Circuit Court for Frederick County
Case No. C-10-CR-19-001096

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 263

September Term, 2021

BYRON HORN

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 2, 2022

*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.

In the early morning of June 1, 2019, an officer observed appellant Byron Horn's vehicle make a wide turn through multiple lanes of traffic, cross over the double line twice, and drift back and forth in its lane. The officer stopped the vehicle, and Mr. Horn was arrested.

In a December 2, 2019 bench trial in the Circuit Court for Frederick County, Mr. Horn was convicted of driving while impaired by alcohol, in violation of Maryland Code (1977, 2012 Repl. Vol., 2019 Supp.), Transportation Article ("TR"), § 21-902(b), and failure to drive a vehicle on the right half of the roadway, in violation of TR § 21-301(a). Mr. Horn was sentenced to one year of imprisonment, all suspended. He filed a motion for a new trial, which was denied on March 26, 2021. Mr. Horn noted an appeal and presents a sundry list of questions for our review, which we restate and reorder as follows:[1]

1. Did the circuit court err in denying the motion to suppress because the police officer lacked a reasonable suspicion for the traffic stop?

2. Did the circuit court err in concluding that Mr. Horn was advised of his rights and afforded due process?

3. Did the circuit court abuse its discretion in admitting Mr. Horn's hospital records?

4. Did the court abuse its discretion in admitting testimony regarding horizontal gaze nystagmus?

5. Did the trial court abuse its discretion in limiting the scope of recross-examination during Officer Coady's testimony?

[1] The questions presented by Mr. Horn in his informal brief appear in the appendix at the end of this opinion.

6. Did the circuit court properly permit the State to recount a prior ruling at trial regarding a motion to suppress before a different judge at the hearing on Mr. Horn's motion for a new trial?

7. Did the circuit court abuse its discretion in denying Mr. Horn's motion for a new trial because Mr. Horn's conviction resulted from false testimony?

Finding no error or abuse of discretion, we affirm the judgments of the circuit court.

BACKGROUND

Indictment and Pre-Trial Notices

Mr. Horn was charged in the District Court for Frederick County with driving a vehicle while under the influence of alcohol; driving a vehicle while impaired by alcohol; failure to drive a vehicle on the right half of a roadway when required; and willfully driving a motor vehicle at a slow speed impeding normal and reasonable speed. Following a request for a jury trial, the case was transferred to the Circuit Court for Frederick County.

On November 14, 2019, the State filed a "Notice of Intention to Request Subsequent Offender Treatment" for Mr. Horn for two separate offenses: (1) a 1997 conviction for driving under the influence of alcohol in violation of TR § 21-902(b); and (2) a 2004 conviction for driving while impaired also in violation of TR § 21-902(b). The same day, the State also filed a "Notice of Intention to Seek Enhanced Penalty." This notice informed Mr. Horn that he would be subject to "the additional penalty of imprisonment of not more than two (2) months, a fine not exceeding $500, or both" if he was "convicted of a violation of Transportation Article Section 21-902 and the trier of fact . . . finds beyond a reasonable doubt that the defendant knowingly refused" to take a test to determine his blood alcohol concentration.

Motion to Suppress

The case proceeded to trial on December 2, 2019. Immediately after the case was called, Mr. Horn waived his right to a trial by jury and elected to proceed with a bench trial.

Counsel for the State alerted the court that Mr. Horn intended to move to suppress evidence. Defense counsel then proffered that the "ground for the motion" that would be forthcoming "is that we believe that the officer did not have reasonable articulable suspicion that [Mr. Horn] was committing any [traffic] offense at the time" of his arrest. Although counsel indicated that the defense would not be calling any witnesses during the trial, for purposes of the motion to suppress only, he would call Mr. Horn to "testify to the events that led up to the stop[.]"

The State began by calling Officer Andrew Coady, a member of the Frederick Police Department, assigned to the Evening Patrol, B Squad. The court accepted Officer Coady as an expert in the administration of horizontal gaze nystagmus and noted that expert testimony was not required for "other parts of the field sobriety test."

Officer Coady testified that he was on duty on June 1, 2019. At approximately 12:10 a.m., he was on patrol in the area of North East Street and East Church Street in Frederick County. He observed a red Cadillac Escalade "turning right onto southbound North East Street." The vehicle made a "wide right turn," crossing over all three lanes of traffic and over the "double yellow line into the northbound side of the road." Based on his "training, knowledge and experience," Officer Coady explained that "a cue for impaired

drivers could be a wide right turn." Officer Coady then "got behind the vehicle." The vehicle then made a "left hand turn onto East Patrick Street to go eastbound." Officer Coady testified that "the vehicle was traveling slower than the posted speed limit" as it was "going 20 miles an hour in a 30-mile an hour zone, which is another cue for impairment." Traffic began to "back up" and the vehicle "was drifting back and forth in its lane side-to-side." The vehicle continued east until "Monocacy Boulevard where it got into lane number two" and made "another wide radius turn, crossing through the lane of travel" and then "cross[ing] over the double lane again, failing to drive right of center." Officer Coady then initiated a traffic stop of the vehicle.

Officer Coady approached the driver's side of the vehicle and requested Mr. Horn's license and registration, which Mr. Horn provided. He told the court that, "[w]hile speaking with [Mr. Horn] at the window, I did detect a strong odor of an alcoholic beverage coming from inside the vehicle." At this point in Officer Coady's testimony, counsel for Mr. Horn requested to voir dire Officer Coady, which the judge permitted.

During voir dire, Officer Coady confirmed that Mr. Horn "came so wide that he crossed into" other lanes of traffic. He could not recall if "there was traffic coming around." When questioned about whether Mr. Horn showed "any signs of any impairment," Officer Coady responded that he watched Mr. Horn make the "left turn onto East Patrick Street" and observed his vehicle "drifting back and forth in his lane," and "the slow speed and traffic backing up behind us." Officer Coady did not recall if Mr. Horn used his blinker or if he utilized a wide turn onto East Patrick Street. After Mr. Horn made

a second wide turn, Officer Coady initiated a stop. He explained that, although he believed that "there was a likelihood" that Mr. Horn was impaired based on how he was driving, he had also "pulled people over for the same thing and they have not been impaired."

