Circuit Court for Baltimore City
Case No. 24-C-17-002377

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0546

September Term, 2019

CHANEL HORTON

v.

CITY HOMES, INC.

Graeff,
Nazarian,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 16, 2020

This appeal stems from a complaint filed by Chanel Horton, appellant, against City Homes, Inc. ("City Homes"), appellee, in the Circuit Court for Baltimore City. Appellant alleged that City Homes' negligence resulted in appellant's exposure to lead paint at 3511 Virginia Avenue, Baltimore City, Maryland. After a trial, the jury returned a verdict finding City Homes not guilty of negligence.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion in allowing testimony that City Homes was a 501(c)(3) nonprofit organization?
2. Did the circuit court abuse its discretion in sustaining objections to impeachment questions asked of City Homes' representative?
3. Did the circuit court abuse its discretion in not admitting the Arc Environmental lead test report into evidence?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was born on November 2, 1996. Appellant's mother, Lena Horton, testified that she lived with her parents, Geneva and David Horton, at 3511 Virginia Avenue in Baltimore City (the "Property") prior to and after appellant was born. City Homes owned the Property during all times relevant to this case. Appellant no longer lives at the Property.

On May 1, 2017, appellant filed a complaint against City Homes, alleging, as relevant to this appeal, negligence. Appellant alleged that she lived at the Property from

"1996 to approximately 2008," and during that time, she "was exposed to flaking, chipping and peeling lead paint and lead paint dust and was diagnosed" with lead poisoning.

On April 15, 2019, trial before a jury began. Many witnesses testified regarding whether appellant lived at the Property, how long she lived there, whether there was a significant amount of lead at the Property, whether the lead poisoning was caused by another property, and the severity of appellant's injuries. We summarize below testimony pertinent to this appeal.

Barry Mankowitz, an employee of City Homes who managed its day-to-day operations at the time appellant lived at the Property, was called as an adverse witness by appellant. He testified that City Homes purchased the Property on December 30 or 31, 1986.[1] When City Homes purchased a new property, it was its custom to take pictures of the Property, inspect it, and make necessary repairs. Mr. Mankowitz agreed that the Property was built before 1950, and therefore, it likely contained lead-based paint. An inspection checklist showed that the Property was inspected in October 1987. Repairs typically were done within two weeks after inspection. The inspection list includes painting. City Homes obtained a work permit to repair and paint the Property. They then used a HEPA vac to clean the dust. Geneva Horton acknowledged that this was done on February 18, 1988.

[1] On cross-examination, Mr. Mankowitz testified that City Homes purchased 101 homes at this time.

Mr. Mankowitz testified that, when City Homes purchased the Property, it borrowed money from the Community Development Administration of Maryland ("CDA"). Because it borrowed money from the CDA, the CDA could inspect the Property at any time. Mr. Mankowitz explained that, after City Homes made its list of changes that needed to be made, the CDA also could send an inspector to add or change the list.

When City Homes purchased the Property in 1986, appellant's grandparents were already living there. Because City Homes borrowed money from the CDA, it had to report to them the names of the tenants of the homes. Appellant's name was never listed on City Homes' records as a person who lived on the Property, although another child was listed on a few of the records. Additionally, in the certification of tenant eligibility signed by Geneva and David Horton on February 20, 1999, they were the only occupants listed, and appellant's mother was listed as an emergency contact who did not live at the Property.

Mr. Mankowitz testified that any requests for repairs by tenants were recorded. City Homes performed multiple repairs of the Property, but the file did not reflect any requests for painting.

Lena Horton, appellant's mother, testified that she lived at the Property with her parents, appellant's grandparents, until she was 30 years old. She testified that appellant was born in 1996 and lived at the Property until 1999.[2] Appellant learned to sit, crawl, and walk at the Property, and as a child, appellant would put things in her mouth that were on

[2] Lena Horton first testified that appellant lived at the Property until 2000 or 2001, but when asked if it was possible that it was 1999 because there was a record indicating as much, Ms. Horton testified that was possible.

the floor, including paint chips and things with paint chips on them. Ms. Horton testified that complaints were made to the landlord about the paint chips, but the problem was not fixed the entire time she lived at the Property.

