Circuit Court for Baltimore City
Case No. 122251005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1184

September Term, 2024

DRAQUAN SMITH

v.

STATE OF MARYLAND

Nazarian,
Zic,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: June 12, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Draquan Smith, appellant, was charged with attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, use of a handgun in the commission of a felony or crime of violence, reckless endangerment, and discharging a firearm within Baltimore City, in connection with the June 27, 2022 shooting of Mr. K.[1] On May 18, 2023, following a jury trial in the Circuit Court for Baltimore City, Mr. Smith was convicted of first-degree assault, use of a handgun in the commission of a felony or crime of violence, reckless endangerment, and discharging a firearm within Baltimore City. Mr. Smith was ultimately sentenced to 16 years of incarceration: eight years for first-degree assault; eight years, consecutive, for use of a handgun in the commission of a felony or crime of violence; and one year, concurrent, for discharging a firearm within Baltimore City.

QUESTIONS PRESENTED

Mr. Smith now appeals and presents three questions for our review, which we have rephrased as follows:[2]

1. Was the evidence insufficient to sustain Mr. Smith's convictions?

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[1] For privacy purposes, we refer to the victim by an anonymized letter.

[2] Mr. Smith phrased the questions as follows:

1. Was the evidence insufficient to support Mr. Smith's convictions?
2. Did the trial court commit reversible error by allowing the State to make improper statements during its rebuttal argument?
3. Did the trial court err in admitting surveillance footage that was not authenticated?

2. Did the trial court err by overruling two objections during the State's rebuttal closing argument?

3. Did the trial court err by admitting two surveillance videos pursuant to Maryland Rule 5-901?

For the following reasons, we answer each of these questions in the negative and affirm.

BACKGROUND

On the evening of June 27, 2022, a shooting occurred at the Charles Center Metro Station ("Metro Station") in Baltimore City. Sergeant David Madden of the Maryland Transit Administration ("MTA") responded to the scene, where he observed a broken glass panel, .40 caliber shell casings, and bullet fragments. Surveillance footage from the Metro Station depicted a physical altercation between Mr. K. and a man in a white shirt. During trial, this video was introduced as State's Exhibit 5A, alongside 32 crime scene photographs, which were presented as State's Exhibit 1.

Detective Antonio Hardy, also with the MTA, assumed the role of lead investigator on the day after the shooting. In this capacity, Detective Hardy secured closed-circuit television ("CCTV") footage from the adjacent Hertz Investment Group ("Hertz"), which captured Mr. Smith engaging in an "altercation" with Mr. K., crouching to discharge a firearm, and fleeing eastbound on Fayette Street. The CCTV footage was admitted as State's Exhibit 7 during Detective Hardy's testimony at trial.

During his interview with Detective Hardy, Mr. K., although initially uncooperative, confirmed his presence at the Metro Station on the day of the shooting. Mr. K. disclosed that, during the confrontation, he acquired a firearm, which he

subsequently discarded in the bushes near the scene. A canvass of the area, however, yielded no firearm.

On July 6, 2022, Sergeant Kevin Moody with the MTA facilitated the administration of a photo array to Mr. K. After examining each of the photographs, Mr. K. was unable to identify Mr. Smith as his assailant. Mr. K. neither modified that response nor testified at trial.

Through the pursuit of multiple investigative leads, Sergeant Madden and Detective Hardy identified Mr. Smith as a suspect in this case. Upon reviewing the surveillance footage from the Metro Station, Sergeant Madden determined that Mr. Smith was the individual wearing the white shirt. Nevertheless, Sergeant Madden conceded on cross-examination that he had no prior acquaintance with Mr. Smith; could not discern the location of the tattoos on the man in the video; and based his identification on the totality of the investigation, rather than his personal knowledge.

After uncovering the alias “SK Drah” as a potential nickname for Mr. Smith, Detective Hardy “found an image to a likeness of Mr. Smith” and prepared a corresponding Be-On-The-Lookout (“BOLO”) bulletin containing still images from the CCTV footage. While reviewing the BOLO, Detective Frank Miller of the Baltimore City Police Department recognized Mr. Smith from a 20-minute “face-to-face” interview that he had conducted with Mr. Smith under “bright[,] [f]l[u]orescent lights[,]” at a distance of less than three feet, approximately six weeks earlier. Relying on his personal familiarity with Mr. Smith, Detective Miller confirmed that Mr. Smith was the individual depicted in both the BOLO and the CCTV footage and formally endorsed the BOLO to

memorialize his identification. The signed BOLO was accepted into evidence as State's Exhibit 10.

