admin review.*
>
> [COUNSEL FOR THE STATE:] What's a tech—can you explain what each of those reviews are to the jury?

> [MS. SPESSARD:] *A tech review is another analyst, qualified analyst will review my whole case file to make sure that everything is scientifically sound. They agree with all of the testing that I did as well as the conclusions.* And then administrative review is more like a grammar check, spelling check, and to make sure that the evidence gets returned properly.
>
> [COUNSEL FOR THE STATE:] And were . . . those reviews done with the information you were given in this case?
>
> [MS. SPESSARD:] Yes.
>
> [COUNSEL FOR THE STATE:] *And what—were both of those reviews found to be appropriate?*
>
> [COUNSEL FOR MR. HOLDEN:] Objection, Judge.
>
> THE COURT: Overruled.
>
> * * *
>
> [MS. SPESSARD:] *Yes.*

(Emphasis added.)

Mr. Holden argues that these statements bolstered Ms. Spessard's credibility with the jury and "the State, in essence, got two expert opinions for the price of one, in violation of both Mr. Holden's confrontation rights and the rule against the admission of hearsay." The State counters *first* that Mr. Holden failed to object to, and thus preserve for appellate review, Ms. Spessard's statements that her "case file gets a tech review and admin review" to "make sure that everything is scientifically sound" and that the tech reviewer "agree[s] with all of the testing that [Ms. Spessard] did as well as the conclusions." These early comments, the State claims, were merely an explanation of the peer review process, devoid of any out-of-court statements, and therefore did not constitute hearsay. *Second*, the State asserts that when the prosecutor asked if "both of those reviews were found to be appropriate," the State was not asking about the *outcome* of the reviews but rather whether

Ms. Spessard believed that they were *conducted* appropriately. According to the State, Ms. Spessard's response to that question was simply her opinion of the propriety of the reviews, not testimonial hearsay implicating the Confrontation Clause. We hold that Ms. Spessard's testimony did not constitute hearsay and did not implicate the Confrontation Clause.

Whether Mr. Holden's right to confrontation was violated by the admission of testimonial hearsay is a question of law, which we review *de novo*. *Langley v. State*, 421 Md. 560, 567 (2011). Hearsay determinations get the same review. *Paydar v. State*, 243 Md. App. 441, 452 (2019). We review evidentiary rulings for abuse of discretion. *Donati*, 215 Md. App. at 708.

The Confrontation Clause of the Sixth Amendment to the U.S. Constitution and Article 21 of the Maryland Declaration of Rights both provide a criminal defendant in a Maryland court with the right to confront witnesses who testify against the defendant. *Derr v. State*, 434 Md. 88, 103 (2013). "[T]he right of confrontation is implicated only when two conditions are met: the challenged out-of-court statement or evidence must be presented for its truth and the challenged out-of-court statement or evidence must be 'testimonial.'" *Cooper v. State*, 434 Md. 209, 233 (2013). "The critical question in Confrontation Clause jurisprudence is the meaning of the term 'testimonial.'" *Derr*, 434 Md. at 107 (cleaned up). A statement is "testimonial" if "a reasonable person in the declarant's position would have made the statement with a primary purpose of creating an out-of-court substitute for trial testimony." *Cox v. State*, 421 Md. 630, 650 (2011) (cleaned up). Testimonial materials include "extrajudicial statements contained in formalized materials, such as affidavits,

depositions, prior testimony, or confessions, or statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Crawford v. United States*, 541 U.S. 36, 51–52 (2004) (cleaned up).

Here, Ms. Spessard described the review process in general for the benefit of the jury, and she didn't testify about any review in particular. When Ms. Spessard stated that as part of a tech review, "[t]hey agree with all of the testing that I did as well as the conclusions," this was offered to aid the jury's understanding of the review process, not an assertion that her testing and conclusions are always reviewed favorably. And with respect to referencing reviews that were found favorable, the Supreme Court of Maryland has identified and allowed precisely this flavor of expert testimony:

> "The federal courts and a majority of state courts permit an expert witness to express an opinion that is based, in part, on hearsay of a kind that is customarily relied on by experts in that particular business, profession, or occupation. However, the hearsay itself is not admissible as substantive evidence. It is only admissible to explain the basis of the expert's opinion. In other words, the trier of fact is allowed to give credence to an expert's opinion that is based on the assumption that certain hearsay is true, but is not allowed to give credence to the hearsay itself."