Mr. Horn testified next, insisting that he "took a normal turn" onto North East Street. He confirmed that he was "very familiar" with the area, took his time "making these turns," and used his signals. Mr. Horn testified that he had no issues navigating the turns and could not have been going "20 in a 30" because he used his cruise control due to traffic cameras. Concerning the turn "at the light at Monocacy and East Street," Mr. Horn asserted that he "never crossed the line." Mr. Horn testified that he did not make any wide turns while driving that evening or violate any traffic laws.

On cross-examination, Mr. Horn testified that he was "visiting a friend" before the officer stopped him. Mr. Horn could not recall how many cars were on the road that evening but "didn't notice anything out of the ordinary."

The State then recalled Officer Coady. He explained where Mr. Horn's car was positioned before it made a right turn onto Monocacy Boulevard. Officer Coady confirmed that there was a "double line on Monocacy Boulevard" and that he witnessed Mr. Horn's car cross it. Following Officer Coady's testimony, the court heard argument on Mr. Horn's motion to suppress.

Mr. Horn's counsel requested the court suppress "everything after the stop." He argued that Officer Coady pulled Mr. Horn "not for a particular traffic offense," but because the officer believed that Mr. Horn was impaired. He further contended that Officer

Coady was attempting to "gather up enough to pull [Mr. Horn] over for a DUI itself" but there was not "enough here." Mr. Horn's counsel urged the court to credit Mr. Horn's testimony and argued that Officer Coady did not "formulate[] the proper probable cause to pull over [Mr. Horn] for a DUI."

The State responded "first . . . that the officer did testify that he did observe a traffic offense. He testified that [Mr. Horn] failed to drive right of center when he crossed over the double yellow lines." The State underscored that the "standard for a traffic stop is reasonable articulable suspicion rather than probable cause." The prosecutor also directed the court to *Edwards v. State*, 143 Md. App. 155 (2002), where this Court "found that the crossing of the center line of an undivided is so inherently dangerous that it is a legally sufficient basis for a stop." Because Officer Coady testified that he "observed [Mr. Horn] cross the double yellow line on two occasions," the State argued that there was a sufficient basis for the stop.

The trial court denied Mr. Horn's motion to suppress, explaining:

> Well, what we have here, based on the testimony of Officer Horn (sic), we have allegedly two instances where Defendant crossed the double yellow line. That is an offense for which one can be stopped and issued a citation, unlike drifting or weaving within the lane.
>
> Now Officer Horn (sic) talked about cues, and I think the drifting within a lane is in fact a cue. It is something that every officer who is experienced in making these types of stops and arrests is familiar with. That is indicative of someone who may be either -- well, may be impaired by the consumption of alcohol.
>
> Now in addition, the testimony is the wide turn. If someone makes a wide turn and does not cross the center line or does not turn into a lane that is one way, then again, that is a cue. It is not an offense in and of itself.
>
> And then we come to driving 20 in a 30. Again, another cue.

* * *

> Let's throw out the second crossing. Let's say that he didn't cross the double yellow line that the Defendant has testified doesn't begin at the intersection, but rather, 80 feet away from that. Let's throw that out of the mix. Certainly there is enough to pull Defendant over based on the first incident of crossing the center line and also, of course, the other evidence, which is, as the officer testified, the totality of the circumstances.
>
> Well, then the question becomes is there enough evidence here to raise, in the mind of the officer, a suspicion which is reasonably articulable, and I believe there is. Therefore, I will deny the motion to suppress.
>
> Proceed.

State's Case in Chief

The State then continued with the testimony of Officer Coady, who related that, when he approached Mr. Horn he smelled a strong odor of alcohol from the vehicle, in which Mr. Horn was the only occupant, and he observed Mr. Horn's slurred speech and "bloodshot, watery eyes." When Officer Coady asked if Mr. Horn had been drinking, he "stated that he had not much" to drink. Officer Coady then directed Mr. Horn to exit the vehicle and performed a field sobriety test. Officer Coady testified that he "observed a total of six c[]ues" and "vertical gaze nystagmus."[2] Officer Coady explained that, "typically, if you see vertical gaze nystagmus, that typically means that there was a higher consumption of alcohol for that individual."

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[2] "Nystagmus is the term used to describe an eye that is undergoing a repetitive, back-and-forth or 'bouncing' movement. Nystagmus occurs when there is a disturbance of either the neurological control of the eye or the vestibular (inner ear) system. Nystagmus typically is an involuntary response, in that the person exhibiting the nystagmus cannot control it." National Traffic Law Center, *Horizontal Gaze Nystagmus: The Science and The Law, A Resource Guide for Judges, Prosecutors and Law Enforcement* (2d Ed. 2021). An officer checks for vertical gaze nystagmus by raising an object several inches above a subject's eyes. *Id.* at 14. "When caused by intoxication, the presence of [vertical gaze nystagmus] is a good indicator of a high dose of alcohol[.]" *Id.*

Officer Coady testified that he observed that Mr. Horn was "swaying while standing still" but had "equal tracking and equal pupil size," which indicated to the officer that Mr. Horn "was not having any type of medical emergency." Officer Coady then provided instructions for the "Walk and Turn Test." Officer Coady testified that Mr. Horn "became uncooperative" and began to interrupt the officer. After Officer Coady explained the test three times, he asked Mr. Horn if he would complete the test. Mr. Horn refused to complete the test, and Officer Coady placed him under arrest. Officer Coady concluded, "based on [his] training, knowledge and experience," that Mr. Horn "was under the influence of alcohol and was impaired and could not safely operate a motor vehicle."

After Mr. Horn was placed under arrest, Officer Coady advised him of his rights. Officer Coady testified:

> Once we were back at the Frederick Police Department, I provided [Mr. Horn] with a copy to read along, and then I also had a copy to read along of the DR-15, the Advice of Rights form. He was read the form in its entirety, and he asked to contact an attorney and he was given his cell phone.

The DR-15 Form was admitted into evidence.[3] While the officer signed the form, Mr. Horn "wrote a sentence on the document and refused to sign."[4] Mr. Horn was offered a

[3] "The DR-15 is a standardized statement of a detained driver's rights and the adverse administrative consequences, which, in addition to advising individuals of the consequences of a test refusal, sets forth the sanctions for having a blood alcohol concentration in excess of the statutory limit, explains the administrative review process, and advises of the potential disqualification of a suspected drunk driver's Commercial Driver's License for a test refusal." *Motor Vehicle Admin. v. Delawter*, 403 Md. 243, 262 (2008) (cleaned up).

[4] Mr. Horn wrote at the bottom of the Form: "I need reading glasses. Officer refused."

breathalyzer at police headquarters and refused. Officer Coady related that Mr. Horn asked for a "blood test" but was advised that a "blood test is not [] offered until you are transported to a hospital" or "are unable to give a breath test."

