Circuit Court for Baltimore City
Case No. 618173007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 475

September Term, 2019

IN RE: A.C.

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: January 23, 2020

By way of a delinquency petition filed in the Circuit Court for Baltimore City, A.C., appellant, was alleged to have committed 23 offenses related to an armed carjacking that occurred in Baltimore. Prior to trial, appellant filed a motion to exclude the testimony of the State's fingerprint expert. Following a hearing before a magistrate, the magistrate recommended that appellant's motion be denied and that appellant be found involved as to all counts. Appellant filed exceptions to those recommendations, and the circuit court ultimately affirmed the magistrate's recommendation that appellant's motion to exclude the State's expert be denied. The court also affirmed the magistrate's recommendations on 15 of the 23 charged offenses, and appellant was thereafter committed for placement. In this appeal, appellant presents a single question for our review:

> Did the circuit court err in failing to exclude the testimony of the State's fingerprint expert?

For reasons to follow, we answer appellant's question in the negative and affirm the judgment of the circuit court.

BACKGROUND

On June 21, 2018, at approximately 2:10 p.m., Amanda Michael parked her vehicle, a blue Honda, in front of her fiancé's house on the 1500 block of Patapsco Street in Baltimore. After Ms. Michael exited her vehicle, an individual wearing a white and black jacket approached her from behind, put a gun to her head, and demanded her money. The individual then took Ms. Michael's purse and retrieved her vehicle's keys, which he threw to another individual who was standing nearby. That individual, later identified as

appellant, grabbed the keys and got in the vehicle's driver's seat while the other individual got in the passenger's seat. Appellant then drove away, and Ms. Michael called 911.

Around the same time, Tactical Flight Officer Scott Henry of the Baltimore City Police received a call for a "carjacking" and began canvassing the area in a helicopter. Shortly thereafter, Officer Henry observed a vehicle matching the description of Ms. Michael's vehicle pull over to the side of the road and park. Officer Henry then observed an individual matching appellant's description get out of the vehicle's driver's seat and proceed on foot. Officer Henry relayed his observations to other officers on the scene, and appellant was apprehended.

Jerome Taylor, a crime laboratory technician with the Baltimore County Police, responded to the scene to gather evidence from Ms. Michael's vehicle, which had been recovered following appellant's apprehension. In so doing, Mr. Taylor recovered several fingerprints from the vehicle's driver's side door. Those fingerprints were then sent to Linda Kolodner, an analyst with the Baltimore Police Department's Latent Print Unit, for comparison. Ms. Kolodner ultimately determined that several of the prints recovered from the driver's side door of Ms. Michael's vehicle matched appellant's fingerprints.

Motion to Exclude Testimony of State's Fingerprint Expert

At the adjudication hearing before a magistrate, appellant's counsel moved to exclude Ms. Kolodner from testifying.[1] Counsel argued that Ms. Kolodner did not provide a sufficient factual basis to support her conclusions that some of the fingerprint's recovered

[1] Counsel actually filed the motion prior to trial, but the court waited until trial to hear arguments on the matter.

from the stolen vehicle matched appellant's fingerprints. Counsel explained that, when she discussed the issue with Ms. Kolodner prior to trial, Ms. Kolodner was able to recall "the process she used," which entailed "looking back and forth at the different prints," but was unable to provide details as to "what findings she made" and "what points she identified" because "she did not take notes regarding any of that." Counsel argued, therefore, that she had "no information" as to the basis of Ms. Kolodner's ultimate opinion that appellant's fingerprints matched some of the fingerprints recovered from the stolen vehicle. Counsel maintained that it would be erroneous for the court to "simply rely on [Ms. Kolodner's] word" that her conclusions were appropriately reached.

Ms. Kolodner then took the stand and testified as an expert in "latent print processing and examination."[2] Ms. Kolodner testified that all people are born with "friction ridge skin" on their hands and feet that is individual to the person and is characterized by "very narrow, very tiny ridge details." Ms. Kolodner explained that, when a person touches a "suitable surface," the encounter may result in an impression, or "latent print" of the person's "ridge detail," which can then be reproduced "by chemical or powder techniques and captured on lift cards or photographed." Ms. Kolodner stated that the reproduced latent print can then be compared to a "known print" to determine if the two prints match.

[2] Appellant did not challenge Ms. Kolodner's qualifications as an expert.