Ms. Horton testified that doctors discovered that appellant had lead in her blood. Appellant had difficulty in school, specifically having problems with focusing, concentrating, and getting angry all the time.

During cross examination, counsel for City Homes questioned Ms. Horton about other ways appellant could have been exposed to lead, and she agreed that appellant played in dirt and her grandfather worked construction. Ms. Horton also agreed that appellant had visited other homes that had chipping paint.

Rush Barnett, an expert in industrial hygiene and lead paint risk assessment, testified on behalf of appellant. He testified that appellant's medical tests showed the following micrograms per deciliter of lead in her blood: in November 1997, a lead level of 9.7; in March 1998, a lead level of 13.5; in August 1998, a lead level of 9; and in June 1999, a lead level of 6. Although there is no "safe" level of lead for a child to have in their blood, the Center for Disease Control considers a level of 5 micrograms per deciliter or higher to be a lead hazard.

Mr. Barnett reviewed a lead testing survey report conducted by Arc Environmental (the "Arc Report") in July 2017. It was not allowed access to the second floor, so the testing was done on the first floor and exterior of the Property. Mr. Barnett testified that he had trained people who worked at Arc Environmental, including the person who

prepared the Arc Report for the Property. It was the type of report he regularly would rely on in forming an opinion.

Appellant attempted to enter the Arc Report into evidence, but City Homes objected. The following colloquy occurred:

> [CITY HOMES' COUNSEL]: This is an expert report with expert data in it. This is not admissible evidence, understanding Mr. Barnett's relying on it and can testify about it, but it should not be given to the jury for their interpretation. That's why you call experts.
>
> [APPELLANT'S COUNSEL]: It's merely a listing of findings made. There is no mystery. It is just purely the findings.

The court sustained the objection. Counsel then asked to admit only two pages of the report, the data sheet showing "where they found the lead-based paint above the Maryland standard." Counsel for City Homes argued that it was inadmissible, and the court again sustained the objection.

Mr. Barnett then testified that, pursuant to the report, Arc Environmental found "lead-based paint on a number of components that typically contain lead-based paint," such as baseboards, doors, door trims and jams, and window sills and casings. Mr. Barnett believed the data generated was "accurate and valid." He ultimately concluded that the Property did contain lead-based paint, which would have "resulted in lead-based paint hazards existing in the [P]roperty while [appellant] was living there."

Patrick Connor, an expert in lead risk assessment, testified for City Homes. He testified that flaking and chipping lead-based paint is a lead hazard. Intact lead-based paint

typically is not a hazard because it is behind layers of non lead-based paint. Lead is also found in soil. There are multiple sources of potential lead exposure.

Mr. Connor reviewed records and reports to determine if they indicated lead-based paint hazards at the Property. They did an assessment of the area in 2018 and found soil lead hazards. They did not find in the records for the Property any references to lead-based paint hazards. And City Homes' repair records did not reference any chipping paint at the Property.

On April 24, 2019, at the close of trial, the jury returned a verdict for City Homes. This appeal followed.

STANDARD OF REVIEW

Appellant's contentions on appeal all address the circuit court's decision to admit or exclude evidence. As we have explained:

> Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. *Hajireen v. State*, 203 Md. App. 537, 552, *cert. denied*, 429 Md. 306 (2012). This Court reviews a trial court's evidentiary rulings for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011). A trial court abuses its discretion only when "no reasonable person would take the view adopted by the [trial] court," or "when the court acts 'without reference to any guiding rules or principles.'" *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

Baker v. State, 223 Md. App. 750, 759 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 708, *cert. denied*, 438 Md. 143 (2014)).

DISCUSSION

I.

Testimony About Non-Profit Status

Appellant's first contention is that the circuit court committed reversible error by allowing Mr. Mankowitz to testify that City Homes was a 501(c)(3) nonprofit organization. She asserts that City Homes' nonprofit status was not relevant, and it was highly prejudicial because it could have led the jurors to think that City Homes did not have any money, and therefore, it could not pay any judgment. Appellant argues that the nonprofit status of City Homes is analogous to financial status, which typically is not relevant until after a finding of negligence.

City Homes contends that the court did not err in allowing Mr. Mankowitz to testify regarding its nonprofit status. It asserts that the nonprofit status, which was mentioned only once, was not introduced to establish financial status, but rather, it was relevant because it explained the purpose for which it was formed and why it had certain procedures and policies in place for repairing/renovating homes "to conform to its formation mission."