After Mr. Horn refused the breath test, he complained of chest pains and was transported to the hospital. Mr. Horn remained uncooperative and, according to Officer Coady, still had slurred speech while walking to the ambulance. Officer Coady testified that in the ambulance, Mr. Horn "was still somewhat uncooperative and antagonistic" and told Officer Coady that "he was allergic to cheap girls and dumb cops."

At the hospital, Mr. Horn was offered a blood test. Although Mr. Horn stated that "he was not refusing," he also would not "sign anything." Accordingly, a blood test was not administered.

On cross-examination, among other things, Officer Coady confirmed that Mr. Horn had "uneven eyes" but testified that it would not have an effect on horizontal gaze nystagmus (HGN) "as long as there's equal tracking and equal pupil size." Officer Coady confirmed that he did not specify in his report that he asked Mr. Horn if he wanted to take field sobriety tests and Mr. Horn said "no." Concerning the DR-15 form, Officer Coady testified that the form that he provided to Mr. Horn included his initials, not Mr. Horn's, because he initialed the paragraphs after he read them aloud to Mr. Horn. He confirmed that the writing, "I need reading glasses. Officer refused[]" was Mr. Horn's. On redirect, Officer Coady confirmed that he read the DR-15 form "out loud word for word." Finally,

on re-cross-examination, Officer Coady confirmed that he checked the box on the DR-15 form noting that Mr. Horn refused the breath test.

Next, the State called Dr. Anil Kumar Mahajan, an emergency room physician at Frederick Memorial Hospital. Dr. Mahajan was accepted as an expert in emergency medicine. He testified, after his recollection was refreshed by reviewing Mr. Horn's chart, that Mr. Horn "was brought to the hospital [] complaining of having chest pain after getting arrested by the police officer." Dr. Mahajan performed a physical exam and chest pain workup, including EKGs and blood tests. Dr. Mahajan testified: "During the examination I had a [] strong smell of the alcohol. I just wanted to get the blood alcohol level to make sure he's not . . . very intoxicated, because it will help me to make a disposition." The test measured the concentration of alcohol as 0.201 milligram per deciliter. Mr. Horn's counsel objected to further testimony from Dr. Mahajan regarding his opinion of the concentration of alcohol in Mr. Horn's blood. In analyzing the objection, the court noted:

> [T]he problem the State has here is they cannot, . . . I don't believe this witness can tell us, based upon a hypothetical, as to when the alcohol was consumed, when [Mr. Horn] was pulled over and what the alcohol content was at the time he was driving the vehicle. Whatever the test result is, his alcohol content, according to the test, could be higher or lower than the alcohol content which would have been able to be determined if blood had been taken or [breath] had been taken at the time of the stop or within two hours of the stop, as is required by law.
>
> And typically, what has to happen in order to do that is a toxicologist, someone from the State's Toxicologist's Office, comes in and testifies, based upon that hypothetical, what the blood alcohol content would have been at the time [Mr. Horn] was operating the motor vehicle, or at least two hours within the time of arrest, and I don't believe Dr. Mahajan can do that.

On cross-examination, Dr. Mahajan confirmed that he did "not have any independent recollection of when [Mr. Horn's] blood was taken." Dr. Mahajan did not see any reason why an ethanol level could be high other than consuming alcohol. At the conclusion of Dr. Mahajan's testimony, the State and the defense rested.

Motion for Judgment of Acquittal and Verdict

The court then confirmed that Mr. Horn was moving for a judgment of acquittal. The court granted the motion as to count 1, driving under the influence, and count 4, willfully driving a motor vehicle at a slow speed.

After closing argument, the court offered its verdict:

> Well, remember that in order for someone to be found guilty under 21-902(b), all that is required is alcohol and some impairment. Driving under the influence requires substantial impairment.
>
> Now if we look at this case, we have testimony that [Mr. Horn] crossed the double yellow line twice, took wide turns twice and was driving 10 miles under the posted speed limit. Now I didn't find him guilty of willfully driving a vehicle at a slow speed and impeding normal and reasonable traffic movement, but I think, as the officer testified, it is a cue when you -- particularly at 12:00 a.m. if someone is driving 20 miles an hour.
>
> Of course, there are a lot of people who make the foolish mistake of exceeding the speed limit, and they get pulled over. Obviously, it is prudent many times to drive a little slower than you would ordinarily.
>
> But if you look at the totality, [Mr. Horn] admits that he had consumed alcohol. That is confirmed by the HGN, and it is also confirmed by the blood test. Now as I indicated, we don't know what his blood level was, the alcohol content was, at the time he was operating the motor vehicle. I am guessing that the State's Attorney's Office has had other cases like this, and . . . typically, the toxicologist needs to be subpoenaed to testify so they can do that conversion, because his alcohol level could have been lower at the time it was - - blood was drawn.
>
> Or it could have been higher. It is impossible to tell until you take the timeframe and plug all the various components needed for an opinion.

> But if we look at, again, the totality of circumstances here --and let's not forget that like many people who have been drinking, [Mr. Horn] was -- I will be kind and say argumentative. Some people might say obnoxious. But there are the earmarks here of somebody who has had too much to drink.
> So I find – I will deny the motion and find [Mr. Horn] guilty beyond a reasonable doubt on Count 2, driving while impaired by alcohol, a violation of Transportation Article 21[-]902(b), and also the failure to drive vehicle on right half of roadway, a violation of Transportation 21[-]301(a).

The court deferred disposition until a later date and placed Mr. Horn on pre-disposition supervision. Mr. Horn was directed to abstain from alcohol, submit to a drug and alcohol evaluation, begin any recommended treatment, and attend Alcoholics Anonymous meetings.

Sentencing

On August 14, 2020, Mr. Horn was sentenced to one year of imprisonment, all suspended, and two years of probation.[5]

Motion for New Trial[6]

On August 24, 2020, Mr. Horn moved for a new trial pursuant to Maryland Rule 4-331. Among other bases, Mr. Horn asserted that at his MVA hearing,[7] "the sworn

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[5] The transcript of the sentencing hearing is not included in the record.

[6] Mr. Horn also moved for modification of his sentence on August 17, 2020. The court ordered the motion held in abeyance on August 31, 2020.