Ms. Kolodner testified that, ordinarily, she utilizes the "ACE-V"[3] method of fingerprint analysis. Ms. Kolodner explained that that analysis begins with a determination of whether the latent print is "suitable for comparison." This involves "looking at all the information in the latent print," including "overall ridge flow," the presence of "minutia," or "Galton points," and "any scars or creases that might be present." While examining that information, Ms. Kolodner identifies an area on the latent print, "looking for the correspondence and the agreement of the features and the spatial relationship" between the latent print and the known print. Using that area as a starting point, Ms. Kolodner then goes "from ridge to ridge, detail to detail taking note of all the information that is in the latent [print] and looking for the corresponding information in the same spot in the same spatial relationship in the known [print]." Ms. Kolodner explained that she continues this process until "there's overwhelming agreement" that the two prints came from the same person. Ms. Kolodner added that there is "no set number" of features or identifications that determines whether a latent print and a known print match. Ms. Kolodner explained, rather, that "it's in the details, it's in the ridge shape, it's in the width of the ridges and the furrows, it's in the overall ridge flow, the pattern area. It's not just points."

Ms. Kolodner testified that, in appellant's case, she received multiple "lift cards," each of which contained one or more fingerprints recovered from the stolen vehicle. She explained that she began her analysis by looking at each individual lift card to identify "any

[3] Ms. Kolodner testified that "ACE-V" is "an acronym for analysis, comparison, evaluation and then verification." The ACE-V method has long been accepted as reliable by the scientific community and the courts. *Markham v. State*, 189 Md. App. 140, 160-65 (2009). Appellant did not challenge the reliability of that method.

latent impressions," which, if found, were subsequently "marked" with her initials and the date on "the tape next to the fingerprints." She then compared the marked impressions on each of the lift cards to the known prints that had been taken from appellant. If there was a match or "overwhelming agreement" between a latent print and appellant's known print, Ms. Kolodner indicated that conclusion by initialing and dating that particular print. Ms. Kolodner testified that, in completing her analysis, she determined that there was overwhelming agreement between three of the prints recovered from the stolen vehicle and the known prints taken from appellant. Ms. Kolodner added that her findings were later independently verified by another fingerprint examiner.

In conjunction with Ms. Kolodner's testimony, the State introduced the two lift cards on which Ms. Kolodner had marked the various impressions that she matched to appellant's known prints. In addition, the State introduced a report authored by Ms. Kolodner that indicated her findings in appellant's case.

On cross-examination, Ms. Kolodner admitted that, when she was looking for similarities between the latent prints and appellant's prints, she did not physically document the "points of similarity" but rather took notes "in her head." She also admitted that she could not recall which "features" she relied on to determine that there was a match, nor could she recall how many similarities she found in determining that there was "overwhelming similarity." Ms. Kolodner explained that the number of features relied upon was "not something that we keep record of" but that "it did not go for non-routine verification, so it was more than eight." She further explained that her analysis was not

confined to "just points;" rather, she considered "any and all information," including "overall ridge flow," the presence of "scars or creases," the "width and length of the ridges," and the "shape of the ridges."

On redirect, Ms. Kolodner testified that each identification she made on the print card was marked with her initials and the date. She further testified that those notations were made when she had the print card and appellant's known print "side by side." When the State asked Ms. Kolodner if she waited "until the very end" to make the notations, she responded, "No. I make the notations as I do them."

In the end, the magistrate recommended that appellant's motion to exclude Ms. Kolodner's testimony be denied. The magistrate found that he "could not find support for the argument … that Ms. Kolodner was under a specific duty not only to just explain her methodology, which she did, but to keep detailed step-by-step notes."

After appellant filed exceptions to the magistrate's recommendations in the circuit court, the court issued a written opinion affirming the magistrate's finding that Ms. Kolodner's testimony was admissible. The court found that Ms. Kolodner "adequately followed both the widely accepted methodology of ACE-V fingerprint identification analysis and its application to the known and latent fingerprints in this case." The court also found that the magistrate's denial of appellant's motion to exclude "was not erroneous for the absence of written notes or recollection of [Ms.] Kolodner's mental processing/impressions in comparing the known and latent fingerprints herein or otherwise." The court concluded that "[Ms.] Kolodner's opinion, independently verified

and resting on accepted methodology routinely applied with at least eight points of overwhelming similarity was admissible under Md. Rule 5-702 and *Frye-Reed* [4] Maryland case law."

Appellant was ultimately found involved in multiple offenses. This timely appeal followed.

