

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1122

September Term, 2014

RYAN PATRICK MATTHIAS

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: February 23, 2017

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Howard County convicted Ryan Patrick Matthias, appellant, of the premeditated murder of Deborah Castellano. During an eight-day trial, the State presented evidence that Matthias, after learning that his former girlfriend was seeing other men, killed her. The prosecution theory was that Matthias rented a car, and drove from North Carolina to Columbia, Maryland, where he ambushed Ms. Castellano in the parking lot of her apartment and shot her three times.

In this appeal, Matthias, who was sentenced to life for first degree murder and a consecutive twenty years for using a handgun to commit a crime of violence, raises two issues that we restate as follows:¹

1. Whether the trial court erred or abused its discretion in overruling defense objections to:

(A) testimony by an expert witness regarding certain cell tower ranges; and

(B) testimony that, based on cell tower records, it would be inaccurate for a person utilizing Matthias's cell phone to say the phone had never been used in Maryland.

2. Whether the trial court erred or abused its discretion in admitting evidence of odometer readings as shown on rental car agency records.

¹ As stated in Matthias's brief, the issues are:

1. Did the trial court err in admitting certain testimony of Detective Branigan?

2. Did the trial court err in admitting hearsay evidence?

For the reasons explained herein, we shall affirm Matthias's convictions.

FACTS AND PROCEDURAL HISTORY

Among the circumstantial evidence linking Matthias to the murder were records for his cell phone and rental car. The issues raised in this appeal relate to that evidence. Viewing the evidence in the light most favorable to the State as the prevailing party, *see Smith v. State*, 415 Md. 174, 186 (2010), the jury could have found the following.

In July 2012, after meeting Ms. Castellano online, Matthias moved from Charlotte, North Carolina, into Ms. Castellano's residence in Herkimer, New York. They stopped living together in March 2013, shortly before Ms. Castellano moved to Columbia, Maryland, where she rented an apartment at 9689 Basket Ring Road. She began working as a dealer and floor supervisor at the Maryland Live Casino in Anne Arundel County.

Matthias helped her move into the new apartment, hiring some of her new neighbors to help him with her furniture. He then returned to Charlotte, North Carolina, where he worked the night shift at a retail distribution center.

In April 2013, Matthias was living with his sister, Stephanie Owens. Ms. Owens testified that her brother was distressed over his relationship with Ms. Castellano. He characterized their status as a six-month "break," and reported that Ms. Castellano still said she loved him. He said that he hoped to reconcile with her. Ms. Owens, however, felt that Ms. Castellano was "distancing herself from him."

On April 29 and 30, 2013, Matthias called his employer and reported he was too sick to work. He arranged to rent a vehicle from Triangle Rent A Car in Charlotte, and

then drove to Columbia, Maryland. On April 30, without prior notice, he knocked on the door of the neighbors who had helped him move Ms. Castellano's belongings into her apartment. While in the neighbors' apartment, Matthias peered out the window toward Ms. Castellano's apartment, and asked one of her neighbors "whether [he] knew if [Ms. Castellano] was going out with somebody else."

Ms. Castellano, indeed, had been seeing other men, and was active on dating websites. In the early morning hours of May 1, a co-worker with whom she had been intimate left her apartment. Around 2 a.m. on May 1, Matthias called his sister from "Baltimore." Ms. Owens testified that he was angry, "crying," and "screaming . . . about seeing a gentleman coming out of [Ms. Castellano's] apartment." He "talked about suicide" and said "he was ninety-five percent sure that he was going to hurt somebody and then kill himself." According to Ms. Owens, Matthias "wanted to hurt" Ms. Castellano "and then he was going to hurt himself because he had nothing else to live for." After convincing him to come home instead, Ms. Owens sent a Facebook message to Ms. Castellano's brother, telling him that, after Matthias had seen "a man coming out of her apartment," "he thought about hurting her[.]" She asked him to tell his sister not "to keep giving him hope," and warned that Ms. Castellano should watch out for her safety.

On May 2, 2013, Matthias returned to work in North Carolina, but he left his shift early, complaining of illness. On May 3, he rented a Dodge Challenger from Triangle. A distinctive feature of that model is that the rear taillights extend across the entire back of the vehicle.

According to Verizon records, which we will discuss in more detail below, a cell phone having a number for which Matthias was the subscriber, initiated a “data streaming” event, also known as an Internet protocol (“IP”) session (indicating Internet usage rather than a call or text message), at 2:20 a.m. on May 4, 2013. The session utilized a specific cell tower known as “Annapolis Junction.” This cell tower is located at 9504 Old Annapolis Road in Ellicott City, which is 1.9 “air miles” from Ms. Castellano’s apartment.

Avram Polinsky, from Verizon, and Det. Dan Branigan, from the Howard County Police Department, explained that a smart phone typically initiates both calls and IP sessions through one of the three sectors (or faces) of the cell tower that is geographically closest to where that cellular device is located at the moment of initiation. Maps prepared from information reflected in Matthias’s Verizon records, which were admitted without objection, show that, between the afternoon of May 3 and the early morning of May 4, Matthias’s smart phone traveled from Charlotte, North Carolina, to Howard County, Maryland. These maps indicate that Matthias’s phone connected to cell towers in the Charlotte area during the late afternoon of May 3; in the Richmond, Virginia, area around 10:30 p.m.; and in Ellicott City at 2:20 a.m. on May 4.