[7] On February 12, 2020, an evidentiary hearing was held at the Frederick Branch Office of the Maryland Motor Vehicle Administration before an administrative law judge to determine whether to suspend Mr. Horn's driver's license. At the conclusion of the hearing, the administrative law judge took the matter under advisement because "there is a lot of conflicting arguments" and the judge needed to "check some law," go over the report," and "go over the evidence and the testimony."

testimony of the arresting officer contradicted his sworn testimony at trial" and that there were "discrepancies involving material facts," including the DR-15 form and the blood draw.

The State opposed Mr. Horn's motion on October 29, 2020. It asserted that Mr. Horn failed to cite which subsection of Maryland Rule 4-331 pursuant to which he was seeking a new trial and did not "state in detail the grounds upon which [h]is motion is based as required by Maryland Rule 4-331(e)(2)." The State further argued that Mr. Horn's motion failed to comply with Rule 4-331(a) because it was not filed within ten days after the verdict and failed to comply with Rule 4-331(c) because, among other reasons, he failed to establish a "prima facie basis for granting a new trial."

Mr. Horn filed a supplemental memorandum in support of his motion for a new trial on March 25, 2001.

The court held a hearing on Mr. Horn's motion on March 26, 2021. While counsel originally filed Mr. Horn's motion, Mr. Horn argued the motion pro se. Mr. Horn argued that "the reason for the new trial is that the case was based on false evidence, knowingly presented false evidence, and perjury by the officer, and that's what led to the conviction." Mr. Horn presented the DR-15 form admitted at trial and argued that the officer had altered the form. In response, counsel for the State explained that the form "existed at the time of trial, and the officer was subject to cross-examination."

Next, Mr. Horn asserted that, at the MVA hearing on February 12, months after the trial, that the officer lied regarding where he completed the form and whether a box was

checked by the officer or Mr. Horn. The court then questioned why the officer would lie, and the following exchange occurred:

THE COURT: But why do you think – why would he do this? Why would he have such a desire to convict you that he would lie in court?

MR. HORN: I, I don't know.

THE COURT: I'm just asking if you think you have motive that he would do this. Does he know you personally?

MR. HORN: No, never. This is - -

THE COURT: - - the first time I ever met him, the young man.

THE COURT: And, so, he just randomly decided I don't like this guy, so I'm going to make some stuff up in court about him?

MR. HORN: No, because I was, he pulled me over without cause. I unequivocally, undeniably - -

THE COURT: Why would he do that? I mean I'm not saying that never happened. I'm not saying that - -

MR. HORN: Well, I, I, have no idea.

After further exchange, the court concluded:

> I would give you every chance to win a new trial if I thought that you had a reason, but the fact that the officer – so far all I've heard is that the officer didn't check the box when he should have. . . . That's a mistake. Cops make mistakes all the time. The question is does it amount to something that you can get a new trial on. . . .
>
> So, I don't think it's perjury what the officer did, so that doesn't work.

Mr. Horn argued that there was further discrepancy concerning when the officer left the hospital, and when Mr. Horn's blood was drawn. In response, counsel for the State specified:

[STATE'S COUNSEL]: . . . . [T]he blood was suppressed by the defendant at trial, so there was no testimony at trial on the blood, the existence of a blood kit, everything that he just referenced is testimony that occurred in the MVA hearing that was not admitted at trial on his motion.

THE COURT: That's what I mean. So, that testimony was not even contradicted at trial, because it was never heard by the trier of fact.

[STATE'S COUNSEL]: Correct.

After final argument from Mr. Horn, the court denied his motion for a new trial. The court explained:

> The defendant believes that . . . the officer [was] being untruthful, and the [c]ourt simply does not have enough evidence to determine whether that was an attempt to deceive the [c]ourt, although I do not believe that, frankly, or simply a mistake which happens when police officers, who make a lot of these cases, and then have to testify to them later. That doesn't mean that all mistakes are okay, by any stretch of the imagination.
>
> The court believes officers should testify as accurately as possible, but the question before the [c]ourt today is whether or not those statements . . . amounted to a perjury statement by the police officer that would amount to enough evidence of the defendant to receive a new trial, and I do not find that's the case, and the motion for a new trial is denied.

Mr. Horn timely noted an appeal on April 26, 2021. We provide additional facts as necessary in the discussion section.

DISCUSSION

I.

Motion to Suppress

A. Parties' Contentions

Mr. Horn first contends that the "police lacked reasonable suspicion to seize" him in violation of the Fourth Amendment. Specifically, according to Mr. Horn, the record does not establish "how far Mr. Horn's vehicle crossed over center during [the] turn[.]" He asserts that nothing in the record reveals any unsafe or dangerous movements and does not "reflect any danger to either the officer's vehicle and no other traffic was observed to be present by officer at the time of the turns." In short, Mr. Horn asserts that there was not "reasonable articulable suspicion to make the stop."

The State responds that the "court properly denied the motion to suppress." According to the State, "crossing over the line twice provided a basis for the stop" in addition to "the slow driving and the 'drifting back and forth' in the lane."

B. Analysis

When reviewing a ruling on a motion to suppress evidence under the Fourth Amendment, we accept the court's findings of fact unless clearly erroneous, *Portillo Funes v. State*, 469 Md. 438, 461-62 (2020), viewing those facts in the light most favorable to the prevailing party, *Belote v. State*, 411 Md. 104, 120 (2009). "[W]e review the hearing judge's legal conclusions de novo, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456

Md. 350, 362 (2017). Because each encounter is unique, our review "requires application of the facts under a totality of the circumstances." *Id.* at 363.

Because Mr. Horn was charged in the district court and then requested a jury trial, the district court rules governing pre-trial motions applied. Md. Rule 4-301(b)(2). Rule 4-251(b)(2) provides that "[a] motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial." Accordingly, the court addressed Mr. Horn's motion at the trial in conformance with the Rule.

"The Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, protects individuals against unreasonable searches and seizures by the government." *Lewis v. State*, 398 Md. 349, 361 (2007); *Whren v. United States*, 517 U.S. 806, 809-10 (1996). The Fourth Amendment provides, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" The Court of Appeals has generally interpreted Article 26 of the Maryland Declaration of Rights to provide the same protections as the Fourth Amendment. *Byndloss v. State*, 391 Md. 462, 465 n.1 (2006).

The Fourth Amendment's protections extend to investigatory traffic stops. *United States v. Sharpe*, 470 U.S. 675, 682 (1985). The Fourth Amendment is not a "a guarantee against all searches and seizures, but only against unreasonable searches and seizures." *Id.* The purpose of a traffic stop is "to address the traffic violation that warranted the stop, and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)

(citation omitted). The "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of [the Fourth Amendment]." *Whren*, 517 U.S. at 809-10.