A search warrant executed at Mr. Smith's residence recovered a loaded 30-round magazine and six 9 millimeter rounds from his brother's bedroom, while a contemporaneous search of Mr. Smith's vehicle produced a learner's permit in his name. This evidence was submitted as State's Exhibits 14 and 16, respectively.

During trial, the State's evidence rested primarily on surveillance footage, law enforcement identifications, and physical evidence recovered from Mr. Smith's residence and vehicle. The introduction of Hertz's CCTV footage, however, was vigorously contested throughout the trial. The State first sought to offer the footage during Sergeant Madden's testimony, but the court sustained the defense's objection after the State affirmed that there was no "testimony [as to] how the images stored on [Hertz's] system w[ere] transferred to [law enforcement.]" Defense counsel renewed her objection to the State's second attempt to offer the footage during Detective Hardy's testimony, arguing that the witness had failed to adequately establish the reliability of the system and the identity of the individual who transferred the files to the flash drive. On this occasion, the trial court, finding that Detective Hardy's testimony satisfied Maryland Rule 5-901's authentication requirements, overruled the defense's objection and admitted the footage into evidence.

At the close of the State's case, and again following presentation of all the evidence, the defense moved "for judgment of acquittal as to all counts." The court ultimately denied both motions.

During closing arguments, defense counsel relied extensively on Mr. K.'s failure to recognize Mr. Smith in the photo array, characterizing it as the only incontrovertible evidence presented at trial. The defense posited that Mr. K. had cooperated with the underlying investigation and, therefore, dismissed any implication that his refusal to testify resulted from fear. On rebuttal, the State attributed Mr. K.'s absence from trial to the pervasive climate of "fear in Baltimore City" and asserted that he engaged with law enforcement solely because of their direct intervention after the shooting. The court overruled the defense's objection to these remarks without a curative instruction. Later in rebuttal, the State reiterated that Mr. K.'s reluctance to cooperate with the investigation was motivated by fear for his personal safety. These comments elicited another objection from the defense, which the court once again overruled.

After a four-day jury trial, Mr. Smith was convicted of first-degree assault, use of a handgun in the commission of a felony or crime of violence, reckless endangerment, and discharging a firearm within Baltimore City. This timely appeal followed. We supplement with additional facts below.

DISCUSSION

I. TO THE EXTENT PRESERVED, THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO SUPPORT MR. SMITH'S CONVICTIONS.

A. Relevant Background

1. Underlying Criminal Investigation at the Metro Station

Sergeant Madden was dispatched to the Metro Station in response to a reported shooting on June 27, 2022. Upon arrival, Sergeant Madden discovered "no victim or

suspect on location[,]" but he observed a broken glass panel alongside shell casings and bullet fragments scattered on the ground. Two bullet casings and two fragments were collected near the entrance, and one additional casing was recovered at the bottom of the escalator. The casings were determined to be .40 caliber.

Sergeant Madden then conducted a comprehensive review of the Metro Station's surveillance footage, concentrating on the period between 5:00 and 6:00 p.m., on the day of the shooting. The footage depicted a man, later identified as Mr. K., entering the station and taking a seat on the steps at the base of the escalator. Shortly thereafter, two other men approached and engaged Mr. K. in a conversation. One of these men, dressed in a white shirt, extended a handshake, which Mr. K. declined. As Mr. K. began to depart, the man in the white shirt closely followed him. After the men exited the station, a physical altercation ensued.

2. Identifications of Mr. Smith

During trial, the State offered into evidence State's Exhibit 1, comprising 32 photographs of the Metro Station taken by Sergeant Madden. Sergeant Madden testified that he had collected both projectiles[3] and surveillance footage from the crime scene.

[3] During direct examination, Sergeant Madden, relying on his 11 years of experience with the MTA, underscored the critical distinction between projectiles and casings:

> [THE STATE]: Sergeant Madden, have you ever seen a projectile?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Okay. And what is a projectile?