Ms. Castellano clocked out of work at the casino at 3:42 a.m. on May 4. She returned home, and parked her Toyota Corolla in front of her apartment building, next to a white Dodge Caravan. While she was still in the driver’s seat, Ms. Castellano was mortally shot three times.

The shooting wakened Ms. Castellano's neighbors. Shortly after 4:00 a.m., Maria Zeledon, a resident of an adjacent apartment building, heard "three shots." Looking out her third floor window, she saw a vehicle with distinctive taillights all across the back. She heard the tires of the vehicle make a squealing noise as it left the scene.

At the same time, Veronica Arredondo, a first-floor resident of Ms. Castellano's apartment building, heard four "strong" noises that sounded like "tires . . . had exploded," followed by the sound of a car "tak[ing] off" with "really loud" squealing tires. Later, at 9:10 a.m. on May 4, Ms. Arredondo went to her white Dodge Caravan, which she had parked in the apartment lot at approximately 3:45 a.m. In the adjacent car was a "dead lady."

There were spent casings from a .45 caliber firearm on the ground, and blood stains on the passenger side of Ms. Arredondo's van, which was parked next to the driver's side of Ms. Castellano's vehicle. Although the murder weapon was never recovered, police obtained palm prints from the exterior passenger side of the van, and forensically matched those prints to Matthias.

At approximately 6:30 a.m. on May 4, 2013, Matthias called Michelle Peterson, a tractor trailer driver whom he had met online in 2009. During the call, Matthias told Ms. Peterson that he was traveling down the I-81 corridor in Virginia. Ms. Peterson testified that she had only met Matthias in person twice, had not been in contact with him since 2010, and did not make arrangements with to meet with him that day.

Later, on the morning of May 4, Matthias phoned his fifteen-year-old son in Roanoke. According to the boy's mother, Matthias made the call between 7 and 8 a.m., and then showed up for an unscheduled visit to their Roanoke home, driving a rented vehicle. After 9 a.m. on May 4, Matthias called his sister to tell her he was taking her advice to spend more time with his son.

After spending the evening in Roanoke, Matthias drove back to Charlotte, where he returned the rental car on May 5, 2013. Triangle Rent A Car manager John Molina testified that, he performed the routine "walk-around" of the vehicle when Matthias rented it on May 3, to "document damage, mileage and fuel." On May 5, the odometer had changed from 23,500 to 24,545, a total of 1,045 miles. As detailed below, Mr. Molina explained that there was an "incorrect" odometer reading on the first page of the rental agreement, which would have indicated a total mileage of only 675 miles. A drive from Charlotte to Columbia, and then to Roanoke and back to Charlotte would be over 800 miles.

On May 8, Matthias called Michelle Peterson again, asking her to lie if anyone called about him, and say that he had been "hanging" with her over the weekend of May 3-4. Because he failed to answer her questions about who would be calling and why, Ms. Peterson hung up on him. Matthias also told her that he had changed his phone number.

Matthias was charged with Ms. Castellano's murder and incarcerated pending trial. At the Howard County Detention Center, he had daily conversations with another inmate, Sean Witt. At trial, Mr. Witt testified that Matthias was upset that the victim had been dating other men, called her "very promiscuous" and "a whore," and said that "she got

what she deserved.” Witt maintained that Matthias’s account of his whereabouts on May 3-4, 2013, changed several times as discovery in the criminal proceedings was disclosed to him. Although Matthias told Witt that “they’re not going to find a gun,” Matthias was aware that his palm print on the vehicle adjacent to Ms. Castellano’s car would be “a damning piece of evidence against him.”

In recorded telephone calls to family members from jail, Matthias repeatedly stated that he did not travel to Maryland on May 3-4, 2013, and insisted that the paperwork for his rental vehicle would support that claim by showing that he traveled only 675 miles.

In closing, the State argued that Matthias’s palm print, cell phone, and distinctive rental car placed him at the murder scene, and that his behavior afterward, in attempting to establish an alibi and discussing the crime during his incarceration, showed consciousness of guilt.

DISCUSSION

I. Detective Branigan’s Testimony

Matthias argues that “the trial court erred in admitting certain testimony of Detective Branigan,” who testified as “an expert in the area of cellular technology, cellular phone records analysis, plotting of cellular tower locations, and cellular phone data transmission.” In Matthias’s view, the court allowed the detective to offer testimony regarding cell tower ranges “that was irrelevant, without factual basis, and/or beyond his expertise.” In addition, Matthias contends that the court erred in overruling his objection to a question that improperly invited Det. Branigan to comment on the credibility of Matthias’s out-of-court

statements that he was not in Maryland on May 3-4, 2013. For the reasons explained below, we disagree with both contentions.

