

Circuit Court for Wicomico County
Case No. 22-K-16-000110

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 384

September Term, 2017

WALTER BUNTING

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 2, 2018

*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 Wicomico County, convicted Walter Bunting, appellant, of second-degree burglary, two counts of fourth-degree burglary, malicious destruction of property, and theft. In this appeal, Bunting presents the following question for our review: “Did the circuit court err in allowing lay opinion testimony about a surveillance video that was admitted into evidence and played for the jury?” For reasons to follow, we answer Bunting’s question in the negative and affirm the judgments of the circuit court.

BACKGROUND

Bunting was arrested and charged following a burglary at “How Sweet It Is,” a store that sells various plants and landscaping materials (the “Store”). At trial, the Store’s owner, Brent Malone, testified that, in the morning hours of November 24, 2015, he arrived at the Store and noticed that a lock, which was attached to a cable designed to block access to the Store’s nursery, had been cut. Upon further investigation of the Store’s inventory, Malone discovered that “a number of plants” were missing. Malone then reviewed footage from the Store’s security cameras, which were positioned at the Store’s entrance and had captured the burglary.

While reviewing that footage, Malone observed a truck with a trailer “pulling into the convenience store across the street” around the time of the burglary. Malone then observed an unidentified individual get out of the truck, walk across the street toward the Store, and cut the Store’s lock. The individual then went back to his truck, drove the truck into the Store’s nursery, and exited “with the truck and trailer full of plants.” The security footage was played for the jury.

Malone testified that, three days after the burglary, he was driving on Deal Island Road near the Store when he saw Bunting driving “the same vehicle” that Malone had seen in the security footage from the night of the burglary. Malone described Bunting’s vehicle as an “older Dodge truck” with “black wheels and white letter tires” and “big splotches of primer.” After seeing the vehicle, Malone called the police. Malone then followed the vehicle to Bunting’s residence and waited for the police. A short time later, Sergeant Todd¹ of the Somerset County Sheriff’s Office responded to Bunting’s residence. Sergeant Todd testified that, upon arriving at that location, he observed “an older-style Dodge pickup truck” with a “ball hitch on the bumper.” When Sergeant Todd looked more closely at the bed of the pickup truck, he observed “foliage and loose pine needles.”

Detective William Oakley of the Wicomico County Sheriff’s Office was assigned to investigate the burglary. Detective Oakley testified that, as part of his investigation, he reviewed the security footage of the burglary:

[STATE]: What, if anything, did you observe on that video surveillance?

[WITNESS]: I observed it . . . was the 24th of November. It was the early morning hours. I observed what appeared to be a full-size –

[DEFENSE]: I’m going to object, Your Honor. This is already in evidence, so this witness is pinning [sic] is as to what he saw, if it’s relevant to the proceedings.

[STATE]: If I may rephrase? Did you observe any vehicle on that video surveillance?

THE COURT: Thank you –

¹ Sergeant Todd’s first name was not included in the trial transcript.

[WITNESS]: I did.

THE COURT: Go ahead.

[STATE]: What was that vehicle that you observed?

[DEFENSE]: Object, again. It's in evidence.

THE COURT: Overruled. Go ahead.

[WITNESS]: I observed what appeared to be a full-size Dodge regular cab pickup older model.

DISCUSSION

Bunting argues that the circuit court erred in permitting Detective Oakley to testify as to the make and model of the vehicle he observed on the Store's security footage. Bunting maintains that Detective Oakley's testimony constituted impermissible "lay opinion" evidence. Bunting also maintains that the court's error was prejudicial because Detective Oakley's testimony "independently corroborated the State's claim that the suspect vehicle was Mr. Bunting's truck."

Bunting's claim was waived. "[W]hen particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.'" *State v. Jones*, 138 Md. App. 178, 218 (2001) (citations omitted); *See also Brecker v. State*, 304 Md. 36, 39-40 (1985) ("[O]ur cases have consistently stated that when an objector sets forth the specific grounds for his objection, . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified."). At trial, Bunting objected twice during the relevant portions of Detective Oakley's testimony, both times

indicating that he was objecting because the testimony had already been introduced into evidence. At no time did Bunting assert that he was objecting because the testimony was “lay opinion.” Consequently, that issue was waived.

Assuming, *arguendo*, that Bunting’s claim was not waived, his argument is without merit. Maryland Rule 5-701 provides that testimony by a non-expert, or “lay” witness, in the form of opinions or inferences should be “limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” Lay opinion testimony that does not meet the above criteria should normally be excluded because a lay witness “is not qualified to express an opinion about matters which are either within the scope of common knowledge and experience of the jury or which are peculiarly within the specialized knowledge of experts.” *Bell v. State*, 114 Md. App. 480, 507-08 (1997) (citations and quotations omitted). “[T]he decision to admit lay opinion testimony lies within the sound discretion of the trial court . . . [and] will not be overturned unless it is shown that the trial court abused its discretion.” *Thomas v. State*, 183 Md. App. 152, 174 (2008).

Here, we are persuaded that the circuit court did not abuse its discretion in admitting Detective Oakley’s testimony. Said testimony was clearly based on Detective Oakley’s perceptions, as it was derived from what he observed on the Store’s security footage. The testimony was also helpful to the jury in either understanding Detective Oakley’s testimony or determining a fact in issue, namely, what caused the police to identify Bunting as a suspect in the burglary of the Store. At the very least, we cannot say that the court exercised

its discretion on untenable grounds or for untenable reasons, nor can we say that the court's decision was arbitrary, capricious, manifestly unreasonable, or beyond the letter or reason of the law. *See Wilson-X v. Department of Human Resources*, 403 Md. 667, 677 (2008) (discussing the abuse of discretion standard).

Finally, any error was harmless. Prior to Detective Oakley's testimony, Malone, the Store's owner, had identified Bunting's truck as the same one he saw in the Store's security footage. Malone described the truck as an "older Dodge truck." Thus, Detective Oakley's testimony – that the vehicle depicted in the Store's security footage "appeared to be a full-size Dodge regular cab pickup older model" – was cumulative to evidence already admitted. *See Potts v. State*, 231 Md. App. 398, 408-09 (2016).

**JUDGMENTS OF THE CIRCUIT
COURT FOR WICOMICO COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**