DISCUSSION

Appellant contends that the circuit court erred in allowing Linda Kolodner, the State's fingerprint examiner, to testify as an expert that several of the latent prints recovered from the stolen vehicle matched the known fingerprints taken from appellant. Appellant asserts that the court's decision was erroneous because Ms. Kolodner "failed to provide a sufficient basis for her conclusion as required by Maryland Rule 5-702 when she did not document or testify to the factual basis on which she reached her conclusion." Appellant, in making that argument, does not challenge the scientific technique of fingerprint identification or the reliability of the "ACE-V" method, which Ms. Kolodner utilized in appellant's case. Rather, appellant claims the circuit court was "wrong in allowing [Ms. Kolodner] to simply testify that the various latent prints 'looked like' the known prints of [appellant] and had several matching details or minutia and therefore the [factfinder] should just trust and accept her conclusion that they matched." Appellant claims, in other

[4] "[T]he standard enunciated in *Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923), and adopted by this Court in *Reed v. State*, 283 Md. 374 (1979), … makes evidence emanating from a novel scientific process inadmissible absent a finding that the process is generally accepted by the relevant scientific community." *Clemons v. State*, 392 Md. 339, 343-44 (2006). That standard is sometimes referred to as the "*Frye-Reed* standard." *Id.* at 344.

words, that Ms. Kolodner "presented a purely subjective comparison of the appearance of the prints without any data or reference to any objective findings on which her conclusions could be tested, in essence testifying that the fingerprints matched 'because I say so.'" Appellant asserts, therefore, that Ms. Kolodner's opinion did not meet the requirements of Maryland Rule 5-702 and should have been excluded.

"[T]he general test for determining whether to allow expert testimony is set forth in Md. Rule 5-702[.]" *Dixon v. Ford Motor Co.*, 433 Md. 137, 149 (2013). Under that rule:

> 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.

Md. Rule 5-702.

"When analyzing whether expert testimony is based on 'a sufficient factual basis,' we consider whether the prospective testimony is comprised of (a) an adequate supply of data, and (b) a reliable methodology." *Santiago v. State*, 458 Md. 140, 154-55 (2018). That is, the expert testimony "must 'constitute more than mere speculation or conjecture' and 'indicate the use of reliable principles and methodology in support of the expert's conclusions.'" *Id.* at 155 (citing *Rochkind v. Stevenson*, 454 Md. 277, 286 (2017)). "Data from sources such as an 'expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions,' has been

found to constitute 'a sufficient factual basis.'" *Id.* (citing *Taylor v. Fishkind*, 207 Md. App. 121, 143 (2012)). Moreover, "[m]aterials relied upon by an expert need not be admissible provided that they are of the kind reasonably relied upon by experts in the particular field to form opinions or inferences on the subject." *Sugarman v. Liles*, 460 Md. 396, 415 (2018).

"To satisfy the requirement of a reliable methodology, 'an expert opinion must provide a sound reasoning process for inducing its conclusion from the factual data and must have an adequate theory or rational explanation of how the factual data led to the expert's conclusion.'" *Santiago*, 458 Md. at 155 (citing *Exxon Mobil Corp. v. Ford*, 433 Md. 426 481 (2013)). In other words, because the expert's opinion must "assist the trier of fact," the reasoning underlying that opinion must be clear. "Conclusory or *ipse dixit* assertions are not helpful – an expert 'must be able to articulate a reliable methodology for how she reached her conclusion.'" *Sugarman*, 460 Md. at 415 (citing *Rochkind*, 454 Md. at 287).

"The admissibility of expert testimony is committed to the sound discretion of the trial court." *Bryant v. State*, 163 Md. App. 451, 472 (2005). "The court's action in admitting or excluding such testimony seldom constitutes ground for reversal." *Id.* Moreover, "[the] court's decision to allow an expert witness to testify will be reversed only if the trial judge acted in an 'arbitrary or capricious manner' or if the trial judge's decision was 'beyond the letter or reason of law.'" *Santiago*, 458 Md. at 154 (citing *Garg v. Garg*, 393 Md. 225, 238 (2006)). Nevertheless, "[t]he burden rests with the proponent of the

expert testimony to demonstrate that [the requirements of Rule 5-702] have been met." *Rochkind*, 454 Md. at 286.

We hold that the circuit court did not err in permitting Linda Kolodner, the State's fingerprint expert, to testify that several of the latent prints recovered from the stolen vehicle matched the known prints taken from appellant. Ms. Kolodner testified that she came to that conclusion using the ACE-V method, which appellant admits is both reliable and admissible. More importantly, Ms. Kolodner provided a detailed explanation of the process she used in appellant's case, which included analyzing the latent prints to identify certain characteristics in the individual prints; making note of those characteristics; conducting a "side by side" comparison of those prints with appellant's known prints; looking for correspondence or agreement in the noted features of the latent print and the features of appellant's known prints; determining, based on that analysis, whether there was "overwhelming agreement" between the latent prints and appellant's prints; and noting her observations and conclusions by initialing and dating the known prints that she had matched to the latent prints. Ms. Kolodner's analysis and conclusions, which were documented in the form of the actual print cards and a report authored by Ms. Kolodner herself, were then verified by an independent fingerprint examiner.