A. Evidence of Cell Tower Ranges

1. Standards Governing Admission of Cellular Technology Evidence

Evidence regarding cellular phone technology generally must be presented by an expert witness. *See, e.g., State v. Payne*, 440 Md. 680, 701-02 (2014) (trial court erred in admitting police officer's non-expert testimony regarding location of co-defendants based on cell phone and cell tower records); *Coleman-Fuller v. State*, 192 Md. App. 577, 619 (2010) (error for police detective to testify to lay opinion that cell phone records placed defendant in vicinity of crime); *Wilder v. State*, 191 Md. App. 319, 364-65 (2010) (error to permit police detective to testify about plotting defendant's location on map using cell phone records without qualifying the witness as an expert).

Testimony by experts is governed by Maryland Rule 5-702, which provides:

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

To qualify as an expert, "one need only possess such skill, knowledge, or experience in that field or calling as to make it appear that [the] opinion or inference will probably aid the trier [of fact] in [the factfinder's] search for the truth." *Thanos v. State*, 330 Md. 77, 95 (1993) (internal quotation marks and citations omitted). *See Donati v. State*, 215 Md. App. 686, 742, *cert. denied*, 438 Md. 143 (2014). A trial court may determine that a witness is

sufficiently familiar with the subject matter to render an expert opinion based on “the witness’s formal education, professional training, personal observations, and actual experience.” *Massie v. State*, 349 Md. 834, 850-51 (1998) (citations omitted). “A trial judge has wide latitude to determine whether expert testimony is sufficiently reliable to be admitted into evidence, and his sound discretion will not be disturbed on appeal unless the decision to admit the expert testimony was clearly erroneous or constituted an abuse of discretion.” *Stevenson v. State*, 222 Md. App. 118, 132 (2015) (quoting *Montgomery Mut. Ins. Co. v. Chesson*, 399 Md. 314, 327 (2007)).

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.” Maryland Rule 5-401. Under Maryland Rule 5-402, “[e]vidence that is not relevant is not admissible.” The Court of Appeals has described the appellate court’s standard of review as follows:

Our standard of review on a relevancy question depends on whether the “ruling under review was based on a discretionary weighing of relevance in relation to other factors or on a pure conclusion of law.” *J.L. Matthews, Inc. v. Md.-Nat’l Capital Park & Planning Comm’n*, 368 Md. 71, 92, (2002). “When the trial judge’s ruling involves a weighing, we apply the more deferential abuse of discretion standard.” *Id.* When the trial judge’s ruling involves a legal question, however, we review the trial court’s ruling *de novo*. *Id.*

Parker v. State, 408 Md. 428, 437 (2009).

In reviewing a lower court’s evidentiary rulings, we accept the underlying factual findings unless they are shown to be clearly erroneous. *See Gordon v. State*, 431 Md. 527, 538 (2013). “A holding of ‘clearly erroneous’ is a determination, as a matter of law, that,

even granting maximum credibility and maximum weight, there was no evidentiary basis whatsoever for the finding of fact.” *State v. Brooks*, 148 Md. App. 374, 399 (2002).

2. Proceedings Below

At trial, the State sought to establish that Matthias utilized his cell phone in the vicinity of Ms. Castellano’s apartment shortly before she was shot, by showing that, at 2:20 a.m., on May 4, 2013, his cell phone connected to the Internet through a cell tower located 1.9 miles from 9689 Basket Ring Road. Witnesses for the prosecution included Verizon representative Avram Polinsky and Howard County Police Detective Dan Branigan, both of whom testified as experts. Although Matthias did not object to admission of the Verizon records for his cell phone, he attempted to restrict expert testimony regarding the cell tower records that indicated his cell phone connected to a cell tower in Howard County two hours before the murder.

In pre-trial motions, defense counsel sought to preclude Det. Branigan from testifying that the range of a “typical” cell tower in an area like Howard County is six miles or less. In those motions, counsel argued that this was new evidence disclosed in a report given to defense counsel that day, and that it differed from an earlier report indicating a typical range of 20 miles. That debate continued on the first day of trial, when defense counsel argued that what is “typical” for any cell tower would not be relevant, that such evidence could not supported by an adequate factual basis, and that it was beyond Det. Branigan’s expertise. The trial court reserved its ruling until after voir dire of the expert.

Mr. Polinsky, Custodian of Records for Verizon, authenticated business records for the cell phone associated with Matthias's account. He explained that, generally, cell phones connect through the closest available cell tower (or cell site, if not located on a tower), but he acknowledged that Verizon's records do not include all towers of other networks, and that a cell phone is not necessarily served by the closest tower. In contrast to historical records for cellular phone calls, which show both the first and last serving cell tower(s) used during a call, historical records for IP sessions show only the starting time of the session and the initiating cell tower. Mr. Polinsky testified that, according to the Verizon records for Matthias's cell number (315-368-7035), an IP session started at 2:20 a.m. on May 4, 2013, from "Switch Two and Cell I.D. 16," which is the "Annapolis Junction switch" located "at 9504 Old Annapolis Road, Ellicott City[.]" When asked about a column in the records labeled "max antenna range," Mr. Polinsky answered that he was "not totally familiar with what that column is or how it's calculated."