(continued)

The State offered the footage into evidence as State's Exhibit 5A. Sergeant Madden then identified Mr. Smith as the individual wearing the white shirt in the video:

> [THE STATE]: Now the individuals dressed in white and black, are these individuals --
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE STATE]: -- do you recognize these individuals?
>
> [SERGEANT MADDEN]: Yes.
>
> THE COURT: Overruled.
>
> [THE STATE]: And who are these individuals?
>
> [SERGEANT MADDEN]: The individual to the left is [Mr. Smith]. I did say yes but I don't recognize the one in the black. I'm sorry. I don't know who that is.
>
> [THE STATE]: So just to clarify, the individual in white you identify as [Mr. Smith]?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Is [Mr. Smith] sitting in the courtroom today?

> [SERGEANT MADDEN]: A projectile is just -- so the round has a casing and a projectile. And when the weapon is fired, the casing falls from [the] weapon[,] and a projectile goes into whatever you point the weapon at and shoot.
>
> [THE STATE]: Okay. And so what was shown to the jury, those small bits, were those the projectiles?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Okay. And so those were, for laymen terms, the bullets, correct?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Okay. And then the casings were what were loaded -- or what were discarded --
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: -- from a handgun.
>
> [SERGEANT MADDEN]: Yes.

> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Can you identify him by an article of clothing?
>
> [SERGEANT MADDEN]: Green shirt.
>
> [THE STATE]: Your Honor, let the record reflect that Sergeant Madden has identified [Mr. Smith].
>
> THE COURT: So noted.

On cross-examination, the defense pressed Sergeant Madden on the basis of his identification:

> [DEFENSE COUNSEL]: You keep saying that there's someone in this video called [Mr. Smith]. Why do you keep saying that?
>
> [SERGEANT MADDEN]: Only because of what I can see on the video and because of what . . . had later been identified as the person. I didn't know [] initially who he was, of course.
>
> [DEFENSE COUNSEL]: So based on the video, you're saying that's [Mr.] Smith in . . . [a] white shirt, black shirt[,] or gray shirt.
>
> [SERGEANT MADDEN]: I'm sorry?
>
> [DEFENSE COUNSEL]: Which one is the --
>
> [SERGEANT MADDEN]: Oh. The white shirt.
>
> [DEFENSE COUNSEL]: White shirt, right? Had you seen [Mr.] Smith before June 27th, 2022?
>
> [SERGEANT MADDEN]: No, ma'am.
>
> [DEFENSE COUNSEL]: Ha[d] you engaged with Mr. Smith before June 27th, 2022?
>
> [SERGEANT MADDEN]: No, ma'am.
>
> [DEFENSE COUNSEL]: How do you know -- you, not someone else, that that's [Mr.] Smith [in the video]?

> [SERGEANT MADDEN]: Based off [] the video. Based off the BOLO that was signed by another person. And based off what was gathered after the initial incident.
>
> * * *
>
> [DEFENSE COUNSEL]: Are there any marks or tattoos or anything unique on that person's body that may be excluded from your investigation?
>
> * * *
>
> [SERGEANT MADDEN]: I can't see anything from the photo.
>
> [DEFENSE COUNSEL]: No. When you looked at that video, did you see any tattoos on that person's arm, particularly right inside of their arm?
>
> [SERGEANT MADDEN]: Not that I can remember or not that I can see.
>
> [DEFENSE COUNSEL]: Did you indicate anywhere or get any information from anywhere whatsoever that that person in that video had any tattoos on their arm?
>
> [SERGEANT MADDEN]: No. Me personally, no.
>
> [DEFENSE COUNSEL]: You did not.
>
> [SERGEANT MADDEN]: I did not.
>
> [DEFENSE COUNSEL]: Did you observe anything anywhere that would indicate the person in that video has tattoos on their arm?
>
> [SERGEANT MADDEN]: I did not.
>
> [DEFENSE COUNSEL]: You said it's [Mr. Smith]. What view of [Mr.] Smith did you have of his body?
>
> [SERGEANT MADDEN]: I did not.
>
> [DEFENSE COUNSEL]: No.
>
> [SERGEANT MADDEN]: Correct.
>
> [DEFENSE COUNSEL]: Right? So the identification, according to you, is based on what someone else said. But you did not have a good look [at] Mr. [] Smith.