A.

Proceedings Below

The testimony at issue occurred when counsel for City Homes began its cross-examination of Mr. Mankowitz. Counsel asked: "Mr. Mankowitz, can you just briefly explain the purpose or what City Homes, Inc. was about?" Appellant's counsel objected, and at a bench conference, he explained that he did not want City Homes' status as a

501(c)(3) nonprofit corporation to come into evidence "because that refers to that they're in some way a charity and I don't think it's appropriate in this case because they have insurance."[3] Counsel continued: "[I]f they go about and they renovate houses for low income people, how is that relevant to the case of whether he complied with the code?" The court overruled the objection.

The following colloquy then ensued:

> [CITY HOMES' COUNSEL:] Mr. Mankowitz, would you explain to the ladies and gentlemen of the jury what City Homes, Inc. was about, please?
>
> [MR. MANKOWITZ:] City Homes, Inc. was a 501(c)(3), which is a nonprofit.

Appellant's counsel's objection and motion to strike were overruled.

The testimony continued:

> MR. MANKOWITZ: So we were set up in 1986 to provide clean decent affordable housing in Baltimore, Maryland. It was set up by Jim Rouse, James Rouse, who set up the Enterprise Foundation. Today that Enterprise Foundation has changed names, but they're all over the United States of America providing clean, decent, affordable housing, among other things, dealing with low income families throughout the country. That's why we were set up.

Mr. Mankowitz then explained that when City Homes purchased the Property, along with 100 other properties, it borrowed money from the CDA, which allowed the CDA to inspect the Property at any time and required City Homes to submit a list of the tenants

[3] Counsel referred to the nonprofit status as "under 5-103(b) or … 403(b)," but it is clear from the record that his argument on appeal is preserved.

living at the Property and their incomes. Appellant was never listed as an occupant of the Property.

B.

Analysis

Evidence is admissible if it is relevant, that is, if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401; 5-402. "[T]rial judges do not have discretion to admit irrelevant evidence." *Fuentes v. State*, 454 Md. 296, 325 (2017) (quoting *State v. Simms*, 420 Md. 705, 724 (2011)). "[T]he determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court." *Id*. (quoting *DeLeon v. State*, 407 Md. 16, 20 (2008)).

As indicated, City Homes argues that the evidence was relevant because it explained the purpose for which it was formed and why it had certain procedures and policies in place for repairing/renovating homes "to conform to its formation mission." We are not persuaded. Mr. Mankowitz's testimony regarding City Homes' mission could have been explained without reference to its status as a 501(c)(3) nonprofit corporation.

As the Court of Appeals has explained, however, "[e]ven where evidence is wrongly admitted, under Maryland Rule 5-103(a), '[e]rror may not be predicated upon a ruling that admits . . . evidence unless the party is prejudiced by the ruling.'" *Perry v. Asphalt & Concrete Services*, 447 Md. 31, 59 (2016). *Accord Flanagan v. Flanagan*, 181 Md. App.

492, 515 (2008) ("[T]his Court will not reverse a lower court judgment if the error is harmless."). "The burden is on the complaining party to show prejudice." *Id*.

Here, appellant has failed to show prejudice by the one-time statement that City Homes was a nonprofit corporation. There was no testimony, or argument, that the nonprofit status meant that City Homes did not have money to pay a judgment. Moreover, the court instructed the jury that it was not to consider a person's "wealth or poverty." Given the facts of this case, appellant failed to meet her burden of showing prejudicial error that requires reversal.

II.

Impeachment Questions

Appellant next contends that the circuit court erred in prohibiting her from asking questions challenging the credibility of Mr. Mankowitz. She sets forth three specific rulings, which she alleges "inhibited [her] attempt to rebut and discredit" Mr. Mankowitz's testimony. City Homes, by contrast, contends that the "trial court did not err in sustaining objections as to improper, harassing, irrelevant and offensive questions to the Corporate Designee of City Homes, Inc."

