Circuit Court for Anne Arundel County
Case No. C-02-18-000814

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0628

September Term, 2019

COREY MICHAEL BOYER

v.

STATE OF MARYLAND

Fader, C.J.,
Meredith,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: June 23, 2020

*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.

Following a jury trial in the Circuit Court for Anne Arundel County, Corey Michael Boyer, appellant, was convicted of five counts relating to the underlying theft of automobile parts: one count of rogue and vagabond in violation of Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL") § 6-206; three counts of fourth degree burglary in violation of CL § 6-205(c) and (d), and; one count of theft in violation of CL § 7-104. Boyer timely noted an appeal of his convictions, and raises four questions for our review, which we have rephrased as follows:

> 1. Did the circuit court err by admitting prejudicial evidence of prior bad acts?
>
> 2. Did the circuit court err by restricting appellant's cross-examination of the State's fingerprint expert?
>
> 3. Was the evidence legally sufficient to support appellant's convictions?
>
> 4. Should appellant's conviction pursuant to CL § 6-205(c) be vacated?

We answer the first two questions in the negative and the latter two in the affirmative. We therefore affirm the judgment in part and vacate appellant's conviction pursuant to CL § 6-205(c).

BACKGROUND

I. UNDERLYING INCIDENT & INVESTIGATION

In May 2016, Mr. Daniel Wagner and Mr. Corey Foster shared a residence in Millersville, Maryland. At that residence, near the side of the house, they kept a Camaro automobile. The vehicle sat on a parking pad adjacent to the house, roughly 75 to 100 feet

off of the main roadway. The Camaro was visible from the street, though covered by a tarp. Wagner testified that the vehicle was in "semi-working condition."

At the time, Wagner and Foster, along with Mr. Brandon Hannan, were working to restore the vehicle to fully operable condition. Notably, it was owned by Hannan and Foster collectively. The work to restore the Camaro had taken place over the course of approximately two years preceding the incident. Parts were generally purchased by Hannan and Foster, though the group had built some custom parts themselves. Wagner could not give a precise amount, but estimated that the expense of the parts purchased in the effort to restore the vehicle was "several thousand dollars." He further explained that the parts used for the restoration were bolted to or otherwise mounted into the vehicle. This included a hood built specially to accommodate augmentations to the engine.

On the date of the incident in question, Wagner testified that he was returning home around lunchtime when he noticed something was amiss. Seeing an air filter in his driveway, which would otherwise be attached to the vehicle's air/oil separator, he went over to inspect the Camaro. Upon examining the vehicle, he noticed an odd indentation in the tarp covering it. Lifting the tarp, Wagner noticed several parts missing, including but not limited to: the intake manifold, fuel rails, fuel injectors, air/oil separator, crossover plate, a headlight, and the hood itself.[1] A number of parts which he, Foster, and Hannan

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[1] A December 4, 2017 Application for Statement of Charges listed the stolen items and their values as follows:

> AutoMeter pillar gauge pod valued at $29, an Edelbrock Victor Jr. LS1 EFI Intake manifold valued at $317, Edelbrock aluminum fuel rails valued at $104, two Edelbrock throttle body intake elbow [sic] valued at $357, two

had themselves constructed were missing as well. Inside the vehicle, Wagner noted that some items in the passenger compartment had been shuffled around, and that some wires had been cut.

Beyond the disturbance of the vehicle, Wagner also noticed an indication of unsolicited activity at the shed located to the rear of his home. He testified that the shed was secured by a cut-resistant lock. Upon inspection he was able to identify two indentations—what he called "cut marks"—in the lock itself. (Foster testified that the marks appeared consistent with the use of bolt cutters.) However, the lock was still intact, and it did not appear that anything had been disturbed in the shed.

Additionally, Mr. Wagner maintained a four-camera motion-activated security system. The State offered video taken by that system on the date of the incident into evidence. The video evidence showed two men removing the tarp covering the vehicle,

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Russel ProClassic AN to NPT adapter fitting valued at $9, five Summit Racing weld-in Bungs valued at $13, Summit Racing Breather Tans valued at $57, Wilwood Brake Flexline Kit valued at $63, a LS2 Step Launch Control valued at $187, FAST ECR w/internal [sic] data long/traction valued at $1,621, Ignition Controller kit valued at $484, FAST 5 bar map sensor valued at $145, FAST single PSI sensor harness valued at $126, Main wiring harness valued at $268, FAST Gen III injector harness valued at $90, FAST fuel & oil pressure kit harness valued at $250, Accelerometer kit valued at $168, Drive shaft speed 2 sensor kit valued at $139, two B & M SuperCooler Oil Coolers valued at $149, Flaming River combo batter and alternator kill switches valued at $81, Sam Biondo Oversized Ultra-Quick microswitch valued at $42, TCI Flexplates valued at $252, TCI Outlaw Shifters values at $290, ACR overhead control module valued at $361, and Pro Tuning Lab Camaro z28 replacement crystal headlights valued at $136, for a total of $5,448.

removing the hood, and otherwise interfering with the property. No video clearly showing the front of the shed where the lock was located was available. Mr. Wagner testified that the two men could not have been Foster or Hannan, as they were out of town at the time, and further noted that no one aside from the three of them had permission to interact with or make use of the vehicle or its parts.

After discovering the apparent theft of various parts from the Camaro, Wagner called the police. The responding officer was Sergeant Eric Love. Sergeant Love was a 29-year veteran of the Anne Arundel County Police Department and had special training in recovering fingerprints.[2] Noticing that the front quarter panels of the vehicle were "smooth . . . flat and hard" such that they would "really work well for leaving . . . latent fingerprints behind" and were "conducive for the process of fingerprints[,]" Sergeant Love applied black powder to see if any prints had been left behind. He ultimately was able to

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[2] Sergeant Love explained his relevant credentials as follows:

> Initially, when I became [sic] with the police department, I was an evidence technician. I was an evidence technician for the first 10 years . . . of my career. During that time I attended schools, FBI school for 10-print and latent print processing. I attended the Metropolitan D.C. crime scene school which took care—which taught me how to process for prints with different mediums such as powders or chemicals.
>
> In the time of the 10 years there, I actually was part of—I was part of the instructor class that taught officers how to process for latent prints using powders and processed numerous crime scenes using powders.

When asked how many crime scenes he had attempted to obtain prints from, Sergeant Love responded, "well over 500."

recover four fingerprints from the front quarter panels and passenger side door of the vehicle. The prints were then transferred to print cards.

After recovering the prints and creating the print cards, Sergeant Love submitted them to the Department's latent print unit for analysis. There, the prints were examined by Ms. Patricia Rogers. Ms. Rogers identified herself at trial as a latent print examiner with 17 years of experience in the Anne Arundel County Police Department. When asked, she described her work thus:

> My duties are I analyze, compare, evaluate and verify latent fingerprints. I conduct manual examinations. I enter those latent fingerprints into an automated fingerprint identification system known as [MAFIS].[3] And once I conduct these examinations, with the aid of a magnifying glass I render opinion and the comparison results and I testify whenever it's needed in court to those results.