The State then called Det. Branigan, who testified during voir dire that he had completed several training courses pertaining to cellular phone technology. First, he took an Introduction to Cell Phones course, as part of a 40-hour Criminal Investigations Course. Second, he completed a separate 40-hour "Introduction to Cellular Technology" course, taught by the Public Agency Training Council. That course covered historical call records, "cellular technology in general," and "[h]ow does a cell network generally work," including "Visual Forensics" such as "downloading" and "the actual details physically on the phone." In that course, he learned how to read the records of various cell phone

companies, including Verizon, and how to use “historical data” to “plot down towers that are used by a particular phone and utilizing that inside of a criminal investigation.” Third, Det. Branigan had taken and passed another 40-hour course in Smart Phone Forensics, which covered the same topics addressed in the Introduction to Cellular Technology course but with a focus on devices that transmit both voice communications and data via the Internet.

Det. Branigan testified that he had applied this training in the field to analyze cell phone records and cell tower location data in fifty to sixty cases. In at least thirty of those cases, the records involved were Verizon records. Det. Branigan had been previously qualified to testify as an expert in “the field of cellular phone technology, cellular forensics analysis, and data recovery, the analysis of cellular records and cellular phone tower location related to cell phone usage[.]” The trial court expressly accepted him “as an expert in the area of cellular technology, cellular phone records analysis, plotting of cellular tower locations, and cellular phone data transmission.”

Det. Branigan explained that a smart “phone will communicate with the tower whether its going to do a phone call, data, [or] text.” He mapped the data points from Matthias’s Verizon records onto a series of maps that were admitted without objection. As shown on these maps, there were no calls or texts on May 4, 2013, between midnight and 6:30 a.m., but there was a “data hit” from Matthias’s cell phone at 2:20 a.m., through the Annapolis Junction cell tower at 9504 Annapolis Road, Ellicott City, in Howard County. That tower is 1.9 “air-miles” from the murder scene.

Over defense objections, the detective thereafter testified in the following colloquy that the maximum range for a cell tower in an “area such as Howard County” is generally six miles but that, according to the Verizon records authenticated by Mr. Polinsky, the maximum range of the Annapolis Junction tower could be as much as 13.08 miles:

[Prosecutor]: Now in your experience given the 50 to 60 cases, the information provided to Verizon records, when does a tower typically connect with a phone?

[Defense Counsel]: Objection.

THE COURT: Overruled. I’ll allow it.

[Defense Counsel]: May we approach?

THE COURT: Sure.

BENCH CONFERENCE with Defendant

[Defense Counsel]: *Your Honor, this was the subject at the pretrial motion. I’m basically making this objection on two grounds. First of all, it’s relevance, because it’s not relevant. This is your typical tower. And then secondly, there’s foundation. And it’s the conversation is how Detective Branigan on this point is offering them based on his training and education and experience, which under Wood v Toyota Motor does not come in, because that’s not sufficient. There actually needs to be a scientific basis. They can’t just because I say so.*

THE COURT: But isn’t the evidence already in through Mr. Polansky?

[Prosecutor]: Polinsky.

THE COURT: Polinsky. That the initial contact with the cell tower is with the closest tower?

[Defense Counsel]: *He said the closest available cell tower.*

THE COURT: Closest available cell tower.

[Defense Counsel]: Yes, but still there's no range going on. There may be all sorts of factors included, but the cell tower requires the issue of being fair and impartial to examination.

[Prosecutor]: But I mean he is using his training. He is using his knowledge and using experience to rely on which he's qualified as an expert.

[Defense Counsel]: But *Wood v. Toyota Motor* says there has to be scientific basis, because I say so it's an expert opinion should not permit additional – typically it's not relevant here, because all these cell towers, there are various factors that can affect range.

THE COURT: Would you repeat for my benefit the question that was posed?

[Prosecutor]: I believe the question was, given your training and experience, would the cell phone connect to a tower?

THE COURT: When did the cell phone connect?

[Prosecutor]: I'm sorry. When does the cell phone connect to a tower?

THE COURT: I'm not sure if he asked from what distance, but that was not the question I don't think. *But that would be your question? From what distance can a cell phone connect to a tower?*

[Defense Counsel]: *I think it's typical so irrelevant.*

THE COURT: *I'm going to allow it. Overruled.*

BENCH CONFERENCE ENDS

THE COURT: Would you rephrase the question?

[Prosecutor]: Of course.

BY [Prosecutor]: *Detective Branigan, from your experience when does a cell phone – from what distance does a cell phone typically connect to a tower?*

[Defense Counsel]: *Objection.*

THE COURT: *Overruled.*

[Det. Branigan]: *Depending on the setting whether it be urban, rural, metropolitan. I mean, those can all affect the ability for a phone to connect. In a setting such as Howard County, especially in Columbia and Ellicott City, I typically see six miles or less.*

[Prosecutor]: *Now, did you have an opportunity to review the specific information for the tower that was utilized on May 4, 2013 at 2:20 in the morning?*

[Det. Branigan]: *I did.*

[Prosecutor]: *And were you able to ascertain the maximum range of that tower?*

[Det. Branigan]: *I did.*

[Defense Counsel]: *Objection.*

THE COURT: *Overruled. I'm going to allow it.*

BY [Prosecutor]: *You were able to ascertain the maximum range of that tower?*

[Det. Branigan]: *As provided by Verizon, yes.*

[Prosecutor]: *And before we go there, what is the maximum – definition-wise, what is the maximum range? What does that mean?*

[Defense Counsel]: *Objection.*

THE COURT: *Overruled.*

[Det. Branigan]: *Max range is provided by Verizon in their own records. It is an estimation of how far a tower can reach, let's say, if it was to be running at full capacity, full power.*

BY [Prosecutor]: *And from your experience, do cell phones usually run at full power?*

[Defense Counsel]: *Objection.*

THE COURT: *Overruled.*

[Defense Counsel]: Can we approach?