Attorney Grievance Comm'n of Md. v. Nothstein, 300 Md. 667, 679 (1984) (*quoting* David F. Binder, *Hearsay Handbook* 451 (2d ed. 1975)).

Ms. Spessard relied on her reviewers to confirm the validity and integrity of her work, which in turn contributed to the basis for her opinion. She would have had a reason to question her own findings if she received an unfavorable tech review. In *Morten v. State*,

this Court offered a more detailed explanation of the purpose of a tech reviewer that supports this presumption:

> When samples come into the laboratory, the case and the samples get assigned to a DNA analyst who does all the physical work, does all the technical work, documents everything, generates the report, the data[,] and writes the draft report. *It's required that a second person called the technical reviewer review all the work that's been done, checks to see that the standard procedures were followed*, that the documentation is appropriate, *does a second independent interpretation of the data and then co-signs the report stating that the individual agrees with the results and conclusions as they're reported in the report.*

242 Md. App. 537, 572–73 (2019). Ms. Spessard's responses were not intended to prove the truth of the matter asserted. If anything, she indicated only that both of her reviews were favorable, which would speak only to the *validity* of Ms. Spessard's results and conclusions, not their *truth*. And in any event, her testimony wasn't hearsay—she didn't recount any statements by the reviewers, only the fact of the review, so those statements didn't implicate the Confrontation Clause. The trial court did not abuse its discretion in overruling Mr. Holden's objection.

F. The Trial Court Did Not Abuse Its Discretion In Permitting The Prosecutor To Restate Ms. Spessard's Testimony During Direct Examination And Closing Argument.

Mr. Holden's final two arguments involve Ms. Spessard's substantive DNA testimony. He argues *first* that the prosecutor misled the jury during direct examination by asking leading questions and restating Ms. Spessard's testimony improperly. *Second*, Mr. Holden argues that the prosecutor misled the jury during closing argument by misconstruing the statistical significance and conclusions in Ms. Spessard's expert

testimony.

1. The prosecutor's misleading restatements of Ms. Spessard's expert testimony were counterbalanced sufficiently by Ms. Spessard's corrective, clarifying remarks and the stark results of her testing.

During direct examination, the State questioned Ms. Spessard about the results of her DNA analysis and restated several of her responses:

> [COUNSEL FOR THE STATE:] And to a reasonable degree of scientific certainty in your field of expertise, have you come to a conclusion about the DNA analysis of the blue bandana as compared to Ryan Holden's known swabs?
>
> [MS. SPESSARD:] Yes.
>
> [COUNSEL FOR THE STATE:] And what is that conclusion?
>
> [MS. SPESSARD:] Reading from my reports, a DNA profile from at least three contributors was obtained from side one of the bandana. A significant contributor and at least two male contributors was obtained. *Ryan Holden cannot be excluded as the significant contributor to this DNA profile. [Where] the probability of selecting an unrelated individual at random who cannot be excluded as the significant contributor is approximately 1 in 36 quadrillion U.S. Caucasian, 1 in 4.6 quadrillion African-American, and 1 in 41 quadrillion U.S. Hispanic.*
>
> * * *
>
> [COUNSEL FOR THE STATE:] Is Mr. Holden's DNA profile found on the blue bandana?
>
> [MS. SPESSARD:] *He cannot be excluded as a contributor.* There is one profile that is a little more intense than all of the other information, and that's what I call the significant contributor. It's one person's DNA profile is a little above everything else. And I do a statistical calculation to kind of separate that out, and that DNA information out, and *Ryan Holden is consistent with that DNA information.*
>
> [COUNSEL FOR THE STATE:] The significant [contributor]? The one that's higher than all the other ones?

[MS. SPESSARD:] Yes.

* * *

[COUNSEL FOR THE STATE:] *Mr. Holden was the significant contributor of that side of the bandana*, meaning his DNA was—

[COUNSEL FOR MR. HOLDEN:] Objection, Judge.