Ms. Rogers explained that, after conducting her own independent analysis, she proceeded to enter the fingerprints into MAFIS. The system produced a candidate list including twenty potential matches. Noting that each match is ranked according to a numerical score, she explained that the top two matches for two of the prints corresponded to one Corey

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[3] During direct examination Ms. Rogers provided the following explanation of AFIS and MAFIS, the Maryland specific iteration of the system:

> It's an automated fingerprint identification system. It's a computer system that's just to assist examiner. For the State of Maryland, that system—we call it MAFIS 'cause it's Maryland's Automated Fingerprint Identification System. . . . And it's a database that the State of Maryland owns and all remote sites—Baltimore City, Anne Arundel, P.G.—we all have the capability of running fingerprints and latent fingerprints in this database that's established in the State of Maryland.

Michael Boyer.[4] With respect to the third-ranked print in the computer system, Ms. Rogers testified that, according to her personal assessment, it was "highly likely" that the print also was attributable to Mr. Boyer. The results of the fingerprint analysis were eventually submitted to Sergeant Love, who in turn began developing Boyer as a suspect. Boyer was eventually arrested and charged with six counts—second degree attempted burglary, rogue and vagabond, three counts of fourth degree burglary, and theft over $1000. The matter proceeded to trial.

II. TRIAL & CONTESTED TESTIMONY

Over the course of a two-day trial, testimony was heard from six witnesses. Four of those witnesses—Wagner, Foster, Hannan, and Love—provided testimony regarding the events preceding and immediately following the theft, consistent with the factual recitation above. The testimony and evidence generally indicated that a theft had in fact

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[4] Ms. Rogers explained Mr. Boyer's two appearances in MAFIS as follows:

> [STATE]: All right. And you had indicated that the top candidate was attributed to Mr. Corey Boyer, is that right?
>
> [ROGERS]: Correct.
>
> [STATE]: And just for the record now that the jury has received your report, what rank was Mr. Boyer?
>
> [ROGERS]: Mr. Boyer was number 1 and number 2.
>
> [STATE]: Okay, so why did Mr. Boyer come up twice?
>
> [ROGERS]: Because in the Maryland Automated Fingerprint Identification System, a unique feature is that the State uploaded—uploads all fingerprint cards into the database.

taken place, that neither of the owners knew Boyer or permitted him to interfere with the Camaro, and that fingerprints were gathered after the fact. However, there was some dispute as to the evidence adduced from two other witnesses—Ms. Lashonda Dreher and Ms. Patricia Rogers. Ms. Dreher testified primarily to having taken Mr. Boyer's fingerprint on an earlier occasion. Ms. Rogers served as the State's expert on fingerprint identification.

A. Probation Monitor Testimony

First, defense counsel protested testimony and evidence elicited from Ms. Lashonda Dreher. Immediately after Ms. Dreher took the stand, the following colloquy ensued:

> CLERK: You may be seated. Please state your full name and occupation and spell your name for the record.
>
> [DREHER]: Lashonda Dreher, L-A-S-H-O-N-D-A. Last name, D-R-E-H-E-R. And *I'm the Drinking and Driving Monitor II for the Division of Parole and Probation*.
>
> CLERK: Thank you.
>
> [DEFENSE]: Your Honor, may we approach?
>
> [COURT]: Yes. Come on up.
>
> (Bench Conference)
>
> [COURT]: I wish you had said something before.
>
> [DEFENSE]: I didn't think she was going to—
>
> [COURT]: —Yeah—
>
> [DEFENSE]: —say that she was a Drinking and Driving monitor—
>
> [COURT]: —I know—
>
> [DEFENSE]: —with the Department of Parole and Probation. My concern is that she was going to identify herself as a parole and probation agent when

questioned at which point I was going to object because I think that's more prejudicial than probative. I think the State's about to ask her if she had met Mr. Boyer and taken fingerprints. But anything in terms of any other charges or anything like that infringes upon his right to remain silent.

[COURT]: All right. One second.

(At this point, the jury was excused.)

* * *

[COURT]: Ma'am, you didn't do anything wrong, but I don't want any attention drawn to the fact that he may be on probation, you might be supervising him or anything like that because it will create in the jury's mind a perception that he may be a criminal and therefore they might not look at it, perhaps as a judge would, impartially. You understand?

[DREHER]: I believe so. So you didn't—

[COURT]: So–

[DREHER]: —want me to say Division of Parole and Probation?

[COURT]: I would have preferred you to say State of Maryland but nobody brought it up beforehand.

[DREHER]: Okay.

[COURT]: Okay?

[DREHER]: No problem.

[COURT]: So, Ms. Bush—

[STATE]: Yes, Your Honor?

[COURT]: I'm going to give you latitude to ask some leading questions to avoid getting lost in the weeds.

* * *

> [COURT]: [So,] don't ask the lady how long she's been with Parole and Probation. Don't ask her how long she's been a monitor. Just say, at some point in time, did you have an occasion to take fingerprints.
>
> [STATE]: I did also intend to ask her about her experience taking prints.
>
> [COURT]: That's fine.
>
> * * *
>
> [STATE]: *Your Honor, I presume we're just going to strike her response from the record?*
>
> [COURT]: *No.*
>
> [STATE]: *Okay.*
>
> [COURT]: *We're just going to leave it and move on.*

(Emphasis added).

Later during Ms. Dreher's testimony, the State inquired about a fingerprint card for Mr. Boyer produced in conjunction with a separate, unrelated incident. After having Ms. Dreher authenticate the card, the State sought to enter it into evidence. The defense objected on the grounds that the card contained prejudicial information. During the ensuing bench conference, dialogue between the court and defense counsel was as follows:

> [DEFENSE]: I have concerns about the document as a whole because on the back side says 'Criminal Justice Information Systems" and it has some things that I think need to be redacted.
>
> * * *
>
> [COURT]: [I]t's conditionally admitted. . . . I do think there are some things that'll have to be redacted. His social security number I don't think needs to be in there. But other than that, I don't see anything else which is really improper. Okay? All right.

B. FINGERPRINT EXPERT TESTIMONY

The second source of contested testimony came during the cross-examination of Ms. Rogers. During direct questioning, Ms. Rogers explained that she followed the ACE–V[5] method in performing her analysis, which she described as "the scientific methodology

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[5] ACE–V is an acronym for each step in the identification process—analysis, comparison, evaluation, and verification. In *Commonwealth v. Patterson*, 445 Mass. 626, 629-32 (2005), *overruled on other grounds by Commonwealth v. Britt*, 465 Mass. 87 (2013), the Supreme Judicial Court explained the ACE–V method as follows:

> In the analysis stage of ACE–V, the examiner looks at the first of three levels of detail ('level one') on the latent print. Level one detail involves the general ridge flow of a fingerprint, that is, the pattern of loops, arches, and whorls visible to the naked eye. The examiner compares this information to the exemplar print in an attempt to exclude a print that has very clear dissimilarities. At this stage, the examiner also looks for focal points—or points of interest—on the latent print that could help prove or disprove a match. Such focal points are often at the boundaries between different ridges in the print. The examiner will then collect level two and level three detail information about the focal points he has observed. Level two details include ridge characteristics (or Galton points) like islands, dots, and forks, formed as the ridges begin, end, join or bifurcate. Level three details involve microscopic ridge attributes such as the width of a ridge, the shape of its edge, or the presence of a sweat pore near a particular ridge.
>
> In the comparison stage, the examiner compares the level one, two, and three details of the focal points found on the latent print with the full print, paying attention to each characteristic's location, type, direction, and relationship to one another. The comparison step is a somewhat objective process, as the examiner simply adds up and records the quantity and quality of similarities he sees between the prints. In the evaluation stage, by contrast, the examiner relies on his subjective judgment to determine whether the quality and quantity of those similarities are sufficient to make an identification, an exclusion, or neither.
>
> While some jurisdictions require (or used to require) a minimum number of Galton point similarities to declare an individual match between a latent and full print, most agencies in the United States no longer mandate any specific number. Rather, the examiner uses his expertise, experience, and training to

used throughout the latent fingerprint community." In an effort to undermine the legitimacy of the State's fingerprint identification of Boyer, defense counsel challenged Ms. Rogers on the reliability of the ACE–V method. The relevant colloquy went as follows:

> [DEFENSE]: Are you familiar with the Brandon Mayfield case?
>
> [ROGERS]: Yes, I'm familiar with it.
>
> * * *
>
> [DEFENSE]: That was a case where there was a mistake made when FBI fingerprint analysts employed the ACE-V method, is that correct?
>
> [ROGERS]: Correct.
>
> [DEFENSE]: And that's a case where the FBI believed that Mr. Mayfield had perpetrated a crime in Madrid, Spain, is that right?
>
> [ROGERS]: Yes.
>
> [DEFENSE]: And it was—
>
> [STATE]: Objection.

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make a final determination. There is a rule of examination, the "one-discrepancy" rule, that provides that a nonidentification finding should be made if a single discrepancy exists. However, the examiner has the discretion to ignore a possible discrepancy if he concludes, based on his experience and the application of various factors, that the discrepancy might have been caused by distortions of the fingerprint at the time it was made or at the time it was collected.

Assuming a positive identification is made by the first examiner, the verification step of the process involves a second examiner, who knows that a preliminary match has been made and who knows the identity of the suspect, repeating the first three steps of the process.

[COURT]: Sustained. Sustained. Parties to approach.

(Bench Conference)

[COURT]: Unless you're going to be able to prove that she did something wrong here, we could go down the road of a thousand cases with people who were misidentified. I would not allow you to cross-examine because the *Bloodsworth* case, for example, had a bad identification. I mean—

[DEFENSE]: I'm attempting to prove that the science is unreliable. And I think I—

[COURT]: Then you should have done it through a *Frye-Reed* hearing.

[DEFENSE]: I don't think that I'm required to do it through a *Frye-Reed* hearing.

[COURT]: If you want to show that the science is unreliable, you have to do it through a *Frye-Reed* hearing.

[DEFENSE]: I—You've made your ruling. I'm not going to argue with you.

[COURT]: I know. But—

[DEFENSE]: —I would note—

[COURT]: —You can— You know, then the State's going to ask for about a hundred hypotheticals where they are— it did work.

[DEFENSE]: Which I think is permitted.

[COURT]: You're talking one case in the entire world.

[DEFENSE]: That's one case that I brought up and there are more.

[COURT]: In the entire world.

[DEFENSE]: And there are more.

[COURT]: Unless you are going to challenge this in a *Frye-Reed* hearing, I'm not going to allow it. Okay?

Upon the trial court's ruling, defense counsel proceeded with their cross-examination without further questioning regarding the reliability of the ACE–V methodology.

C. VERDICT & APPEAL

Upon completion of the trial proceedings, the jury deliberated and rendered its verdict. Boyer was acquitted of attempted second degree burglary, and convicted on the remaining five counts. He timely filed this appeal of his conviction.

DISCUSSION

I. STRIKING WITNESS TESTIMONY & REDACTION OF EVIDENCE

Boyer's first appellate challenge concerns the testimony offered by Ms. Dreher. Boyer argues that the portion of her testimony where Ms. Dreher stated her occupation—"Drinking and Driving Monitor II for the Division of Parole and Probation"—should have been stricken from the record. Boyer regards the statement as unduly prejudicial, and the judge's failure to strike the statement as an abuse of discretion warranting the reversal of his conviction. He further avers that remedial efforts taken by the judge were inadequate in light of the challenged impropriety. In similar fashion, Boyer also challenges the admission of a fingerprint card offered during Ms. Dreher's testimony into evidence. Boyer maintains that certain information, specifically a reference to "Criminal Justice Information Systems," should have been redacted. Boyer maintains that "[d]ue to its lack of relevance as well as the risk that the jury would infer from it that [Boyer] had a propensity to commit criminal acts, evidence that his fingerprints were on file as a result of past criminal conduct should not have remained before the jury." In response, the State argues that the admitted evidence did not create unfair prejudice substantially outweighing

its probative value, and also highlights the breadth of the trial court's discretion in determining the admissibility of evidence.

A. STANDARD OF REVIEW

Generally, a trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion. *State v. Young*, 462 Md. 159, 169 (2018). However, whether that standard is applied in a given instance turns on the basis of a trial judge's determination. When a trial judge's ruling is predicated on "a discretionary weighing of relevance in relation to other factors," we apply an abuse of discretion standard. *J.L. Matthews, Inc. v. Maryland-National Capital Park and Planning Comm'n*, 368 Md. 71, 92 (2002); *see also id.* at n.18 ("Although at first glance such a determination may appear to be a legal conclusion, at its core it is based on a trial judge's independent weighing of the probative value of the evidence against its harmful effects. As such, it is subject to the abuse of discretion standard."). Conversely, if the determination is based on a pure question of law, we apply a *de novo* standard, considering only whether the trial court's ruling was legally correct. *Id.* We note, however, that a trial court retains no discretion to admit evidence that is not relevant. Md. Rule 5-402 ("Evidence that is not relevant is not admissible."). *See also State v. Simms*, 420 Md. 705, 724-25 (2011) ("While trial judges are vested with discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence."); *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 619 (2011); *Parker v. State*, 408 Md. 428, 437 (2009).

B. Admissibility & Prejudice

At a minimum, for evidence to be admissible, it must be relevant. The relevance of evidence is determined pursuant to Title 5 of the Maryland Rules. Fundamentally, relevant evidence is defined as evidence "having 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. As we noted above, evidence that is not relevant is not admissible. Md. Rule 5-402.

Even where evidence is relevant, it may be excluded should the court find that "its probative value is substantially outweighed by the danger of unfair prejudice . . . ." Md. Rule 5-403. On this point, we note that the word "unfair" is included with intention—a distinction may be drawn between prejudice which is unfair, and prejudice which is legitimate. *E.g.*, *Newman v. State*, 236 Md. App. 533, 551 (2018) (noting specifically the distinction between unfair and legitimate prejudice). The unfair variety of prejudice warranting exclusion is produced by evidence that "tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission." *Hannah v. State*, 420 Md. 339, 347 (2011) (quotation omitted). The Court of Appeals' seminal *Odum v. State*, 412 Md. 593 (2010), lends helpful context. It provides, in pertinent part:

> We have said that relevant evidence is admissible, under Maryland Rule 5-402, subject to the court's exercise of discretion to exclude it, under Maryland Rule 5-403, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . . .
>
> [W]e keep in mind that the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403. Evidence may be unfairly prejudicial if it might

> influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which he is being charged. The more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial.