To be sure, Ms. Kolodner admitted that she did not document which "points of similarity" she relied on to determine that there was a match, nor did she document how many of those "points" she considered to be determinative of an "overwhelming agreement." She did, however, testify that "it was more than eight." Moreover, Ms.

Kolodner explained that there was no set number of features or identifications that determines whether a latent print and a known print match and that such records were not routinely kept by her office. She further explained that, in addition to the points of similarity, she considered other information, such as the characteristics of the ridges and the presence of scars or creases, when conducting her analysis. Thus, although Ms. Kolodner did not testify to the precise "points of similarity" on which she relied, she did indicate the use of reliable principles and methodology in support of her conclusions. *See Oken v. State*, 343 Md. 256, 291 (1996) ("[T]he proponent of expert testimony is not required to elicit *all* the facts upon which the opinion is based[.]") (emphasis in original).

Appellant, in setting forth his argument, cites no Maryland case in which either this Court or the Court of Appeals held that a fingerprint examiner was required to provide the sort of factual detail that appellant claims is required by Maryland Rule 5-702. Rather, appellant tries to analogize the circumstances of his case to those faced by the Court of Appeals in *Giant Food, Inc. v. Booker*, 152 Md. App. 166 (2003), but that effort falls flat. In that case, the Court held that the defendant's medical expert failed to provide a sufficient factual basis or reliable methodology for his conclusion regarding the cause-and-effect relationship between the defendant's adult on-set asthma and a prior incident in which the defendant was exposed to Freon gas. *Id.* at 184-89. The Court explained that the expert had "little factual information" regarding the incident during which the defendant was exposed to Freon gas and that the expert "was not clear about what happened, not clear about what chemicals were involved." *Id.* at 185, 187. The Court further explained that

the expert's opinion was particularly inappropriate given the defendant's theory of causation, which was based "on the equivalent of a *res ipsa loquitur* theory; that is, if there is no other explanation, and no other exposure, the asthma must have been caused by the Freon." *Id.* at 187-88. Finally, the Court held that the methodology used by the expert was "woefully inadequate," as the expert "did not rely on a single medical or scientific study suggesting a causal relationship between Freon exposure and asthma" but instead limited his research to "looking up some textbooks." *Id.* at 189.

Here, by contrast, Ms. Kolodner testified that she reached her conclusions using the ACE-V method, which appellant admits is reliable. Moreover, the State did not, like the defendant in *Booker*, present Ms. Kolodner's conclusions in an effort to prove something for which there was "no other explanation" or about which Ms. Kolodner had "little factual information." To the contrary, Ms. Kolodner's conclusions were reached after a careful, first-hand examination of the evidence using a reliable methodology.

Appellant, in support of his argument, has also identified several cases from other jurisdictions, most of which are factually distinguishable. *See e.g. United States v. Saunders*, 826 F.3d 363, 369-70 (7th Cir. 2016) (holding that a fingerprint examiner's expert conclusion was inadmissible because the examiner failed to disclose the number of "Galton points," where "the number of points [was] the basis for the determination that there [was] a match.")[5]; *United States v. Robinson*, 44 F.Supp.2d 1345 (S.D. Ga. 1997) (excluding, as a discovery sanction, the testimony of the government's fingerprint

[5] As noted, Ms. Kolodner testified that she did not rely on a set number of "points" but rather upon a combination of points and other information.

examiner where the government was expressly ordered by the court to disclose the "points of identification" relied upon by the expert in reaching his conclusions); *State v. McPhaul*, 808 S.E.2d 294, 304-05 (N.C. 2017) (holding that, under the *Daubert* standard of admissibility, the fingerprint expert's general explanation of her examination procedure was insufficient because she did not then explain how she applied that procedure in that particular case). Appellant's reliance on *People v. Safford*, 910 N.E. 2d 143 (Ill. App. 2009), is equally misplaced, as the conclusions reached by the appellate court in that case have since been rejected by that same court. *See People v. Wilson*, 86 N.E. 3d 1231, 1242-43 (Ill. App. 2017) (noting that, "[s]ince it was decided, multiple panels of this court have declined to follow *Safford*" and that "the *Safford* court's ultimate holding … runs counter to [prior case law and the Illinois Rules].").

In sum, we reject appellant's claim that Ms. Kolodner failed to provide the factual basis on which she reached her conclusions. Rather, the record makes plain that Ms. Kolodner provided a detailed explanation of the process she utilized in appellant's case and, in so doing, established a sufficient factual basis to support her expert conclusions, as required by Maryland Rule 5-702. Accordingly, the circuit court did not abuse its discretion in admitting that testimony.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.