> [SERGEANT MADDEN]: That's correct.
>
> [DEFENSE COUNSEL]: That's correct. You didn't look at his arms or his legs or anything like that; did you?
>
> [SERGEANT MADDEN]: I did not.
>
> * * *
>
> [DEFENSE COUNSEL]: So your conclusion that that is [Mr.] Smith is based on a totality of the information?
>
> [SERGEANT MADDEN]: Correct.

Drawing upon investigative leads that he pursued independently, Detective Hardy also identified Mr. Smith as a suspect in this case. As stated above, Detective Hardy developed the alias "SK Drah" as a potential nickname for the suspect based on information obtained from various interviews. Pursuing this angle, Detective Hardy discovered an image associated with the alias that bore a strong resemblance to Mr. Smith. Detective Hardy then drafted a BOLO and presented it to Detective Miller. On direct examination, Detective Hardy expounded on the police tactics that formed the underlying foundation of his testimony:

> [THE STATE]: Did you develop a suspect in this incident?
>
> [DETECTIVE HARDY]: Yes.
>
> [THE STATE]: Who was that suspect?
>
> [DETECTIVE HARDY]: Mr. Smith.
>
> [THE STATE]: How did you develop Mr. Smith as a suspect?
>
> [DETECTIVE HARDY]: I conducted interviews.
>
> * * *
>
> [THE STATE]: Did you ever receive any leads, Detective Hardy?

[DETECTIVE HARDY]: Yes, I did.

[THE STATE]: And what leads did you receive?

[DETECTIVE HARDY]: The lead I received was my sergeant conducted some over source intelligence and developed a lead [] -- from a Ms. [T.][4] And through that, he developed a certain name, SK Drah (phonetic). . . . And through that, we found an image to a likeness of Mr. Smith.

[THE STATE]: Okay. Now after receiving that open intelligence lead, what, if anything, did you do after?

[DETECTIVE HARDY]: So we worked the lead. Basically, we just did a criminal history, looked through several police databases, developed an address for him. And during that time, we conducted a canvass.

* * *

[THE STATE]: Detective Hardy, did there ever come a time where you had a conversation with Detective [] Miller?

[DETECTIVE HARDY]: Yes.

[THE STATE]: Okay. And did you show Detective [] Miller the CCTV footage that you recovered?

[DETECTIVE HARDY]: Yes.

[THE STATE]: And did you show Detective [] Miller the BOLO that you had drafted?

[DETECTIVE HARDY]: Yes.

[THE STATE]: Okay. And did he positively identify anyone in either the BOLO or the CCTV footage?

[DETECTIVE HARDY]: Yes.

[THE STATE]: And who[m] did he identify?

[DETECTIVE HARDY]: Mr. Smith.

[THE STATE]: And was that documented somehow?

[DETECTIVE HARDY]: Yes.

[THE STATE]: How was that documented?

[4] For privacy purposes, we refer to the source of this lead by an anonymized letter.

> [DETECTIVE HARDY]: It gets submitted into evidence once they . . . sign the BOLO.

The State then offered into evidence State's Exhibit 10, the BOLO signed by Detective Miller.

In turn, Detective Miller testified that, on May 13, 2022, he had conducted a recorded 20-minute "face to face" interview with Mr. Smith, "relative to an unrelated matter," under bright, fluorescent lighting at a close distance of "less than 3 feet." Relying on this prior interaction and his personal familiarity with the suspect, Detective Miller identified Mr. Smith as the individual depicted in the BOLO image:

> [THE STATE]: [W]hat is this document?
>
> [DETECTIVE MILLER]: It's the BOLO from [the] Maryland . . . Department of Transportation.
>
> * * *
>
> [THE STATE]: Okay. And [are] there any markings on that document?
>
> [DETECTIVE MILLER]: Yes. My signature. I wrote Draquan Smith. I signed it. . . . And the date and time that I signed it was August 2nd, [20]22.
>
> [THE STATE]: Okay. And so August 2nd, 2022, that is about three months, give or take, after you had interviewed Mr. Smith?
>
> [DETECTIVE MILLER]: Yes.
>
> [THE STATE]: Okay. And why did you sign the BOLO?
>
> [DETECTIVE MILLER]: Saying that I identified him as [Mr.] Smith . . . .

When asked to summarize the basis for his identification of Mr. Smith, Detective Miller stated, "Face, hair. I've met him. I've interviewed him. That stuff."