"The credibility of a witness may be attacked by any party, including the party calling the witness." Md. Rule 5-607. When a party calls an adverse witness, the party is "bound" by the testimony of the adverse witness "unless contradicted or discredited." *Hanna v. Emergency Med. Assoc., P.A.*, 77 Md. App. 595, 602–03, *cert. denied*, 315 Md. 691 (1989).

1.

Exhibit 3

Appellant's first evidentiary contention relates to Plaintiff's Exhibit 3, a list of repairs dated July 28, 2003. This Exhibit was addressed on two occasions. During direct examination, appellant's counsel tried to show Mr. Mankowitz what was marked as Plaintiff's Exhibit 3. Counsel for City Homes objected, and the following occurred:

> [CITY HOMES' COUNSEL:] So, Your Honor, this record, Plaintiff's Exhibit 3, is dated July 28th of 2003. So this record post dates any alleged lead ingestion from the case. So it's not relevant to the case itself. It doesn't have anything to do with Ms. Horton's lead poisoning or alleged lead poisoning.
>
> [APPELLANT'S COUNSEL:] One of the Defense arguments is reasonableness. This is a documentation of every room in the house requiring scraping and spackling of various painted surfaces in 2003. I think – and he's indicated he has really no record of documents in between that of doing these repairs. I think it is relevant because one of the questions is isn't it reasonable to assume that this isn't something that happened overnight, but existed for a long time.
>
> THE COURT: Objection sustained.

Counsel continued questioning as follows:

> [APPELLANT'S COUNSEL:] Now, Mr. Mankowitz, if there is testimony in this case that there was flaking and chipping paint in [the Property] from 1996 through 2000, you don't have any reason to dispute that, do you?
>
> [MR. MANKOWITZ:] I can't confirm it and I can't dispute it, except for this document here that you just presented me with.
>
> [APPELLANT'S COUNSEL:] Well, that was in 2003, correct?
>
> [MR. MANKOWITZ:] Correct.

> [APPELLANT'S COUNSEL:] Okay. And how does that document help you answer that question?
>
> [MR. MANKOWITZ:] Well –
>
> [CITY HOMES' COUNSEL:] Objection.
>
> THE COURT: Sustained.

On re-direct examination, counsel for appellant followed-up on Mr. Mankowitz's testimony regarding Exhibit 8, which included: (1) an undated work proposal from C.J.S. Construction, listing three rooms to "scrape and paint," for an amount of $650; and (2) an attached check, dated June 30, 1994, in the amount of $1,270. In discussing that the check was for $1,270, the following occurred:

> [APPELLANT'S COUNSEL:] So the numbers don't match, do they?
>
> [MR. MANKOWSKI:] No. Do you want me to tell you why?
>
> [APPELLANT'S COUNSEL:] Well why don't you tell me doesn't the work that's listed by CJ Construction look a lot like what was listed from 2003?

City Homes' counsel objected, without elaboration, and the court sustained the objection. No further discussion ensued regarding the 2003 document.

Appellant contends that, because the undated repair record was matched to "a check that was almost double the amount of the repair cost listed," the evidence was "ripe for cross-examination." She asserts that the 2003 repair record was impeachment of testimony regarding repair records that did not match.[4]

[4] She also argues that the 2003 repair record "was circumstantial evidence of the conditions of the home and supported the testimony of Ms. Horton that there was flaking (…continued)

City Homes contends that evidence of work performed on the Property in 2003, long after appellant left the Property, was not relevant because it "had nothing to do with the condition of the house when [a]ppellant was allegedly living there." Additionally, City Homes contends that there was "no connection to the 1994 C.J.S. proposal and the 2003 note," and appellant did not lay the proper foundation to use it for impeachment.

Exhibit 3 is a list of work on the Property, dated July 28, 2003, which says that it was prepared by "Brodie." Appellant attempted to use it to impeach Mr. Mankowitz's suggestion in his testimony that Exhibit 8, the undated work proposal by C.J.S. Construction, with a 1994 check attached, showed work done to the Property before appellant was born. Appellant failed, however, to show a clear connection between the C.J.S Construction proposal and Exhibit 3. And Exhibit 3 was a 2003 document, made years after appellant alleged that she lived at the Property. Evidence of events that occurred after the dates at issue generally are not relevant. See, e.g., *East Park Ltd. P'ship v. Larkin*, 167 Md. App. 599, 622, *cert. denied*, 393 Md. 243 (2006) (In litigation about value of partners' interest, events after partners withdrew from partnership were not relevant.). The circuit court did not abuse its discretion by refusing to admit Exhibit 3 into evidence.

paint throughout the home." This argument was not argued in appellant's initial brief, and therefore, we will not consider it. *See Prince George's Cty. v. Wash. Post Co.*, 149 Md. App. 289, 317 n.21 (2003) (Because the party "only made such an argument to us in its reply brief, we do not consider it preserved on appeal.").