THE COURT: Yes.

BENCH CONFERENCE with Defendant

[Defense Counsel]: *Your Honor, this is far [a]field of Mr. – Detective Branigan’s expertise. He’s not a cell phone engineer. He was to determine those records and cell technology or talk about his experience. But the towers are way beyond he [sic] scope.*

[Prosecutor]: *He’s an expert as far as cell towers. He uses the towers to plot information. He’s an expert. He’s not guessing it. He’s using his experience to answer the very question I asked.*

[Defense Counsel]: *He testified he’s had two 40-hour courses on Smart Phones and cell phones, which frankly we’re still implying. He doesn’t know anything about just interpreting towers. Now we’re on towers.*

[Prosecutor]: *It falls within the scope of examination.*

[Defense Counsel]: *It is not appropriate for him to be offering opinions about this.*

THE COURT: *Overruled.*

BENCH CONFERENCE ENDS

BY [Prosecutor]: Now, in your experience, are the towers running at 100 percent all the time?

[Det. Branigan]: In my experience? I don’t have enough information regarding cell tower power to actually verify how turned on a tower can be power-wise I don’t have enough experience in that particular realm.

[Prosecutor]: But from your experience, if a cell phone is powered at 100 percent, it would reach that maximum antenna range?

[Defense Counsel]: Objection. Leading and asked and answered.

THE COURT: Sustained.

[Prosecutor]: *Now, what was the maximum antenna range for that particular cell tower, Tower Number 16, Annapolis Junction at 9504 Old Annapolis Road?*

[Defense Counsel]: *Objection. May we approach? Objection -*

THE COURT: *The same basis?*

[Defense Counsel]: *No, it's actually - it's a different basis.*

THE COURT: *All right.*

BENCH CONFERENCE with Defendant

[Defense Counsel]: *Your Honor, I think there are two sets of towers that are already in evidence. I think it's [State's Exhibit] 78 or so. And Mr. Polinsky didn't establish which one was in affect [sic] at the time of the incident, so I believe it would be inappropriate to ask him that.*

[Prosecutor]: *I'm not asking expert opinion. I'm asking his opinion of a cell tower based off information he used from Verizon records of the maximum antenna range.*

[Defense Counsel]: *Mr. Polinsky didn't establish that and it's not in evidence.*

[Prosecutor]: *It is in evidence. It's in the records over there. The records are in evidence.*

[Defense Counsel]: *He's not qualified to answer that question.*

[Prosecutor]: *He gave us certain records. Those records show antenna range. He can use those certain records. He can talk about what he did or didn't do.*

THE COURT: *The records reflect what the maximum antenna range for that particular cell tower?*

[Prosecutor]: *That's State's 78.*

THE COURT: *Can you just show that to me?*

[Prosecutor]: Sure. Your Honor, I'm showing you State's 78.

[Defense Counsel]: That's the one he could not interpret yesterday.

THE COURT: Yeah, what did Mr. Polinsky say yesterday about that?

[Defense Counsel]: He was not able to talk about maximum range. He said he didn't know what the maximum range was from his memory. He said I really don't know. His interpretation is outside the scope of this.

THE COURT: *I'll allow it.*

[Defense Counsel]: Thanks.

BENCH CONFERENCE ENDS

BY [Prosecutor]: *Now, Detective Branigan, with respect to the May 4, 2013 tower that was utilized by the 315-368-7053 number on May 4, 2013 at 2:20 in the morning, what were the maximum antenna ranges?*

[Defense Counsel]: *Objection.*

THE COURT: *Noted. Overruled.*

[Det. Branigan]: May I refer to my report?

[Prosecutor]: Your Honor, may –

THE COURT: Yes, he may to refresh his recollection.

[Prosecutor]: And Your Honor, I took State's 78 with me.

THE COURT: Thank you. You may answer.

[Det. Branigan]: *There were three max ranges that were provided for each of the three sides of that particular tower. Side 1 the largest maximum range of Side 1 was 13.08 miles. And this had a listed azimuth of 350 degrees, so not point [sic] directly straight north, but I guess we can say, from looking over top, I guess, to the left 10 degrees.*

Side 2 of the tower again had two listed max ranges. The largest of those max ranges was 6.46 miles and this had listed azimuth of 110 degrees, so it point [sic]southeasterly direction.

And Side 3 of the tower, again, also had two listed max ranges the largest of the max ranges being 8.17 miles. And this had a listed azimuth of 240 degrees. So it pointed in a southeasterly western direction.

(Italics added.)