We're getting leading at this point.

THE COURT: Overruled.

Go ahead.

[COUNSEL FOR THE STATE:]—*meaning his DNA was significantly higher than the other profiles?*

[MS. SPESSARD:] *Yes.*

[COUNSEL FOR THE STATE:] Now, let's talk about the other side of the bandana. Did you reach a conclusion to a reasonable degree of scientific certainty in your field of expertise about that side of the bandana, the second side?

[MS. SPESSARD:] Yes. So the DNA profile obtained from the swabbing of side two was a DNA mixture from at least three contributors, including a significant contributor, and at least two male contributors. *Ryan Holden cannot be excluded as the significant contributor to this DNA profile with a probability of selecting an unrelated individual at random who cannot be excluded as the significant contributor being 1 in 5.5 quadrillion in U.S. Caucasian population, 1 in 83 trillion in the African-American population, and 1 in 4.4 quadrillion in the U.S. Hispanic population.*

[COUNSEL FOR THE STATE:] So, again, like we previously discussed with the other side, *Mr. Holden's DNA is greater than the other DNA profiles found on that bandana?*

[MS. SPESSARD:] *Yes. There is a more intense DNA profile and Ryan Holden cannot be excluded from that DNA profile.*

[COUNSEL FOR THE STATE:] In the statistics that you're giving, the 1 in 5.5 quadrillion, *that's the likelihood that it's not Ryan Holden, is that correct?*

[MS. SPESSARD:] *That's a probability.* If I randomly select an individual at random, that they would be included as that significant contributor. *So 1 out of every 5.5 quadrillion people*

> *that I select will match that significant contributor profile on the bandana.*
>
> [COUNSEL FOR THE STATE:] And that's for the Caucasian population?
>
> [MS. SPESSARD:] Yes.
>
> [COUNSEL FOR THE STATE:] What is the percentage or the number for the African-American population?
>
> [MS. SPESSARD:] *It's 1 in 830 trillion.*[10]

(Emphasis added.)

Mr. Holden argues that the prosecutor's leading questions and restatements of Ms. Spessard's conclusions misled the jury by construing as truth that Mr. Holden was the significant contributor to the DNA mixtures found on each side of the bandana. The State counters *first* that the prosecutor's restatements of Ms. Spessard's testimony were proper, in the spirit of breaking down "a lot of science talk . . . into real people talk." *Second*, the State points out that when the prosecutor asked if "Mr. Holden's DNA profile [was] found on the blue bandana," Ms. Spessard declined to extend her determination that "Ryan Holden [could not] be excluded as the significant contributor to this DNA profile." Ms. Spessard instead reiterated her conclusion with added context, explaining the concept of a "significant contributor." *Third*, the State argues that the prosecutor's questions were not leading, but that even if they *were*, "[t]he allowance of leading questions rests in the discretion of the trial court," Md. Rule 5-611(c), and there was no abuse of discretion.

[10] It's not clear whether the true probability was "1 in 83 trillion" or "1 in 830 trillion," but the probabilities are so low that the difference doesn't affect our analysis in any meaningful way.

Finally, the State suggests that because Mr. Holden only objected to a single question during Ms. Spessard's direct examination, the remainder of the State's questioning is not subject to appellate review.

The decision to allow or disallow leading questions rests in the discretion of the trial court, and we review a court's allowance of leading questions for abuse of discretion. Md. Rule 5-611(c). A leading question is one that "suggests to a witness the specific answer desired by the questioner." Lynn McLain, *Maryland Evidence: State and Federal* § 611.3(a), at 713 (3d ed. 2013). Under Rule 5-611(c), "[o]rdinarily, leading questions should not be allowed on the direct examination of a witness except as may be necessary to develop the witness's testimony." Leading questions that merely summarize or repeat a witness's testimony are permissible. *See MacDonald v. State*, 227 Md. 391, 392 (1962). This is especially important when a witness is testifying about DNA evidence, which "has the potential to be highly technical and confusing," *Whack v. State*, 433 Md. 728, 732 (2013), but is viewed by the public "as more accurate than any other type of evidence . . . ." *Id.* at 747. "[J]urors are asked not only to become familiar with the science of DNA, but to interpret the DNA evidence presented through the filter of statistical analysis." *Id.* at 747.