2.

Rehearsal of Testimony

Appellant next contends that the court abused its discretion in sustaining the objection to counsel's questions regarding whether Mr. Mankowitz had rehearsed his testimony prior to trial. The inquiry was during redirect, as follows:

> [APPELLANT'S COUNSEL:] Now, with regards to your testimony here in front of the jury, you've rehearsed your testimony before, haven't you?
>
> [MR. MANKOWSKI:] Say it again, please?
>
> [APPELLANT'S COUNSEL:] You've rehearsed testifying in front of juries before, haven't you?
>
> [CITY HOMES' COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> [APPELLANT'S COUNSEL:] Have you ever worked with Todd Wilson, an attorney here in Baltimore on how to make a presentation in court?
>
> [CITY HOMES' COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> [CITY HOMES' COUNSEL]: Move to strike.
>
> THE COURT: Stricken.

Appellant contends that "[q]uestions about testimony preparation go to credibility," and she should have been allowed to explore that line of questioning.

City Homes contends that questions regarding whether Mr. Mankowitz's answers were rehearsed were "completely inappropriate, harassing questions." It asserts that asking about conversations with previous counsel was protected by attorney-client privilege and

asking about preparations with a lawyer not involved in the case was "completely improper."

Initially, we note that, based on the way the questions were phrased, whether Mr. Mankowitz had "rehearsed testifying in front of juries before" or worked with an attorney "on how to make a presentation in court," the questions were not relevant to the issues in this case. And even if the questions were relevant, "the trial judge, and not this Court, is in the best position to determine whether the introduction of certain impeachment evidence would enmesh the trial in confusing or collateral issues." *Merzbacher v. State*, 346 Md. 391, 413–14 (1997). Introducing evidence of Mr. Mankowitz's experience in other cases could easily confuse the jury, and we do not see much, if any, probative value. Under the circumstances of this case, we cannot conclude that the court abused its discretion in preventing counsel's questions in this regard.

3.

Paint Scraping

Appellant next argues that the court erred in sustaining City Homes' objection to the following question: "And you would agree based on your experience that the scraping of old paint that might be leaded could cause an additional hazard in the home?" She asserts, with no authority other than a party's general ability to impeach pursuant to Md. Rules 5-607 and 5-616(a)(2), that this question was proper in light of Mr. Mankowitz's knowledge of the Baltimore City Housing Code and his experience managing properties.

City Homes argues that this question was improper because Mr. Mankowitz was not an environmental expert or an expert in lead abatement. Additionally, it argues that appellant laid no foundation for the question, and it was meant to mislead the jury.

Md. Rule 5-701 governs the testimony of lay witnesses:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is 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.

In *Ragland v. State*, 385 Md. 706, 725 (2005), the Court of Appeals held that the above rule prohibits the admission as lay opinion "testimony based upon specialized knowledge, skill, experience, training or education." *Accord State v. Blackwell*, 408 Md. 677, 690 (2009). Where opinion testimony involves specialized knowledge, experience, and training, the witness providing such testimony must be qualified as an expert to testify. *Ragland*, 385 Md. at 716.

Here, as City Homes notes, Mr. Mankowitz was not admitted as an expert regarding lead paint hazards. Accordingly, the circuit court did not abuse its discretion in sustaining the objection to a question asking for his opinion regarding the hazards of scraping lead-based paint.

III.

Arc Environmental Report

Appellant contends that the trial court abused its discretion by refusing to admit the Arc Report into evidence. She asserts that she was required, as part of her negligence

claim, to prove that there was lead paint inside the Property, and the Arc Report was direct evidence of that fact. Appellant argues that the data relied upon by experts is admissible to explain the basis of the expert's opinion, and the Arc Report was analogous to "medical records and test results admitted at trial every day." She contends that excluding the Arc Report caused substantial prejudice to her ability to prove all the elements of negligence.