The "touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)); *Sellman v. State*, 449 Md. 526, 540 (2016). In assessing the reasonableness of a traffic stop, the Supreme Court has adopted a "dual inquiry," examining "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Sharpe*, 470 U.S. at 682. "In assessing whether the articulable reasonable suspicion standard is satisfied, it is well settled that the police have the right to stop and detain the operator of a vehicle when they witness a violation of a traffic law." *Steck v. State*, 239 Md. App. 440, 454 (2018). "The subjective motivations of the officer for conducting a traffic stop are irrelevant." *Smith v. State*, 214 Md. App. 195, 201 (2013).

Applying the foregoing precepts to the case before us, we conclude that the behavior observed by Officer Coady and credited by the court provided the officer reasonable suspicion to stop Mr. Horn's car. As Officer Coady testified, Mr. Horn's car crossed over the line twice and was "drifting back and forth in its lane side-to-side." This alone provided

the basis for the stop. *Edwards v. State*, 143 Md. App. 155, 171 (2002) (concluding, "under the circumstances of this case, crossing the center line of an undivided, two lane road by as much as a foot, on at least one occasion, provided a legally sufficient basis to justify the traffic stop"). In addition, Officer Coady witnessed Mr. Horn driving slowly and making wide turns—providing further cues of impairment under the totality of the circumstances. Accordingly, we hold that the circuit court properly denied the motion to suppress.

II.

Due Process

A. Parties' Contentions

Mr. Horn asserts that he was "denied due process and equal protection of law when not fully advised of [his] DR-15 rights and prevented from reading them with needed glasses." He contends that he "could not read or make th[e] acknowledgment" provided in the form. Mr. Horn avers that he provided "a clear record of proof" that he needed glasses to understand the advisements by writing statements at the bottom of the form and requesting counsel. In opposition, the State asserts that the form was not relevant because "the verdict was not based on blood alcohol readings from any test." The State avers that, "[i]n any event," Mr. Horn was "properly advised" of his rights.

B. Analysis

Maryland has adopted an implied consent and advice of rights statute. *Portillo Funes v. State*, 469 Md. 438, 462 (2020). The statute provides:

> Any person who drives or attempts to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State is

> deemed to have consented . . . to take a test if the person should be detained on suspicion of driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance[.]

TR § 16-205.1(a)(2). Among the procedural requirements, a police officer must advise a "suspect of the administrative sanctions and criminal penalties that accompany either refusing the test or a test reflecting a blood alcohol concentration above .08." *Portillo Funes*, 469 Md. at 463 (citing TR § 16-205.1(b)(2)). "The advisements required of the implied consent statute are included in the Motor Vehicle Administration's ("MVA") DR-15 form." *Id.*

The Court of Appeals recently confirmed:

> We have repeatedly held that due process is satisfied when the motorist reads **or is read the DR-15** because the DR-15 "accurately and adequately conveys to the driver the rights granted by the statute" and "the consequences of a test refusal." "[T]he DR-15 adequately capture[s] the full advisement of administrative sanctions because the language in the form is unambiguous, with no prejudice or roadblocks to inhibit a driver's decision-making process."

Motor Vehicle Admin. v. Barrett, 467 Md. 61, 70-71 (2020) (cleaned up) (emphasis added).

Here, the record reveals that Mr. Horn was fully advised of his DR-15 rights. Officer Coady testified that he read the DR-15 form, which was admitted as State's Exhibit 1, aloud to Mr. Horn "in its entirety." Consequently, Mr. Horn's due process argument is without merit. While Mr. Horn may have been unable to read the form without his reading glasses, under *Barrett*, his due process rights were satisfied when Officer Coady read the DR-15 form to him. *Id.* at 70-71; *Portillo Funes*, 469 Md. at 471.

III.

Admission of Medical Records

Mr. Horn contends that the trial court erred and/or abused its discretion "when it overruled defense counsel's foundation objection to business records and blood test into evidence and permitted the State to introduce blood test results of unknow[n] person." According to Mr. Horn, the records were not certified under penalty of perjury. In his reply brief, Mr. Horn further clarifies that the records "did not meet the requirements expressed in Rule 5-902(a)(11)." He avers that Dr. Mahajan's testimony "was inadequate to establish the necessary evidentiary foundation to admit the blood test results and [the blood test results were] not properly authenticated as a business record." Mr. Horn refers to a discrepancy when his lab results were completed and when his blood was drawn and, accordingly, argues that the prosecutor "knew or should have recognized that this was false evidence."

To the contrary, the State argues that it "is not clear whether these records were admitted at trial." In the alternative, the State contends that "[i]f they were [admitted], they were properly admitted." First, the State argues that the "records were admissible as business records." Second, relying on *Jackson v. State*, 460 Md. 107 (2018), the State avers that circumstantial evidence was sufficient to authenticate the medical records.

We agree with the State that Mr. Horn's medical records were never admitted into evidence. A review of the trial transcript indicates that the records were "marked for identification," but, unlike the other exhibits admitted into evidence, there is nothing in the

transcript to indicate that the medical records were received into evidence or admitted. Consequently, the court could not have erred in admitting records that were not, in fact, ever admitted into evidence.

But even if the medical records were admitted into evidence, we conclude that the records were admissible. Maryland Rule 5-901(a) provides: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." In construing "the requirement of authentication" in Rule 5-901(a), a court "need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so." *Jackson v. State*, 460 Md. 107, 116 (2018) (quoting *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006)). Accordingly, the threshold for admissibility is "slight." *Id.* "Generally, hospital records may be admitted under the business records exception to the hearsay rule." *State v. Bryant*, 361 Md. 420, 430 n.5 (2000). "In order for hospital records to be considered records of regularly conducted business activity, however, and therefore presumptively reliable and trustworthy, the records must be generated as part of the hospital's regular course of treatment—i.e., pathologically germane to the patient's care and not developed for the purposes of litigation." *Id.* (citations omitted). We review the circuit court's ruling on authentication, like other rulings on admissibility of evidence, for abuse of discretion. *Wheeler v. State*, 459 Md. 555, 560, 566-67 (2018).