"[U]nless it appears that the jury was actually misled or was likely to have been misled or influenced to the prejudice of the accused by the prosecutor's improper argument to the jury, reversal of the conviction would not be warranted . . . ." *Conway v. State*, 7 Md. App. 400, 413 (1969). "[A] significant factor in determining whether the jury was likely to have been misled or prejudicially influenced is whether the trial court took appropriate

action to overcome a likelihood of prejudice, *e.g.*, informing the jury that the remark was improper, striking it and admonishing the jurors to disregard it." *Id.* at 413–14 (*citing Holbrook v. State*, 6 Md. App. 265, 270 (1969)).

To determine whether the State's questions were leading (and misleading), we examine first the mechanics of DNA analysis. The probabilities provided by Ms. Spessard are a metric DNA analysts call the "random match probability" that contextualizes the degree to which two DNA samples match:

> Once two DNA samples . . . are found to be sufficiently similar such that they could have originated from the same source, the analyst must determine the significance of the comparison. In other words, the analyst must determine how common or rare the particular DNA profile is based on population frequency data. The analyst does this by calculating the profile frequency, also called the random match probability. The profile frequency is simply the probability that an unrelated person chosen at random from the population would have the same DNA profile as the unknown sample.

United States v. Davis, 602 F. Supp. 2d 658, 667 (D. Md. 2009). "[W]hat this probability says is what are the chances that another random person may also have a DNA profile that could also be included as a potential source of the [DNA] mixture?" *Whack*, 433 Md. at 737.

Mr. Holden tries to connect this case and *Whack v. State*, in which the Supreme Court of Maryland held that the circuit court should have granted a mistrial based on the State's misrepresentation of the statistical significance of DNA evidence. In *Whack*, the defendant was charged with the murder of an individual who was shot inside a vehicle. *Id.* at 732. At trial, the State called a forensic chemist to testify about the DNA profile found

on one of the vehicle's headrests and a mixture of DNA profiles found on an armrest inside the vehicle. *Id.* at 735–36. The chemist testified that the victim, an African-American male, was a major contributor to that DNA profile found on the headrest and that "the odds of someone in the African American population, other than [the victim], having been the source of the DNA profile on the headrest was one in 212 trillion[.]" *Id.* at 745. As for the DNA profiles found on the armrest, the chemist testified that the defendant, also an African-American male, *may* have contributed to the DNA mixture. *Id.* at 737–38. The chemist explained that "[t]he odds of randomly selecting an African American individual as a contributor to that sample were one in 172." *Id.* at 745. From this evidence, the prosecutor argued in closing that the defendant's DNA in fact was found in the vehicle. *Id.* at 745–46. The State also argued that the one-in-172 probability statistic cited by the chemist in linking the defendant to the DNA mixture found on the armrest was "no less strong" than the one-in-212 trillion probability that someone *other than* the victim contributed to the DNA profile to the profile found on the headrest. *Id.* At the conclusion of argument, the defendant moved for a mistrial, that motion was denied, and the defendant was convicted. *Id.* at 741.

The Supreme Court ordered that the defendant be granted a new trial:

> We disagree that the prosecutor's statements were merely "inartfully worded" and could be easily cleared up by consulting the expert's report. The evidence was that the DNA of one out of every 172 African Americans could be consistent with the DNA mixture found on the armrest. And based on the testing that was done, Petitioner could not be excluded among that number. Given that evidence, the prosecutor went too far in stating emphatically that Petitioner's DNA was present in

> the truck.
>
> The prosecutor compounded that error by overstating the statistical significance of the DNA evidence by equating the odds of one in 172 with one in 212 trillion. The State is correct that no jury was likely to believe that one in 172 was literally the same as one in 212 trillion. The danger, though, was not that jurors might believe the two numbers were the same, but that the prosecutor stated the one in 172 figure was "no less strong" than the one in 212 trillion figure. The prosecutor's statement could have seriously misled the jury.