Id. at 615 (internal quotations and citations omitted).

In conjunction, it is important to note that a court's discretionary power concerning judgments on prejudice is juxtaposed with a general lack of discretion it has to admit evidence of other wrongdoing. Per Maryland Rule 5-404(b), evidence of other crimes, wrongs or acts is inadmissible to prove character or action in accordance with that character. The Rule is the product of a policy consideration regarding juries and potential extraneous motivations for convicting a defendant, stemming not from the evidence adduced at trial or the specific crime before them, but rather from their perception that a defendant is "of the type" to commit a crime. The Court of Appeals has explicitly stated the two reasons underlying the Rule as follows:

> First, if a jury considers a defendant's prior criminal activity, it may decide to convict and punish him for having a criminal disposition. Second, a jury might infer that because the defendant has committed crimes in the past, he is more likely to have committed the crime for which he is being tried.

Straughn v. State, 297 Md. 329, 333 (1983). *See Tichnell v. State*, 287 Md. 695, 711 (1980). Even so, evidence of other crimes may be available for particular, delineated purposes—specifically, "as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." Md. Rule 5-404; *Streater v. State*, 352 Md. 800, 808 (1999). Under such circumstances, this evidence retains "special relevance" independent of criminal propensity, making it at least preliminarily admissible. *Streater*, 352 Md. at 808.

With these guiding principles as touchstones, courts apply a three-part analysis to examine the admissibility of other crimes evidence, considering: *first*, whether the other crimes evidence is substantially relevant and otherwise falls within the purview of a recognized exception; *second*, whether the evidence is clear and convincing in showing that the defendant participated in the prior bad act; and, *third*, whether introduction of the evidence would result in unfair prejudice. *Burris v. State*, 435 Md. 370, 386 (2013); *Gutierrez v. State*, 423 Md. 476, 489-90 (2011); *Sifrit v. State*, 383 Md. 116, 133 (2004); *Conyers v. State*, 345 Md. 525, 550-551 (1997); *State v. Faulkner*, 314 Md. 630, 634-35 (1989).

One particularly noteworthy case—discussed by both parties, applying the legal principles here discussed, and involving a parallel factual scenario—is *Hall v. State*, 69 Md. App. 37 (1986). In *Hall*, this Court considered charges arising from a home burglary and automobile theft. After the incident, the victim's home was processed for fingerprints, and several latent prints were lifted. One of the latent prints was compared with the fingerprints on record with the Montgomery County Police department by a latent print examiner. It matched the fingerprint of Lloyd Lorenzo Hall, who was ultimately arrested.

At trial, the latent fingerprint examiner testified, as well as an Officer Ronald S. Bird of the Montgomery County Police Department who recounted his experience fingerprinting Hall following an unrelated incident several years prior. Notably, Officer Bird created the fingerprint card that was used by the latent print examiner in conducting his comparison. Though the trial court informed Officer Bird that his testimony should in no way indicate that Mr. Hall had a prior arrest, certain comments were elicited indicating

generally that fingerprint cards were created in connection with criminal arrests and that Officer Bird had processed Hall's prints in the past. Hall was subsequently convicted, and on appeal he challenged Bird's testimony. He argued that Officer Bird's comments constituted evidence of prior bad acts and that the trial court erred in not sustaining his objections or issuing appropriate curative instructions.

In conducting our review, we found no error on the part of the circuit court. Acknowledging, first, that evidence of prior crimes is generally inadmissible, we nonetheless recognized that there are "well-established exceptions"—*i.e.*, those listed in Rule 5-404(b)—that may render such evidence "substantially relevant for some other purpose." *Hall*, 69 Md. App. at 52. We further noted that Officer Bird's testimony served as foundation for the subsequent testimony of the fingerprint examiner, indicating that "the card which the expert used for comparison did in fact contain [Hall's] fingerprints." *Id.* Thus, "Officer Bird's testimony . . . had direct bearing on identification of [Hall] and his nexus with the burglary with which he was charged." *Id.* We next turned to an assessment of prejudice, noting several factors outlined in our prior decision in *Jones v. State*, 38 Md. App. 432, 438 (1978). Specifically, we weighed,

> on the one side, the actual need for the other-crimes evidence in light of the issues and the other evidence available to the prosecution, the convincingness of the evidence that the other crimes were committed and the accused was the actor, and the strength or weakness of the other-crimes evidence in supporting the issue, and on the other, the degree to which the jury will probably be roused by the evidence to overmastering hostility.

Id. Satisfied that the testimony fell within an exception so as to be preliminarily admissible, we also concluded that an appropriate balance was struck by the trial court. Reasoning,

then, that the State had a legitimate need for Officer Bird's testimony and that the challenged remarks were unlikely to provoke an inference that Hall maintained a criminal disposition, we held that there was no error on the part of the circuit court in permitting Officer Bird's testimony without further instruction.[6]

We now turn to the case at bar and each challenged piece of evidence in turn, beginning with Ms. Dreher's statement that she was "Drinking and Driving Monitor II for the Division of Parole and Probation." As a preliminary matter, we would question whether that statement in isolation could be viewed as other crimes evidence. After her disclosure, Ms. Dreher was told to avoid linking her having fingerprinted Boyer with her employment, and the trial court afforded the State leeway in asking its questions to avoid any further prejudicial remarks. As such, no direct link was made between Ms. Dreher's work and the fingerprinting. Nonetheless, even if the evidence were construed as evidence of prior bad acts, we nonetheless believe that it would satisfy the legal prerequisites so as to be admissible.

In support of this position we note, first, that there was a legitimate and relevant basis for Ms. Dreher's testimony. Here, as with Officer Bird in *Hall*, the testimony was necessary foundation for the expert testimony of the State's fingerprint examiner, establishing that there was a legitimate basis of comparison for the latent print collected from the crime scene. Further, Ms. Dreher's occupation could be considered probative

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[6] Though Boyer argues that *Hall* should be considered inapposite in this matter, we cannot accord that position much merit. The case is on point, and factually and legally parallel to the case at bar.

insofar as it supports the legitimacy of the comparison print.[7] Further, her testimony would fall within one of the specified exceptions outlined in Rule 5-404—evidence pertaining to the identity of the person who committed the charged offense.

With respect to the second prong, concerning clear and convincing evidence, we note that defense counsel never challenged Ms. Dreher on her testimony or questioned whether she had, in fact, fingerprinted Mr. Boyer in the past. Indeed, counsel did not cross-examine Ms. Dreher at all. We find Mr. Boyer's failure to supply any resistance on this point a sufficient basis for concluding that there was clear and convincing evidence of his involvement in the prior act warranting his fingerprinting. *See, e.g.*, *Smith v. State*, 218 Md. App. 689, 710 n.5 (2014) (holding that a failure to challenge the defendant's involvement in the prior bad act coupled with testimony indicating the defendant's involvement was sufficient to hold that clear and convincing bar was met).

Lastly, we cannot discern any significant degree of unfair prejudice. That is due in part to the nature of the disclosure. The revelation of Ms. Dreher's job title would, in the most severe case, provoke the inference that Mr. Boyer was on probation for drinking and driving. However, we consider it unlikely that a reasonable jury, even taking that proposition as true, would proceed to infer that Mr. Boyer was of such a criminal disposition as to disregard the evidence before them, much less be roused to

[7] We say this while acknowledging that the challenged testimony was elicited through a question from the clerk and not the State. We would further note that defense counsel did not object when the clerk directed the witness to state their name and occupation, despite the fact that the State had previously advised the court, on the record, that Ms. Dreher was a probation officer.