Here, when the records were first marked for identification, counsel objected to the records "being entered into evidence [at] this time" for a variety of specific reasons. These reasons included that "there is no foundation" because the "State needs to be able to establish that it was pathologically germane for treatment for any of these tests to be done." Next, referencing the "business records themselves," counsel requested that "anything be redacted that talks about any medical tests that were done" and that "there are obviously numbers in there that haven't been converted that need to be converted." In response to Mr. Horn's objection, the State noted that Dr. Mahajan would "be able to testify to that specific issue" that the tests were pathologically germane to Mr. Horn's care and the court overruled "the objection on that basis, pending the testimony of the doctor."

During his testimony, Dr. Mahajan explained that "there was a medical need for ordering the blood tests." Counsel for Mr. Horn did not object to this testimony; moreover, counsel did not object to the prosecutor's claim that the records "contain[] a certification of business records." Defense counsel later clarified that he "could stipulate" that the records were "kept in the normal course of business at Frederick Memorial Hospital." Accordingly, there is evidence that the records were "generated as part of the hospital's regular course of treatment." *Bryant*, 361 Md. at 430. Further, Mr. Horn's counsel did not object after Dr. Mahajan's testimony to the admissibility of the records, but rather, stipulated that they were kept in the ordinary course. Although counsel for the State did not formally seek to have the records admitted into evidence, if the court did admit the records, they would have been properly admitted.

IV.

Admitting Testimony Concerning Horizontal Gaze Nystagmus (HGN)

Mr. Horn's next assertion of error is that the court abused its discretion by allowing horizontal gaze nystagmus evidence "for [a] person who suffered acute head trauma."

In response, the State contends that the issue was not preserved because Mr. Horn's counsel "did not object to Officer Andrew Coady being qualified as an expert regarding 'Horizontal Gaze Nystagmus'" and did not object to his testimony that he performed the HGN test.

We agree with the State that, because Mr. Horn did not object to Officer Coady's testimony at trial, his claim is not preserved. As we have explained:

> To preserve an assignment of error based on an evidentiary question, a party is required to bring its position to the attention of the trial court so that the court may pass upon any objection, and possibly correct any errors. The failure to raise a particular argument in support of a request to exclude evidence acts as a waiver of the argument for the purposes of appellate review.

Jones v. State, 213 Md. App. 483, 493 (2013) (cleaned up). Mr. Horn's counsel did not object to Officer Coady's qualification as an expert regarding "Horizontal Gaze Nystagmus," and Officer Coady was accepted as "an expert in the administration of the HGN." Counsel further did not object to the officer's testimony that he performed the test and observed six cues alongside HGN. Accordingly, Mr. Horn waived his right to now argue error here.

Had Mr. Horn preserved his objection, we would conclude that the circuit court did not abuse its discretion in admitting testimony regarding horizontal gaze nystagmus. As the Court of Appeals summarized in *State v. Blackwell*:

> HGN is "a lateral or horizontal jerking when the eye gazes to the side." Although HGN is a natural phenomenon, alcohol magnifies its effect.
>
> * * *
>
> Alcohol is a central nervous system depressant affecting many of the higher as well as lower motor control systems of the body. This results in poor motor coordination, sluggish reflexes, and emotional instability. The part of the nervous system that fine-tunes and controls hand movements and body posture also controls eye movements. When intoxicated, a person's nervous system will display a breakdown in the smooth and accurate control of eye movements. This breakdown in the smooth control of eye movement may result in the inability to hold the eyes steady, resulting in a number of observable changes of impaired oculomotor functioning.
>
> * * *
>
> Because nystagmus becomes more pronounced as the degree of alcohol impairment becomes greater, law enforcement officials have looked to HGN as an indicator of alcohol consumption for several decades.

408 Md. 677, 686-87 (2009) (cleaned up). Officer Coady testified to witnessing various cues from Mr. Horn's driving pattern before the stop and to additional impairments to Mr. Horn's systems, including slurred speech and "bloodshot, watery eyes," before he administered the HGN test. Officer Coady's observations provided a basis to administer the test, and Officer Coady testified both to his qualifications to administer the test and to his observations. We conclude that the court appropriately considered Officer Coady's testimony.

V.

Limiting Scope of Recross-Examination

Mr. Horn additionally contends that the "court erred and violated the 6th [A]mendment[] confrontation clause by sustaining objection regarding altered DR-15 preventing defense from uncovering whether [Mr. Horn] was fully advised as required by or denied due process." The following exchange occurred during recross-examination:

[MR. HORN'S COUNSEL]:	Officer, again, that copy of the DR-15 there, you stated that you put your initials on the sides?
[OFFICER]:	Yes.
[MR. HORN'S COUNSEL]:	Okay. And you state[d] that you[] put your initials by signature of the driver, is that correct, and wrote refused to sign?
[OFFICER]:	Yes.
[MR. HORN'S COUNSEL]:	Okay. Then did you hand that copy to [Mr. Horn] in the hospital; you are stating?
[OFFICER]:	The pink copy that you have in your hand was given to him at the hospital.
[MR. HORN'S COUNSEL]:	Okay. Would you notice any difference—I am going to hand this to you. This is the original copy. Would you notice any difference between the pink copy and your copy that you submitted? I would mainly draw your attention to whether it was considered a refusal or not?
[OFFICER]:	There's no check box on—or there's no check box on his copy.
[MR. HORN'S COUNSEL]:	Okay. So—
[OFFICER]:	And there is on this one.

[MR. HORN'S COUNSEL]:	I asked you before whether you –
[MR. HORN'S COUNSEL]:	And, Your Honor, I would like to put this in as a Defense exhibit.
[STATE'S COUNSEL]:	I am going to object. This isn't within the scope of the recross that I elicited from the officer.
THE COURT:	I will sustain.
[MR. HORN'S COUNSEL]:	I have no further questions, Your Honor.

The State argues that Mr. Horn's contention on appeal was not preserved and that "the trial court properly exercised its discretion with respect to the testimony of the police officer who conducted the traffic stop." We agree.

First, Mr. Horn's counsel did not challenge the court's limitation of the evidence, so the State has a strong argument that his claim is not preserved. *See Grandison v. State*, 341 Md. 175, 207 (1995) ("A trial judge's refusal to allow a line of questioning on cross-examination amounts to exclusion of evidence; preservation for appeal of an objection to the exclusion generally requires a formal proffer of the contents and relevancy of the excluded evidence."). Notwithstanding, we discern no abuse of discretion in the court's ruling that the questions from Mr. Horn's counsel were beyond the scope the recross. Md. Rule 5-611(b) (generally "cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness"); *Baires v. State*, 249 Md. App. 62, 96 (explaining "the right to cross-examine witnesses is not without limit as trial judges have the authority and the sound discretion to limit the scope of cross-examination"), *cert. denied*, 474 Md. 634 (2021).