City Homes contends that the court properly exercised its discretion in excluding the Arc Report "when the evidence was presented during trial and the admission of the actual report would lead to jury confusion." It makes several arguments in this regard.

Initially, City Homes argues that at issue in the jury's verdict was whether City Homes violated its duty of care, and the presence of lead paint in the house was not relevant to whether City Homes used ordinary care to maintain the house when appellant allegedly was there. Moreover, it argues that any probative value of the evidence was outweighed by its prejudice, stating that the jury could have been confused by, and misinterpreted, the data. It asserts that the court used its "discretion afforded under Md. Rule 5-703 to allow the [a]ppellant to present the findings of this report to the jury but, to avoid severe prejudice to [City Homes,] did not allow the jury to take a copy of the report into deliberations." City Homes notes that appellant was able to introduce the Arc findings through experts and closing argument.

As City Homes notes, Mr. Barnett did testify regarding the results of the Arc Report. He stated:

> When [Arc Environmental] went to the property, they found lead-based paint on a number of components that typically contain lead-based paint. So they

> found lead-based paint in the foyer, on the door jam, door casing, the transom which was the window over the door, and baseboard. In the living room they found lead-based paint on the window sash . . ., the window sill, which is the front of the sash, the window casing, baseboard in the living room, the door casing and the door jamb. . . .
>
> In the dining room we found lead-based paint in the door casing and/or jamb, and the baseboard.
>
> In the kitchen we found lead-based paint casing and transom, the window sash and window sill and even on the wall in the kitchen.
>
> On the first and second floor stairway, they found lead-based paint on the stair str[ing]er, and the stair str[ing]er is the interior and exterior support areas for the stairs to be built upon . . . . We found it also on the bal[u]ster which are the vertical pieces holding up the banister. We found lead-based paint on the stairway baseboard and outside the front exterior, we found lead-based paint on the door casing, the window sash and the porch header.

When an expert relies on data in reaching an expert opinion, the data may be "admitted into evidence for the purpose of explaining the basis of the expert's opinion." *Lamalfa v. Hearn*, 457 Md. 350, 354 (2018) (quoting *U.S. Gypsum, Co. v. Mayor and City Council of Balt.*, 336 Md. 145, 176 (1994)). A trial court, however, has discretion to exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

At trial, counsel objected to the admission of the Arc Report, stating that "it should not be given to the jury for their interpretation. That's why you call experts." The following colloquy occurred:

> [CITY HOMES' COUNSEL]: So if we look at this data, Your Honor, . . . [the jury] would have to interpret what the designation was for the wall, what the component is, what this reading means, what PNI means. So an expert

> is going to have to explain, this is the data for the report. This is the actual expert data for the — so it would be like me introducing the general land survey to the jury and allowing the jury have that there because there's no conclusions in that. . . .
>
> * * *
>
> [APPELLANT'S COUNSEL]: It's purely data, Your Honor. The witnesses are allowed to discuss what the data shows and what the data means.
>
> [CITY HOMES' COUNSEL]: I agree with that, but I don't want the jury to get it. In other words, it shouldn't be admitted into evidence. . . .

A review of the Arc Report shows, as City Homes argued, that it contained data, and without an explanation of what that data means, it had the potential to confuse a jury.[5] In light of that, and because appellant was able to convey the relevant information in the report to the jury, through Mr. Barnett's testimony and closing argument, we cannot conclude that it was an abuse of discretion for the circuit court to exclude the Arc Report from evidence.

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

[5] Appellant points to no case holding that a trial court is *required* to admit an Arc Report into evidence. Appellants rely on *Ross v. Housing Auth. of Baltimore City*, 430 Md. 648, 655 (2013); and *Kirson v. Johnson*, 236 Md. App. 384, 388–89, *cert. denied*, 459 Md. 185 (2018), as cases where Arc Reports were admitted. In *Ross*, 430 Md. at 652, there is no discussion of the issue other than the statement that the plaintiff relied on the report. In *Kirson*, 236 Md. at 393, this Court merely noted that the plaintiff's experts had relied on the Arc Report as direct evidence that lead was present.