"overmastering hostility." Boyer, at base, was charged with theft, an altogether different type of offense. We would also reiterate that the trial court immediately undertook efforts to mitigate the impact of the disclosure, ordering Ms. Dreher to avoid any future references to her title or the reason for her taking the prints, and instructing the State regarding the manner of their questioning so as to avoid drawing any additional attention to the subject.[8] In sum, we cannot say that there was unfair prejudice resulting from the testimony to support the conclusion that the circuit court erred in its ruling. On this point, we find no abuse of discretion, and affirm the judgment of the trial court.

Having so held, we now turn to the second bit of challenged evidence—the text printed on the fingerprint card reading "Criminal Justice Information Systems." On this point, we are inclined to conclude simply that the inclusion of that information was unduly prejudicial. In this context, where its admission was only incidental, it offered little in the way of probative value. Conversely, the evidence did apprise the jury of former criminal activity. In considering the minimal probative value of the information as compared to the prejudicial impact of informing the jury of former criminal involvement, we assume for the sake of argument that the cited information should have been excluded pursuant to Rule 5-403. Thus, we consider whether the admission was harmless error.

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[8] Additionally, we suspect the very reason why the trial court refrained from striking the testimony on the record was to avoid drawing further attention to the comment. While failure to address prejudicial remarks is by no means a general remedy for such disclosures, where, as here, the remark is mild in the prejudice that it produces, we recognize it as a legitimate approach in attempting to mitigate the impact of an otherwise problematic disclosure.

C. Harmless Error

If there is error the trial court's ruling, "'reversal is required unless the error did not influence the verdict.'" *Bellamy v. State*, 403 Md. 308, 332 (2008) (quoting *Spain v. State*, 385 Md. 145, 175 (2005) (Bell, C.J., dissenting)). Our task, thus, is to determine whether the trial court's ostensibly erroneous admission amounts to reversible or harmless error. The oft-recited test for harmless error was adopted by the Court of Appeals in *Dorsey v. State*, 276 Md. 638, 659 (1976), where it stated:

> When an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed "harmless" and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of-whether erroneously admitted or excluded-may have contributed to the rendition of the guilty verdict.

In performing this analysis, it is not a court's role to usurp the role of the jury, and consequently, "[appellate courts] are not to find facts or weigh evidence." *Bellamy*, 403 Md. at 332. *See also Devincentz v. State*, 460 Md. 518, 560 (2018) ("We apply the harmless error standard without encroaching on the jury's domain."). "Harmless error review is the standard of review most favorable to the defendant short of an automatic reversal." *Bellamy*, 403 Md. at 333. In determining that an error did not contribute to a verdict, we must minimally find the error "unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *United States v. O'Keefe*, 128 F.3d 885, 894 (5th Cir. 1997), *cited with approval in Dionas v. State*, 436 Md. 97, 109 (2013) *and Bellamy*, 403 Md. at 332).

Even in viewing the facts and circumstances in a manner most favorable to the defendant, we find any error here to be harmless. In coming to this conclusion, we note the relatively circumscribed nature of the evidence in this case. Over the course of the two-day trial, the court heard testimony from six witnesses. Three of those witnesses—Wagner, Foster, and Hannan—had no direct knowledge of the incident, with the content of their testimony directed largely toward establishing that something was, in fact, stolen and further that they neither knew nor permitted Boyer to interfere with the vehicle in question. The other three witnesses offered testimony substantially directed toward establishing the validity of the fingerprint identification. Consequently, the jury was charged primarily with the task of according weight to the testimony regarding the fingerprints and assessing the legitimacy of an identification made solely on that basis. In light of the testimony received from three credentialed witnesses, we perceive no significant likelihood that the printing of "Criminal Justice Information Systems" on the fingerprint card had an impact on the rendition of the guilty verdict. We cannot, absent more, accord such weight to that single phrase. To do so would be to undermine the jury's judgment as to the entirety of the case on the basis of a purely speculative conclusion that they drew not one, but several prejudicial inferences. Though Boyer argues in his reply brief that the prejudicial impact was compounded by the card's inclusion of a "date of offense," we note, first, that no objection was lodged specifically to the inclusion of that information, and, second, that there was no direct indication of the nature or severity of the undisclosed offense. Indeed, consistent with our observation above, the erroneously included information paired with Ms. Dreher's disclosure that she was a "Drinking and Driving Monitor II for the Division

of Parole and Probation" would most readily support an inference that Boyer had been fingerprinted following a drinking and driving incident—an entirely different kind of offense. Thus, any error stemming from the failure to redact the words "Criminal Justice Information Systems" on the fingerprint card we hold to be harmless.

II. LIMITS IMPOSED ON CROSS-EXAMINATION

Boyer's second appellate challenge concerns the limitations imposed on defense counsel during their cross-examination of Ms. Rogers, the State's expert on fingerprint identifications. Boyer maintains that the trial court erroneously circumscribed the scope of defense counsel's questioning by incorrectly stating that his challenges should have been addressed in a *Frye-Reed* hearing. In taking this position, he avers that the trial court conflated the legal standard applicable to challenges to admissibility with the standard applicable to challenges to reliability. In response, the State first contends that the issue is unpreserved. In the alternative, the State argues that the circuit court properly limited defense counsel's cross-examination due to its lack of relevance, and further still that any existing error would properly be regarded as harmless.

A. APPLICABLE AUTHORITY

(i) *Preservation*

The Maryland Rules impose clear limits on those issues which an appellate court will review. "Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). The underlying purpose of the Rule is to prevent unfairness. It is not the role of an appellate court to replace the trial court, nor is the appellate process meant to afford a

party the opportunity to advance theories that they chose not to pursue at trial. *See Conyers v. State*, 354 Md. 132, 150 (1999) ("The rules for preservation of issues have a salutary purpose of preventing unfairness and requiring that all issues be raised in and decided by the trial court, and these rules must be followed in all cases . . . ."). Indeed, "[c]ounsel should not rely on . . . any reviewing court[] to do their thinking for them after the fact." *Id.* at 151.

There is even more specific guidance when it comes to rulings on the admission and exclusion of evidence. An appellate court may only assign error on a ruling that excludes evidence where a party was resultingly prejudiced and "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." Md. Rule 5-103(a). With particular respect to cross-examination, the Court of Appeals explained:

> [T]he proffer of a defendant whose cross-examination has been restricted does not need to be extremely specific, for the obvious reason that the defendant cannot know exactly how the witness will respond . . . . Nevertheless, the proffer must at least be sufficient to establish a need for that cross examination; it is necessary to establish a relevant relationship between the expected testimony on cross-examination and the nature of the issue before the court.

Grandison v. State, 341 Md. 175, 208 (1995); *Peterson v. State*, 444 Md. 105, 125 (2015) ("The preservation rule applies to evidence that a trial attorney seeks to develop through cross-examination. While counsel need not—and may not be able to—detail the evidence expected to be elicited on cross-examination, when challenged, counsel must be able to describe the relevance of, and factual foundation for, a line of questioning.").