VI.

Summation of Rulings in Subsequent Hearing for New Trial

Mr. Horn avers that the assistant state's attorney "violate[d] due process when she told the court that defense won suppression issue and no blood evidence was heard at trial."

In opposition, the State responds that the court "properly permitted the prosecutor to recount the rulings at trial before a different judge." Alternatively, the State offers that Mr. Horn did not object to this, so the circuit court was not called upon to make a ruling. Further, the State asserts that the "prosecutor's statement was correct as far as the alcohol concentration." Nevertheless, the State points out that "the trial court did not rely on any alcohol concentration in its verdict."

During Mr. Horn's trial, the State attempted to have Dr. Mahajan testify as to the concentration of alcohol in Mr. Horn's blood at the hospital. Mr. Horn objected, and the court ruled as follows:

> I don't believe this witness can tell us, based upon a hypothetical, as to when the alcohol was consumed, when [Mr. Horn] was pulled over and what the alcohol content was at the time he was driving the vehicle. Whatever the test result is, his alcohol content, according to the test, could be higher or lower than the alcohol content which would have been able to be determined if blood had been taken or breath had been taken at the time of the stop or within two hours of the stop, as is required by law.
>
> And typically, what has to happen in order to do that is a toxicologist, someone from the State's Toxicologist's Office, comes in and testifies, based upon that hypothetical, what the blood alcohol content would have been at the time [Mr. Horn] was operating the motor vehicle, or at least two hours within the time of arrest, and I don't believe Dr. Mahajan can do that.

In rendering its verdict, the court explained:

> [W]e don't know what his blood level was, the alcohol content was, at the time he was operating the motor vehicle. I am guessing that the State's Attorney's Office has had other cases like this, and . . . typically, the toxicologist needs to be subpoenaed to testify so they can do that conversion, because his alcohol level could have been lower at the time it was - - blood was draw.
>
> Or it could have been higher. It is impossible to tell until you take the timeframe and plug all the various components needed for an opinion.

We conclude that the court did not err. First, it is axiomatic that only the court can commit error. *DeLuca v. State*, 78 Md. App. 395, 397-98 (1989) ("Only the judge can commit error, either by failing to rule or by ruling erroneously when called upon, by counsel or occasionally by circumstances, to make a ruling."), *cert. denied*, 316 Md. 549 (1989). After the prosecutor allegedly failed to summarize the events of the trial, Mr. Horn did not object or request any relief. As an appellate court, we "look only to the rulings made by a trial judge, or [the judge's] failure to act when action was required, to find reversible error." *Braun v. Ford Motor Co.*, 32 Md. App. 545, 548, *cert. denied*, 278 Md. 716 (1976). The court was not called upon to rule and did not fail by circumstance to rule. Second, the court did not utilize any blood results in its verdict to determine whether Mr. Horn was over the legal limit while operating a motor vehicle. The only evidentiary significance of the blood test result from the hospital was to confirm that Mr. Horn had consumed alcohol—a contention he does not dispute. Accordingly, the prosecutor's statement was correct concerning its value in determining Mr. Horn's alcohol content at the time of the stop.

VII.

False Testimony

A. Parties' Contentions

Mr. Horn asserts that the "state knowingly and willfully offered false evidence [and] false testimony in violation of the 14th [A]mendment." Comparing Officer Coady's testimony from the trial against his testimony given during the MVA hearing, Mr. Horn now claims, "Officer Coady's false and perjured testimony on the DR-15 Advice of Rights, blood kit, SFST's [standardized field sobriety testing], traffic observations tainted all of his testimony, which, in turn, polluted the entire trial and the court's judgment." Mr. Horn further contends that the State's argument at trial and its sentencing recommendation relied on false evidence that Mr. Horn refused to submit to a test. In his reply, Mr. Horn further clarifies that the government failed to "correct the false testimony and false evidence" and supplied the portions of the record where he believed Officer Coady was untruthful.

In its opposition, the State argues that the "court properly exercised its discretion in denying [Mr.] Horn's motion for [a] new trial." According to the State, "[i]n making this claim below, [Mr.] Horn did not explain why the officer had a motive to testify falsely. On appeal, [Mr.] Horn relies heavily on a MVA hearing that occurred more than two months after trial." Accordingly, State argues, "the prosecutor was not able to consider any possible inconsistency that would exist until more than two months after trial." Turning to each of Mr. Horn's specific contentions, the State urges that it is "evident" that the trial court did not rely on the blood alcohol level in its verdict and that "it does not appear that

the medical records regarding blood tests were admitted at trial." Concerning the DR-15 advisements, the State contends that the "officer testified repeatedly about reading the advisements in their entirety." The State concludes that Mr. "Horn's claim depends on crediting his testimony rather than the State's, on alleged minor discrepancies on minor issues, and on testimony that did not exist at the time of trial," and, therefore, "there was no abuse of discretion in denying the motion for new trial."

In his reply, Mr. Horn argues that the government failed its "constitutional duty to correct the false testimony and false evidence" of Officer Coady. Relying on *Mesarosh v. United States*, 352 U.S. 1 (1956), Mr. Horn contends that "the record clearly demonstrate[d] the officer's willingness to testify untruthfully" and compares Officer Coady's sworn testimony at trial and at the MVA hearing months later.

B. Analysis

Maryland Rule 4-331 provides: "On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial." Md. Rule 4-331(a). We ordinarily review the denial of a motion for a new trial under the abuse of discretion standard. *Williams v. State*, 462 Md. 335, 344 (2019). "To reverse the denial of a new trial on appeal, when utilizing the abuse of discretion standard, the reviewing court must find that the 'degree of probable prejudice [was] so great that it was an abuse of discretion to deny a new trial.'" *Id.* at 345 (citation omitted). "Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts

beyond the letter or reason of law." *Id.* (quoting *Campbell v. State*, 373 Md. 637, 666 (2003)).