The prosecutor then elicited from Det. Branigan certain limitations regarding the conclusions that could be drawn from the cell tower records in this case. Det. Branigan explained that the maximum ranges for the Annapolis Junction cell tower cannot specify “precisely where that cell phone was[.]” Nor could the available Verizon records establish that Matthias’s cell phone was within range of the Annapolis Junction tower at 4:20 a.m, the estimated time of the murder. The detective acknowledged that the data shows only that, “at 2:20 a.m. that cell phone was close enough to that tower within a sufficient distance to initiate a data session[.]”

3. Challenges to Cell Tower Range Evidence

On appeal, Matthias argues that “[t]he trial court erred in allowing Detective Branigan’s testimony regarding the distance at which a cell phone generally connects to a ‘typical’ cell tower and what the maximum range the instant cell tower had[.]” With respect to the range of a “typical” cell tower, Matthias contends such information was “irrelevant” and further, that Det. Branigan lacked sufficient expertise to testify that towers in the Columbia area generally have a maximum range of six miles. Matthias contends the detective admitted that he did not know how cell towers function in terms of power and

proffered no factual basis for the testimony about typical range. With respect to the maximum ranges for the Annapolis Junction tower, Matthias complains that Det. Branigan's expertise did not extend to "derivative tracking" or interpreting the tower range information in the absence of any factual basis for determining how power levels might affect the maximum ranges of that particular tower.

The State counters that "Detective Branigan, who was properly qualified as an expert, gave relevant testimony that did not exceed the scope of his expertise." With respect to the range of the Annapolis Junction tower, the State maintains that "it was proper for Detective Branigan to testify, based on Verizon business records already in evidence, that the maximum range of the cell tower 1.9 miles from the murder scene was 13 miles – [which is] farther than the 6-mile maximum range of a typical tower." As for a "typical" tower range, the State maintains that, because "the State did not need to place Matthias any fewer than 15 miles from the murder scene[,] the "testimony about a typical tower was, if error at all, harmless."

4. Analysis

We conclude that the trial court properly exercised its discretion in accepting Det. Branigan as an expert in interpreting the relevant Verizon records showing cell tower range and in permitting the detective to explain the technology of how and when cell phones connect to cell towers. The detective's training and field experience, both in reading Verizon records and in understanding how smart phones connect to cell towers, provided the court an adequate basis for permitting him to testify regarding the maximum range of

the Annapolis Junction cell tower. *Cf. Hall v. State*, 225 Md. App. 72, 94 (2015) (qualifications of police officer in “plotting and mapping cell phone tower data” were “sufficient to qualify him as an expert”); *see Stevenson, supra*, 222 Md. App. at 136 (“extensive first-hand training and experience in analyzing cell phone call data detail” provided sufficient grounds for expert qualification).

Similarly, the court did not abuse its discretion in permitting Det. Branigan to testify that the “typical” range of cell towers in the Columbia and Ellicott City area of Howard County is only six miles. The detective’s training and experience in 50 to 60 local cases, 30 of which involved review of Verizon records, provided an adequate basis for the court to conclude that the detective was familiar with the “typical” range data for that cell towers in that area. In turn, the “typical range” evidence provided background context for the jury to understand the range of the Annapolis Junction tower that was discussed in this case. Evidence of the typical maximum range of other cell towers in Howard County assisted the jury in understanding that different cell towers have different ranges depending on topography, and that the location of a particular cell phone within the limits of a cell tower’s range at a specified time may be inferred from the fact that the phone connected through that tower. In any event, the “typical range” evidence did not prejudice Matthias because Det. Branigan thereafter testified that the maximum ranges for the three sides of the Annapolis Junction tower were all greater than six miles, and those ranges were reflected in Verizon’s business records that had been admitted in evidence without objection.

Drawing on his training and field experience, the detective explained that, although the maximum range for other towers in the Columbia and Ellicott City area of Howard County was about six miles, Verizon records specified that the maximum ranges for the three sides of the Annapolis Junction tower were 6.46 miles, 8.17 miles, and 13.08 miles. The trial court did not err in overruling foundation objections to that evidence. As the detective explained, his source for this range data was a specific column in the Verizon exhibits previously admitted as business records. Even though Mr. Polinsky indicated he was “not totally familiar” with that portion of the records, Det. Branigan testified that he did have sufficient training and experience to interpret those readings. Det. Branigan explained that maximum range data provided “an estimation of how far a tower can reach, let’s say, if it was to be running at full capacity, full power[.]”

The maximum range of the Annapolis Junction tower was relevant because it provided necessary context for the Verizon record showing that, at 2:20 a.m., Matthias’s cell phone connected to that tower. The lack of information on how power levels might affect the range of this tower did not make the maximum range data irrelevant, and, at most, merely affected the weight of the evidence. Det. Branigan’s testimony supported an inference that Matthias’s phone connected to the Annapolis Junction tower because it was in the vicinity of that tower --- and not far from Ms. Castellano’s apartment --- just two hours before she was murdered there.