(ii) ***Right to Cross-Examine, Judicial Limitations &***
Corresponding Standard of Review

A defendant's right to meaningful cross-examination is secured by the Confrontation Clauses stated in the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."); MD. DECL. RTS. Art. 21 ("[I]n all criminal prosecutions, every man hath a right ... to be confronted with the witnesses against him; to have process for his witnesses; [and] to examine the witnesses for and against him on oath[.]"). Both provisions are read to provide substantially the same protection. *Manchame-Guerra v. State*, 457 Md. 300, 309 (2018); *Derr v. State*, 434 Md. 88, 103 (2013); *Grandison v. State*, 425 Md. 34, 64 (2012); *Martinez v. State*, 416 Md. 418, 428 (2010); *Gupta v. State*, 227 Md. App. 718, 745 (2016).

Criminal defendants must minimally be afforded the opportunity to cross-examine in a manner that meets the constitutional dimension of the right. Stated differently, "[l]imitation of cross-examination should not occur . . . until after the defendant has reached his 'constitutionally required threshold level of inquiry.'" *Smallwood v. State*, 320 Md. 300, 307 (1990) (quoting *Brown v. State*, 74 Md. App. 414, 419 (1988)). Consequently, within the confines of those matters raised during direct examination, a criminal defendant may cross-examine to "elucidate, modify, explain, contradict, or rebut testimony given in chief[,]" or to inquire as to "facts or circumstances inconsistent with testimony." *Id.* Defense counsel must be "permitted to expose to the jury the facts from which jurors, as

the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." *Davis v. Alaska*, 415 U.S. 308, 318 (1974), *cited with approval in Martinez*, 416 Md. at 428.

Beyond these constitutional thresholds, however, a trial court is nonetheless afforded considerable leeway in managing the testimony elicited at trial, particularly through cross-examination. Trial courts are free to "impose reasonable limits on cross-examination" in order to prevent "harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." *Delaware v. Van Ardsall*, 475 U.S. 673, 679 (1986); *Martinez*, 416 Md. at 428; *Lyba v. State*, 321 Md. 564, 570 (1991); *Smallwood*, 320 Md. at 307. And while a court must afford a defendant "wide latitude to cross-examine a witness as to bias or prejudices," that freedom must be balanced against the need to prevent questioning from "stray[ing] into collateral matters which would obscure the trial issues and lead to the factfinder's confusion." *Smallwood*, 320 Md. at 308. In short, "the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam) (emphasis omitted).

The trial court's power to make discretionary judgments regarding the mode of interrogation and presentation of evidence has been codified in Maryland Rule 5-611. The Rule states that a court "shall exercise reasonable control over the mode and order of interrogating witnesses[,]" and will do so in a manner that "(1) make[s] the interrogation and presentation effective for the ascertainment of truth, (2) avoid[s] needless consumption

of time, and (3) protect[s] witnesses from undue harassment and embarrassment." *Id.* In exercising its authority in this regard, a trial court may "make a variety of judgment calls as to whether particular questions are repetitive, probative, harassing, confusing, or the like." *Peterson*, 444 Md. at 124.

In terms of the standard we apply in our review, it is somewhat amorphous, varying in accordance with the basis of a trial court ruling. In this respect, it is largely consistent with the standard we apply when considering a court's ruling on the admissibility of evidence generally. *See* Discussion – Part I.A., *supra*. In *Peterson*, the Court of Appeals articulated the standard as follows:

> In controlling the course of examination of a witness, a trial court may make [discretionary judgments pursuant to Rule 5-611]. The trial court may also restrict cross-examination based on its understanding of the legal rules that may limit particular questions or areas of inquiry. Given that the trial court has its finger on the pulse of the trial while an appellate court does not, decisions of the first type should be reviewed for abuse of discretion. Decisions based on a legal determination should be reviewed under a less deferential standard. Finally, when an appellant alleges a violation of the Confrontation Clause, an appellate court must consider whether the cumulative result of those decisions, some of which are judgment calls and some of which are legal decisions, denied the appellant the opportunity to reach the "threshold level of inquiry" required by the Confrontation Clause.

Peterson, 444 Md. at 124. Further, "[a] decision to limit cross-examination 'does not fit within the limited category of constitutional errors that are deemed prejudicial in every case.' An appellate court must therefore determine 'whether, assuming that the damaging potential of the cross-examination were fully realized, . . . the error was harmless beyond a reasonable doubt.'" *Smallwood*, 320 Md. at 308 (citations omitted) (quoting *Van Arsdall*, 475 U.S. at 682, 684).

B. ANALYSIS

As a starting point for our analysis, we begin with the question of whether Boyer's challenge to the limitations placed on his cross-examination of the State's fingerprint expert was preserved.

As we noted above, preservation of the issue for appeal requires both an adequate proffer before the trial court as well as a showing of prejudice. On the former point, defense counsel's intentions were plain—he sought to "challenge the reliability of the science," apparently through questioning that would direct Ms. Rogers' attention to one or more instances where the ACE–V method was used and a false identification was made. While we would generally regard a challenge to the reliability of expert testimony, or the methods underlying that testimony, as a legitimate end in cross examination, we must nonetheless note that a cross-examiner must also establish a relevant relationship between the testimony they aim to elicit and the issue before the court. It is on this point that Boyer falters, with the reasoning underscoring that conclusion also serving to undermine the notion that he suffered any degree of prejudice.

Before discussing Boyer's tack in challenging the reliability of Ms. Rogers' testimony at trial, we would preliminarily note that the circuit court erred in its assertion that such challenges would only be proper in a *Frye-Reed*[9] hearing. As this Court explained in *Markham v. State*, 189 Md. App. 140, 163 (2009), "Maryland has held, for many years, that fingerprint identification evidence is reliable and admissible without a *Frye-Reed*

[9] *See Frye v. United States*, 293 F. 1013 (D.C.Cir.1923); *Reed v. State*, 283 Md. 374 (1978).

hearing." In that case, we affirmed the judgment of the circuit court with specific regard to its denial of a motion to hold a *Frye-Reed* hearing so defense counsel could challenge the reliability of the ACE–V method. In rejecting the appellant's argument, we noted that

> [t]his view is consistent with the holdings of courts in other jurisdictions. Given the long-standing consensus that fingerprint evidence is reliable, the absence of any suggestion that the ACE–V method of identification differs from that used in the past, and the lack of any reported decision holding that the ACE–V method is unreliable, we cannot find that a trial court is required to revisit this issue and expend scarce judicial resources on a *Frye-Reed* hearing.
>
> *The proper method to address appellant's concerns regarding the fingerprint identification was cross-examination of the fingerprint examiner.*

Id. (emphasis added). Though defense counsel professed his intent to challenge the science underlying the identification, what he sought to do in actuality was highlight instances of failed identifications, generally indicating the possibility of error. In either event, his challenge to reliability would properly be posed through cross-examination.