The State's knowing use of false evidence that is material in a criminal trial violates the defendant's right to due process under the Fourteenth Amendment and offends the "constitutional concept of fairness." *Hall v. Warden of Md. House of Correction*, 222 Md. 590, 593 (1960); *see also Giglio v. United States*, 405 U.S. 150, 153 (1972). Indeed, the State is obligated to "correct statements known to be false, even if unsolicited." *Hall*, 222 Md. at 593. Reversal of a conviction on the grounds of false testimony requires a defendant to meet two conditions. First, the defendant must demonstrate that the State knowingly presented false evidence or testimony at trial. *United States v. Agurs*, 427 U.S. 97, 103 (1976). Second, the defendant must demonstrate that the falsehood was material and that a reasonable likelihood exists that the false evidence or testimony could have affected the jury's verdict. *Id.* The appellant bears the burden of proving that the State "knowingly used perjured testimony" in its efforts to convict the appellant. *Lyde v. Warden*, 1 Md. App. 423, 427 (1967).

Returning to Mr. Horn's claims of false evidence, we initially note that Mr. Horn could not offer a reason why Officer Coady would perjure himself, conceding that he had "no idea." Mr. Horn also did not know Officer Coady, admitting that the traffic stop was the first time that he had met him. In considering the credibility of witnesses, our courts have consistently explained that "even an untruthful man will not usually lie without a motive." *Churchfield v. State*, 137 Md. App. 668, 683 (2001) (quoting Joseph F. Murphy,

Maryland Evidence Handbook § 1302(E) (2d ed. 1993)); *see also Manchame-Guerra v. State*, 457 Md. 300, 313 (2018) (same) (quoting *Calloway v. State*, 414 Md. 616, 633 (2010)).

In reviewing Mr. Horn's specific contentions, we cannot conclude that the circuit court abused its discretion in finding that Officer Coady's statements did not rise to the level of perjury or that the State knowingly presented false evidence. In short, Mr. Horn cannot meet the first condition of *Agurs* and demonstrate that the State knowingly presented false evidence or testimony at trial. 427 U.S. at 103.

First, regarding Officer Coady's reasons for stopping Mr. Horn, the circuit court summarized:

> [T]he defendant believed that the reason for him being pulled over was simply incorrect; did not happen. So, it's just a word against word and a credibility issue that was made, obviously, by the trial judge in this case when the case was tried on that issue.

It is axiomatic that "[w]hen weighing the credibility of witnesses and resolving conflicts in the evidence, 'the fact-finder has the discretion to decide which evidence to credit and which to reject.'" *Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020) (quoting *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000)).

Second, regarding the DR-15 form, the court found:

> There is a handwritten notes that [Mr. Horn] testified he wrote on the bottom of the DR-15 that says something about wanting reading glasses. [Mr. Horn]'s testimony is that the officer read it too fast, and that he wanted to read it himself, but he didn't have his reading glasses.
>
> And the officer, at the end of the day, clearly checked the no box, meaning [Mr. Horn] refused. All that information was also heard by [the circuit court], the trier of fact in this case, but, in this matter, [Mr. Horn]

> believes that's not a refusal by saying you're reading it too fast, I need reading glasses. You don't get to demand reading glasses before you take a DR-15. If you want to read it, then you can read it. So, marking it down as a refusal was appropriate.
>
> Now, the fact that the officer forgot to mark it before he handled [Mr. Horn] a copy is something that's problematic from a procedural standpoint, but not legally problematic. The officer did circle his initials on top of the altered document, so he was drawing attention to the fact that he had filled that in later, and there's no evidence to the contrary.

At Mr. Horn's trial, Officer Coady testified to reading the form in its entirety, and both forms were entered into evidence. Indeed, Officer Coady was subjected to cross-examination regarding the form and the circumstances surrounding it and explained the reasons for the discrepancies. Again, it was the court's task to weigh Officer Coady's testimony and analyze any discrepancies.

Third, regarding the field sobriety testing conducted by Officer Coady, Mr. Horn asserts that Officer Coady testified at trial both that he ended the tests and that Mr. Horn ended the tests. Of course, Mr. Horn was able to cross-examine Officer Coady on any purported inconsistencies at trial, and, again, the court as fact finder was able to weigh and resolve this conflict.

Finally, regarding alleged contradictory statements about when the blood test was taken, the court concluded:

> [T]he [c]ourt simply does not have enough evidence to determine whether that was an attempt to deceive the [c]ourt, although I do not believe that, frankly, or simply a mistake which happens when police officers, who make a lot of these cases, and then have to testify to them later. That doesn't mean that all mistakes are okay, by any stretch of the imagination.
>
> * * *
>
> [T]he question before the [c]ourt today is whether or not those statements, if not the same, amounted to a perjury statement by the police

> officer that would amount to enough evidence for [Mr. Horn] to receive a new trial, and I do not find that's the case, and the motion for a new trial is denied.

As we explained above, the medical records were not admitted at trial, and the court did not rely on Mr. Horn's blood tests to conclude what his blood alcohol level was at the time of the stop.

In reviewing each of Mr. Horn's specific contentions, we conclude that the circuit court did not abuse its discretion in concluding that there was no evidence that Officer Coady offered perjured or false testimony, as opposed to possibly mistaken testimony on minor discrepancies.

We further conclude that none of the discrepancies in Officer Coady's testimony, which were subject to cross-examination by Mr. Horn's counsel, were material and would result in a reasonable likelihood to affect the verdict. *Agurs*, 427 U.S. at 103. Accordingly, in addition to failing to satisfy the first condition of *Agurs*, Mr. Horn cannot meet the second. Mr. Horn was entitled to a "fair trial, although not a perfect trial." *Hook v. State*, 315 Md. 23, 36 (1989). We are satisfied beyond a reasonable doubt that any discrepancies in Officer Coady's testimony—or elsewhere—did not affect the verdict.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

APPENDIX

Mr. Horn presents seven questions for our review, here presented verbatim:

1. Was the stop, subsequent search and arrest of Mr. Horn constitutional?

2. Whether the state knowingly and willfully offered false evidence false testimony in violation of the 14th amendment?

3. Whether the defendant was denied due process and equal protection of law when not fully advised of DR-15 rights and prevented from reading them with needed glasses.

4. Did the trial court err/abuse its discretion when it overruled defense counsel's foundation objection to business records and blood test into evidence and permitted the State to introduce blood tests of unknow person?

5. Did the ASA Gomulka violate due process when she told the court that defense won suppression issue and no blood evidence was heard at trial?

6. Did the court abuse discretion and allow HGN evidence for person who suffered acute head trauma?

7. Whether the court erred and violated the 6th amendments confrontation clause by sustaining objection regarding altered DR-15 preventing defense from uncovering whether defendant was fully advised as required by or denied due process