Given the evidence that Matthias had made statements to family members asserting that he was not in Maryland at all that night, we agree with the State that, regardless of

whether he “was 5, 10, 15, or 20 miles from the crime scene” or whether the “tower was operating at full power,” the evidence about his cell phone connecting to the Annapolis Junction tower two hours before the murder was highly relevant. *Cf., e.g., United States v. Hill*, 818 F.3d 289, 298 (2016) (recognizing that “historical cell-site analysis can show with sufficient reliability that a phone was in a general area,” although expert disclaimer that accused’s “cell phone’s use of a cell site did not mean [he] was right at that tower or at any particular spot near that tower” may be necessary to “save” such testimony).

B. Testimony Regarding Cell Phone Use in Maryland

Matthias also contends that the trial court erred in permitting Det. Branigan “to testify as to the accuracy” of statements he made to family members in the recorded jail calls, denying that he traveled to Maryland during his May 3-4 road trip. This claim of error stems from a colloquy near the end of Det. Branigan’s direct examination when the prosecutor asked a series of questions about the significance of the maps showing that, over the course of the relevant time period from May 3-4, 2013, Matthias’s cell phone progressively connected to towers in Charlotte, and then Richmond, Ellicott City, Chantilly, Lexington, Staunton, and Roanoke. During that portion of the examination, the prosecutor asked Det. Branigan:

So given what we know about the cell towers themselves and given what we know about the maximum ranges, if an individual were to say, I was in Roanoke, could that person in Roanoke communicate with the [Annapolis Junction] cell tower[?]

Consistent with his prior testimony that cell phones generally communicate with the closest available cell tower and that the Annapolis Junction tower had a maximum range

of 13 miles, the detective answered, “At that time no[.]” The prosecutor continued with this line of inquiry:

[Prosecutor]: What if an individual said that I was in Charlotte? Could that person be in Charlottes [sic] utilizing their cell phone and communicate with a cell tower at 9504 Old Annapolis Road?

[Det. Branigan]: No.

[Prosecutor]: What about Lexington?

[Det. Branigan]: No.

[Prosecutor]: What about Stanton [sic].

[Det. Branigan]: No.

[Prosecutor]: What about Richmond?

[Det. Branigan]: No.

[Prosecutor]: Now, going back to . . . that map on the TV. How many data point [sic] did you find in the State of Maryland?

[Det. Branigan]: There’s one data point in the State of Maryland.

[Prosecutor]: You didn’t find any others?

[Det. Branigan]: No.

[Prosecutor]: *Detective Branigan, what if someone utilizing that 315-368-7053 number were to say, I never went to the State of Maryland, would that be accurate or inaccurate?*

[Defense Counsel]: *Objection.*

THE COURT: *Overruled.*

By [Prosecutor]: *If someone utilizing cell phone number 315-368-7053 said, I was never in Maryland, would that be accurate or I [sic] inaccurate.*

[Det. Branigan]: *Inaccurate*.

(Emphasis added.)

Matthias argues that “the trial court erred in allowing Detective Branigan to testify as to *the accuracy of a statement made by*” Matthias. (Emphasis added.) In his view, the trial court allowed Det. Branigan to improperly impugn the credibility of his out-of-court statement and thereby impinged on his “constitutional right not to testify.”

Maryland courts have held that “it is impermissible, as a matter of law, for a witness to give an opinion on *the credibility of another witness*.” *Hunter v. State*, 397 Md. 580, 589 (2007) (emphasis added). The State may not elicit testimony from one witness that another *witness* is lying or telling the truth. *See Brooks v. State*, 439 Md. 698, 729 (2014); *Bohnert v. State*, 312 Md. 266, 278 (1988); *Horton v. State*, 226 Md. App. 382, 402-03 (2016); *Parker v. State*, 189 Md. App. 474, 496-500 (2009).

But that principle does not preclude a witness from assessing “whether a particular statement *is consistent with other facts known to the testifying witness*.” *Brooks*, 439 Md. at 729 (emphasis added). Applying this distinction in *Brooks*, the Court of Appeals held that a forensic nurse was permitted to testify that a rape victim’s physical injuries “would verify” her factual account of the assault. *Id.* Similarly, a detective was permitted to testify that he considered a witness’s statement “to be truthful” because it included facts the witness could only have learned from the killer. *See Conyers v. State*, 354 Md. 132, 153-54 (1999). Whether challenged testimony constitutes improper commentary on the credibility of another witness, or instead is a permissible assessment of “whether a

statement of another witness is consistent with other facts known to the testifying witness,” is a determination that we review *de novo*. See *Brooks*, 439 Md. at 709, 729.

Here, defense counsel did not object when the prosecutor inquired whether a person using Matthias’s cell phone in Charlotte, Richmond, Lexington, and other points along the mapped route, could connect through the Annapolis Junction cell tower. Defense counsel objected only when the prosecutor asked whether, in light of 2:20 a.m. connection to the Annapolis Junction tower, a person using that cell phone while on the mapped route could accurately say that the person “was never in Maryland.”

In our view, the trial judge did not err in concluding that, like the witnesses permitted to testify in *Brooks* and *Conyers*, Det. Branigan could testify to a permissible consistency assessment based on specific facts known to him. The trial court did not err or abuse its discretion in permitting Det. Branigan to testify that a claim by a person using Matthias’s cell phone to have “never [been] in Maryland” on May 4, 2013, would be inconsistent with the facts shown by the Verizon records.

II.