Id. at 746–47. The Court found that the trial judge abused its discretion by not granting a mistrial because "[i]dentity was a central question for the jury to resolve" and "[n]o one witnessed Petitioner shoot [the victim] or saw him at the scene of the crime." *Id.* at 752.

The circumstances in *Whack* are entirely distinguishable. It's true that in this case, the State reframed Ms. Spessard's statements in a manner that construed as truth that Mr. Holden's DNA was the significant contributor on the bandana. But unlike in *Whack*, this was a reasonable inference based on the random match probability evidence. Although Ms. Spessard wouldn't state that Mr. Holden was the significant contributor, the random match probabilities readily allowed the jury to reach the inference for which the prosecutor argued, and the trial court did not abuse its discretion by overruling Mr. Holden's objection.

2. The prosecutor's misstatement of Ms. Spessard's conclusions during closing argument did not prejudice Mr. Holden, unfairly or otherwise.

During closing argument, the State characterized some of the DNA evidence presented at trial as revealing that Mr. Holden was the major contributor:

> The police have the blue bandana, and the DNA corroborates that Ryan Holden wore the bandana.
>
> * * *

> And there is no way for John Schoolfield who you observed on the stand to . . . tamper with the DNA analyst so that Ryan Holden's DNA would come back.
>
> * * *
>
> *You heard from the DNA analyst, he's the major contributor, significant contributor* to the front and back of the bandana. *His DNA, higher than anyone else's on the blue bandana.*
>
> *You know whose DNA is not on the blue bandana? Anybody else's.* Not John Schoolfield, not Courtlen Coston . . . . You didn't hear any testimony about that. *His DNA is the significant contributor on the bandana.* Not anybody else that we have been spending the day pointing fingers at.

(Emphasis added.) During Mr. Holden's closing argument, defense counsel attempted to mitigate the State's assertions about the DNA evidence by deliberately misusing the phrase "cannot be excluded":

> The State has emphasized as the State often does DNA, but the subtle[ties] here [are] important as well. There is certainly something to be said about the terminology cannot be excluded . . . . *If Ryan Holden cannot be excluded, nor can you nor can I be excluded based on what we heard.*
>
> * * *
>
> And if Holden cannot be excluded, that does not equal beyond a reasonable doubt. Cannot be excluded does not equal beyond a reasonable doubt.

(Emphasis added.) The State responded to defense counsel's use of "cannot be excluded" during its rebuttal:

> *And don't b[uy] this—and [counsel for Mr. Holden] is a good attorney and he knows that is crap. It's crap. It's scientific jargon.* It's the way that says he can't be excluded because there is two other really minute DNA samples on that bandana of all she can say is males. That's why you say he cannot be excluded. *But his DNA is the significant contributor to the bandana*, meaning there's much, much more of his than

> anybody else's. It's just the scientific way to say it, and that's why I asked her, can we talk about it in real people, real people terms?

(Emphasis added.)

Mr. Holden argues that the prosecutor denigrated defense counsel and mischaracterized the DNA evidence in a way that misled the jury. The State counters that the prosecutor characterized Ms. Spessard's expert testimony correctly, but Mr. Holden's response—"[i]f Ryan Holden cannot be excluded, nor can you nor can I be excluded based on what we heard"—*did* mischaracterize the DNA evidence. The State asserts that the remark did not mislead the jury in a way that warrants plain-error review. We agree with the State.

Under Rule 8-131(a), "[o]rdinarily, the 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, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Mr. Holden concedes that no objections were raised at the time the prosecutor made these statements, and we note that, unlike in *Whack*, Mr. Holden did not raise an objection after closing arguments, move to strike, or move for a mistrial.

Appellate courts may review under the plain error doctrine "only when the unobjected to error is compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Kelly v. State*, 195 Md. App. 403, 432 (2010) (cleaned up). Mr. Holden's request falls short here. As a baseline matter, the error was subject to reasonable

dispute. And it cannot be said that it had any effect on the outcome of the case given J and Mr. Schoolfield's eyewitness evidence naming Mr. Holden as the shooter. We find that the trial court did not abuse its discretion in permitting the prosecutor to restate Ms. Spessard's testimony, and we decline to exercise plain error review.

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