With that said, as the circuit court properly recognized, the mode of questioning defense counsel undertook stood to elicit responses that were only marginally relevant to the proceedings. The defense was free to challenge the reliability of fingerprint evidence, but the approach counsel chose to pursue was not conducive to developing responses with any significant probative value. What defense counsel essentially attempted to do was get Ms. Rogers to acknowledge one or more cases where the ACE–V methodology was applied and an incorrect identification was made. However, such questioning would not tend to show that she had erred in her own analysis. As a result, any corresponding acknowledgments or concessions would offer little insight with respect to *this* case. Such

testimony would be tantamount to evidence indicating, in a case concerning an automobile accident for example, that "brakes sometimes fail;" or evidence in a trial concerning negligence generally tending to show that "sometimes people act unreasonably under these circumstances." In short, it would serve no purpose other than reminding the jury of something which they already substantially understood—that failures and errors are possible.

Assuming, *arguendo*, that Boyer's line of questioning could meet the low bar of relevance and we could discern a modicum of prejudice such that the issue was preserved for our review, we could not, then, identify any error on the part of the circuit court. As we acknowledged, though the degree of cross-examination must meet the constitutional threshold, beyond that point a trial court has wide-ranging authority with respect to testimony it will admit or deny. Above, we noted a number of justifiable concerns warranting the exercise of that authority, including whether the questioning is "effective for the ascertainment of truth"; needlessly consumes time; risks confusing the issues; is "repetitive and only marginally relevant"; or "stray[s] into collateral matters which would obscure the trial issues." All of these concerns were reasonably implicated by defense counsel's line of questioning, which, as the trial court recognized, could lead to an *ad infinitum* recitation of hypotheticals and ACE–V identifications by the parties that would otherwise fail to relate to any specific failure in the case at bar. Consequently, noting that this decision falls within the ambit of discretionary decisions relegated to the authority of the trial court, we perceive no abuse of that discretion.

III. SUFFICIENCY OF EVIDENCE

Boyer's third contention on appeal is that insufficient evidence was adduced in the circuit court proceedings to support his convictions. He maintains that "[w]ith respect to all the convictions, the evidence was legally insufficient to establish [his] criminal agency beyond a reasonable doubt." The State, conversely, maintains that the evidence was sufficient with respect to all charges.

A. STANDARD OF REVIEW

When assessing whether evidence is legally sufficient to sustain a criminal conviction, an appellate court is not charged with performing a review of the record that substantially amounts to a second trial. *State v. Albrecht*, 336 Md. 475, 478 (1994). Rather, our review is conducted while viewing the evidence in the light most favorable to the State. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Branch v. State*, 305 Md. 177, 182-83 (1986). Further, we must accord "due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Albrecht*, 336 Md. at 478. We must defer to all reasonable inferences of the fact-finder, regardless of whether we would draw those same inferences. *Bible v. State*, 411 Md. 138, 156 (2009); *State v. Suddith*, 379 Md. 425, 430 (2004); *State v. Smith*, 374 Md. 527. Our central point of consideration is whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)); *White v. State*, 363 Md. 150, 162 (2001) ("[An appellate court must] determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could

convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt."). Notably, "[w]hile a valid conviction may be based solely on circumstantial evidence, it cannot be sustained 'on proof amounting only to strong suspicion or mere probability.'" *Moye v. State*, 369 Md. 2, 13 (2002) (quoting *White*, 363 Md. at 163).

With specific regard to fingerprint evidence, we note that such evidence generally must be paired with other evidence excluding the possibility that it was impressed at some time other than during the commission of the charged offense. *McNeil v. State*, 227 Md. 298, 300 (1961); *Lawless v. State*, 3 Md. App. 652, 656 (1968).

B. REVIEW OF CHALLENGED CONVICTIONS

(i) *Rogue & Vagabond | CL § 6-206*

Rogue and vagabond is statutorily defined in CL § 6-206. The statute prohibits two acts, stating as follows:

> (a) A person may not possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a crime involving the breaking and entering of a motor vehicle.
>
> (b) A person may not be in or on the motor vehicle of another with the intent to commit theft of the motor vehicle or property that is in or on the motor vehicle.

Id.

In challenging his conviction, Boyer revisits an argument raised by defense counsel before the circuit court. Specifically, Boyer argues that because the Camaro was inoperable at the time of the theft, it should not be considered a "motor vehicle" within the meaning

of the criminal statute. To wit, during the circuit court proceedings, when moving for a judgment of acquittal, trial counsel argued as follows:

> [W]hat the statute rogue and vagabond says is that a person may not be in or on the motor vehicle of another . . . . We're not talking about a motor vehicle here. We're talking about an unfunctioning car. The definition of a vehicle is something that's used as an instrument of conveyance to transport passengers or merchandise.
>
> This case wasn't operable. It was testified to that it wasn't operable; hadn't been in some time. It's not a motor vehicle, simple as that.

In reiterating this argument on appeal, Boyer offers nothing in the way of legal authority to support his position, simply stating that the Camaro was only partially rebuilt and not in working condition on the day of the theft. The State, in rebutting the argument, similarly failed to cite any contrary authority.

In seeking to resolve this issue we note that the statutory definition of "motor vehicle" is not dispositive. Section 11-135 of the Transportation Article of the Maryland Code simply defines a motor vehicle as "a vehicle that: (i) Is self-propelled or propelled by electric power obtained from overhead electrical wires; and (ii) Is not operated on rails." Likewise, in this Court's review, we have seen nothing in Maryland's jurisprudence precisely on point. Nonetheless, in a handful of instances other jurisdictions have had occasion to consider the issue—specifically, whether inoperability disqualifies a vehicle from being considered a "motor vehicle" within the meaning of a given statute.[10]

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[10] On this point we would note that, in our review, we were able to identify a number of ostensibly relevant cases in other contexts—for instance, determining whether something was a motor vehicle for purposes of establishing physical control in intoxicated driving cases, or in determining the need for insurance. However, such cases we regard as analytically distinct, as they are concerned primarily with the obligations attendant upon

In *Parnell v. State*, 261 S.E.2d 481 (Ga. Ct. App. 1979), the Georgia Court of Appeals considered a case concerning the theft of a 1937 Dodge with no transmission, no radiator, an inoperative engine, and no fenders. The relevant provision of the Georgia Code made sentencing contingent upon whether the property stolen was "an automobile or other motor vehicle." *Id.* at 482. The appellant in the matter contended that "the evidence will not support a felony conviction because the Dodge was in such an extreme state of disrepair that it had ceased to be an automobile or motor vehicle." *Id.* at 481-82. In affirming the conviction, the Court explained that "[d]efinitions of 'motor vehicle' in terms of a self-propelled vehicle are concerned with the design, mechanism, and construction of the vehicle rather than with its temporary condition, and a motor vehicle does not cease to be such merely because it is temporarily incapable of self-propulsion." *Id.* at 482 (quotation and citation omitted).