Rental Car Odometer Evidence

Matthias challenges the admission of testimony and documents relating to the odometer readings for the rental vehicle he drove from May 3-5, 2013. This evidence includes: (1) a written rental agreement signed by Matthias on May 3, 2013, for a Dodge Challenger, which shows an outgoing odometer reading of 23,870 on page one but an outgoing odometer reading of 23,500 on pages three and four; (2) a Triangle Rent A Car

maintenance log showing that, after a pre-rental oil change on May 3, the Dodge Challenger had an odometer reading of 23,500 miles; and (3) testimony by John Molina, Triangle Rent A Car manager, regarding those odometer readings and those documents.

Matthias argues in his brief:

The State called John Molina of Triangle Rent-A-Car in order to introduce and explain documentation regarding [Matthias's] two auto rentals. During Molina's testimony it became apparent that additions or corrections were made on the documents regarding actual mileage of the second vehicle. Over objection, the State was permitted to adduce from Molina hearsay statements regarding the corrections made by another and to introduce these records, which contained hearsay statements entered by non-testifying witnesses. Thereafter, the State was permitted, again over objection, to admit oil change documents containing other hearsay statements regarding the mileage in an effort to bolster Molina's testimony.

(Footnote and record references omitted.)

Matthias contends that Mr. Molina's testimony and the corresponding changes in the car rental and oil change documents constituted inadmissible hearsay that "implicated [his] location" at the time of the murder and "went to the core of the State's highly circumstantial case" by establishing that he traveled 1,045 miles, rather than just 675 miles (which lesser distance would have supported an argument that he did not drive the car to Columbia, Maryland).

This Court makes a *de novo* determination of whether a statement constitutes hearsay. *See Parker, supra*, 408 Md. at 436-37. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Maryland Rule 5-801(c). Unless the statement fits within an established exception, "hearsay is not admissible." Maryland Rule 5-802.

The records of the rental car company were admissible under the business records exception, Maryland Rule 5-803(b)(6), which provides an exception for

[a] memorandum, report, record, or data compilation of . . . conditions . . . if (A) it was made at or near the time of the . . . condition, . . . , (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation.

State's Exhibit 64, which is the rental agreement containing two different odometer readings at the time Matthias rented the vehicle, was admitted, without objection, under the hearsay exception for business records. Indeed, defense counsel expressly agreed to admission of the rental agreement under that exception "so long as [Molina's] testimony is confined to the contents of those documents."

Thereafter, Mr. Molina testified, without objection, about the discrepancy between the 23,870 odometer reading on page one, and the 23,500 odometer reading recorded on pages three and four. He explained that he personally handled the rental transaction with Matthias, during which he inspected the odometer and wrote down the mileage on page 3 of the rental agreement as "23,500." He watched Matthias sign the page containing the handwritten 23,500 odometer reading. During cross-examination, defense counsel elicited Mr. Molina's testimony that, as he "opened the ticket," Matthias's name and address "just pop[ped] up when" Molina "punch[ed] in his driver's license," and that was the reason Molina "didn't bother to change the mileage in the computer" from the "23,870" mileage showing in the computer at that time.

Because of the manner in which Mr. Molina's testimony about the odometer discrepancy came in, the record does not support Matthias's complaint that Mr. Molina was permitted to testify to "hearsay statements regarding the corrections made by another." As the State points out, Mr. Molina did not testify about corrections made "by another person" to the rental agreement. Nor did Mr. Molina relate, either directly or indirectly, any out-of-court statements to explain the discrepancy between the mileage figures on pages one and three of the rental agreement. Instead, he simply explained that he personally inspected the vehicle and recorded the odometer reading as 23,500. When the prosecutor asked why the reference to 23,870 was incorrect, the trial court sustained defense counsel's hearsay objection, thereby preventing the jury from hearing any potentially objectionable testimony regarding a correction made by someone other than Mr. Molina. The explanation he later gave regarding the higher figure being generated by the computer came in during cross-examination by defense counsel.

With respect to evidence regarding the odometer reading of 23,500 shown on the maintenance log documenting an oil change on May 3, the document itself was neither offered nor admitted into evidence, even though it appears that it would also qualify as a business record. Nevertheless, Mr. Molina did testify that the document contained an outgoing odometer reading of 23,500.

Defense counsel did not object to that testimony on hearsay grounds. Instead, the sole argument for excluding that testimony was the belated disclosure of that information, which is a ground that Matthias does not renew on appeal. Because Matthias did not lodge

a hearsay objection to Mr. Molina’s testimony about the “oil change” odometer reading, he cannot raise a hearsay challenge to that testimony in this Court. *See generally Klauenberg v. State*, 355 Md. 528, 541 (1999) (“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.”). In any event, even if a timely hearsay objection had been lodged, we see no reason why that odometer reading could not have been admitted under the business record exception. *Cf. Att’y Grievance Comm’n v. Keister*, 327 Md. 56, 75 (1992) (“There are instances in which a court may ‘conclude from the circumstances and the nature of the document involved that it was made in the regular course of business.’”). Accordingly, we perceive no error in the court’s rulings relative to evidence regarding the odometer readings.

**JUDGMENTS AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**