Similarly, in *Asay v. Watkins*, 751 P.2d 1135 (Utah 1988), the Supreme Court of Utah considered a case where a vehicle with no engine was being towed and swerved into an oncoming lane of traffic. Notably, the Utah Code defined a motor vehicle as "[e]very vehicle which is self-propelled." *Id.* at 1136. In discussing whether the towed vehicle could be considered a "motor vehicle" within the statutory definition, the Court reasoned that "[i]t is a commonly accepted fact that automobiles are not infallible and that from time to time even the best of them are rendered inoperable prior to the time of their ultimate

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those who have or are using a motor vehicle. Those, as a legal matter, are distinct concerns apart from the consideration of whether something *is* a motor vehicle, outright. We have limited our review to those cases concerning the more precise question.

demise. An automobile is thus not deprived of its character as a 'motor vehicle' simply because it becomes inoperable." *Id.* at 1137.[11]

Moreover, in *Dupra v. Benoit*, 705 N.Y.S.2d 781 (App. Div. 2000), the Appellate Division of New York's Supreme Court rendered a memorandum opinion on a matter

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[11] In coming to its holding, the Utah Supreme Court performed an analysis that largely parallels the one performed here, citing a number of other cases. It noted:

> A number of other jurisdictions, construing similar statutes which define motor vehicles as those that are self-propelled, have reached the same conclusion.
>
> In *State v. Ridinger*, [266 S.W.2d 626 (1954)] a case which involved the theft of a tire and wheel from an inoperable bus which had been out of use for some considerable time, the court nevertheless determined that the bus was a "motor vehicle" within the meaning of the applicable statute. The court concluded:
>
>> It is a matter of common knowledge and every day observation that on the used car and outdoor show and display lots of the State, on lots adjoining garages, and in countless yards and various premises in this state, both rural and urban, stand unnumbered thousands of motor vehicles of every description, many in various conditions of disrepair. But few of them stand ready to operate or could otherwise qualify as "self-propelled," but they nonetheless are "motor vehicles." [*Id.* at 632.]
>
> In *State v. Tacey*, [150 A. 68 (1930),] a drunk driving case involving an inoperable automobile being towed by a truck, the court concluded: "Manifestly, it was the design, mechanism, and construction of the vehicle, and not its temporary condition, that the Legislature had in mind when framing the definition of a motor vehicle. Neither the authorities nor sound logic admit of a different conclusion." [*Id.* at 69.] Of like import is *Rogers v. State*, [183 S.W.2d 572 (1944),] also a drunk driving case, involving an inoperable automobile steered by the defendant while being pushed from behind by another automobile.

Asay, 751 P.2d at 1137.

concerning whether an inoperable vehicle was a motor vehicle within the Vehicle and Traffic Law Article of its Code. The Code defined a motor vehicle as "[e]very vehicle operated or driven upon a public highway which is propelled by any power other than muscular power." *Id.* at 782; N.Y. VEH. & TRAF. LAW § 125 (McKinney 2020). The Court held that "a vehicle that is equipped with and propelled by an engine is a motor vehicle even though it is temporarily disabled or inoperable at the time of the accident." *Dupra*, 705 N.Y.S.2d at 782.

Upon review of this analogous authority, we are persuaded and satisfied in concluding that Boyer's argument should be accorded no merit. Indeed, working on motor vehicles, though temporarily disabled or inoperable, may be considered a national pastime. Accordingly, we hold that a motor vehicle includes any vehicle meeting the statutory criteria set out in Section 11-135 of the Transportation Article, and such motor vehicle retains its character as such even during temporary periods of inoperability.

Having so held, we further hold that there was sufficient evidence to support Boyer's conviction for rogue and vagabond under CL § 6-206. Evidence was introduced indicating that the Boyer's fingerprints were on the Camaro. There was also testimony indicating that none of the people authorized to have access to the vehicle knew or were acquainted with Boyer. Testimony indicated that the vehicle was kept off of the roadway, next to Mr. Foster's home, and under a tarp, where it had been for roughly a year preceding the incident. Further, video taken at the time of the theft showed two individuals interfering with the vehicle late one night and without consent. It was undisputed that parts were taken from the vehicle.

In light of this evidence, a reasonable jury could infer, first, that Boyer was present at Foster's residence; second, that his fingerprints were not left at a time other than during the commission of the crime, and; third, that Boyer was one of the individuals shown to be "in or on [Mr. Foster's and Mr. Hannan's] motor vehicle" and responsible for taking the parts attached to it.

(ii) *Three Counts*, *Fourth Degree Burglary | CL § 6-205(c), (d)*

Fourth degree burglary encompasses multiple offenses described in CL § 6-205. With respect to the case at bar, the statute states, in pertinent part:

> **Prohibited—Breaking and entering a storehouse**
>
> (c) A person, with the intent to commit a theft, may not be in or on:
>
> (1) the dwelling or storehouse of another; or
>
> (2) a yard, garden, or other area belonging to the dwelling or storehouse of another.
>
> **Prohibited—Possession of a burglar's tool**
>
> (d) A person may not possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a violation of this subtitle.

Id.

Evidence adduced at trial was sufficient to support Boyer's three convictions for fourth degree burglary. As noted above, fingerprint evidence was adequate to support the inference that Boyer was present at the vehicle at the time the theft was committed. Likewise, testimony offered by Mr. Wagner indicated that the vehicle was kept next to his house, roughly 75 to 100 feet off of the roadway. Straightforwardly, Boyer's presence at the vehicle also establishes his presence in the "yard . . . or other area belonging to the

dwelling . . . of another." Further, testimony was received indicating that a lock on the shed located to the rear of the house had two indentations resembling "cut marks" which a witness perceived to be consistent with the use of bolt cutters. Consequently, there was sufficient evidence to warrant the inference that Boyer was present with a burglar's tool, with the intent to use it in a manner in violation of CL § 6-205.

(iii) *Theft | CL § 7-104*

Lastly, Boyer was convicted of theft in violation of CL § 7-104. The statute provides, in relevant part:

> **Unauthorized control over property**
>
> (a) A person may not willingly or knowingly obtain or exert unauthorized control over property, if the person:
>
> > (1) intends to deprive the owner of the property;
> >
> > (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
> >
> > (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Id.

Consistent with our analysis above, evidence was offered indicating that Boyer was present during the commission of the crime, and that numerous items were, in fact, taken. Testimony further indicated that an itemized list of missing items was provided to the police, with receipts, approximating the value of the missing items at $5,448. A jury could reasonably infer from the fingerprint evidence indicating Mr. Boyer's presence and the video evidence showing the unauthorized interference with Mr. Foster and Mr. Hannan's

vehicle that Boyer was one of the participants, and that items were actually taken from it. Consequently, there was sufficient evidence to sustain Mr. Boyer's conviction under CL § 7-104.

IV. VACATING OVERLAPPING CONVICTION

Boyer's final contention is that he was erroneously convicted of two offenses for the same conduct. Of particular relevance here is CL § 6-205(f), which provides that "[a] person who is convicted of violating § 7-104 of this article may not also be convicted of violating subsection (c) of this section based on the act establishing the violation of § 7-104 of this article." Boyer avers that he "was convicted of violating [CL § 6-205(c)] by virtue of his presence in the driveway and yard belonging to the owners of the Camaro[,]" the same conduct which was necessary to establish his conviction for theft in violation of CL § 7-104. The State concedes this point and agrees with Boyer, with both parties maintaining that Boyer's fourth degree burglary charge for entering the property of another should be vacated.

On this point, we agree with the parties. Because Boyer's entering the property of another was a necessary component of both the challenged burglary and theft offenses, it follows, pursuant to CL § 6-205(f), that the burglary conviction must be vacated.

CONVICTION FOR CL § 6-205(c) VACATED; OTHERWISE, ALL JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID 3/4 BY APPELLANT AND 1/4 BY ANNE ARUNDEL COUNTY.