On cross-examination, the defense challenged the accuracy and reliability of Detective Miller's identification, based on a tattoo on Mr. Smith's right arm:

> [DEFENSE COUNSEL]: Can you describe any marks or tattoos on [Mr. Smith's] body?
>
> [DETECTIVE MILLER]: I believe there's a tattoo on his right upper arm. . . . There's nothing else I can recall off the top of my head.
>
> [DEFENSE COUNSEL]: So he has a tattoo on his right arm --
>
> [DETECTIVE MILLER]: I believe so.
>
> [DEFENSE COUNSEL]: -- is that right? And you observed that tattoo?
>
> [DETECTIVE MILLER]: Yes.
>
> [DEFENSE COUNSEL]: And so in May of 2022, he had a tattoo on his right arm?
>
> [DETECTIVE MILLER]: I believe it's up here. I'm not sure about the forearm.
>
> [DEFENSE COUNSEL]: If I were to tell you that the tattoo is on the lower side of the arm, would you quibble with me?
>
> [DETECTIVE MILLER]: No.
>
> * * *
>
> [DEFENSE COUNSEL]: I'm going to show you what's marked as Defense Exhibit 1 in evidence. Who is that?
>
> [DETECTIVE MILLER]: I don't know.
>
> [DEFENSE COUNSEL]: You don't know.
>
> [DETECTIVE MILLER]: It looks like [Mr.] Smith[,] but I don't see . . . the tattoo that you just showed me in the other photo. But the lighting is bad in the --
>
> [DEFENSE COUNSEL]: The lighting is bad?
>
> [DETECTIVE MILLER]: It's not as -- there's shadows and whatnot. I can't really see his arm.

> [DEFENSE COUNSEL]: The lighting is quite bright on that right arm. Wouldn't you agree with me?
>
> [DETECTIVE MILLER]: I think there is -- it's not as bright as the one on the -- or it's a little brighter the one on the left arm. Again, you can't really see the whole detail.
>
> [DEFENSE COUNSEL]: And just to be clear, this is from the CCTV footage that you said you looked at to identify [Mr.] Smith.
>
> [DETECTIVE MILLER]: I didn't see that footage. That footage is --
>
> [DEFENSE COUNSEL]: Oh. You didn't see this one?
>
> [DETECTIVE MILLER]: That footage is down in the –
>
> [DEFENSE COUNSEL]: Let me show it to you again. Does it look like anything that you believe you observed when you were making your identification of the person you say is [Mr.] Smith?
>
> [DETECTIVE MILLER]: Well, he's wearing the exact same clothing, the same . . . bracelet on the left wrist as shown in this photo here.
>
> [DEFENSE COUNSEL]: So if I were to represent to you that that is a still from the CCTV footage in the State's case, do you have any reason to quibble with me?
>
> [DETECTIVE MILLER]: No.

3. Mr. K.'s Interview and Photo Array

During an interview with Detective Hardy after the shooting, Mr. K. confirmed his presence at the Metro Station on June 27, 2022. Mr. K. reportedly informed Detective Hardy "that he had gotten into an altercation with an individual . . . outside of his work that day of the incident." Regarding the firearm used during the shooting, Mr. K. told Detective Hardy that "he put it in the bushes in the west top side of the bus stop[.]" Detective Hardy and a patrol officer conducted a canvass of the bushes, but no firearm was recovered. Detective Hardy later testified that Mr. K. "wasn't forthcoming and

upfront during the initial interview" and provided false information about the location of the firearm.

Detective Hardy then compiled a photo array to facilitate Mr. K.'s identification of the suspect. On July 6, 2022, Sergeant Moody administered the photo array to Mr. K. in a blind procedure[5] at Mr. K.'s residence. Sergeant Moody explained that, before presenting the photo array to Mr. K., he read aloud the formal written instructions, which required him to indicate, on the corresponding form, whether Mr. K. recognized the suspect based on his designated photograph. Ultimately, Mr. K. was unable to positively identify Mr. Smith in the photo array.

On cross-examination, Sergeant Moody testified that Mr. K. neither refused to participate in the photo array nor expressed any inability or unwillingness to actively engage in the identification process:

> [DEFENSE COUNSEL]: When you got [to Mr. K.'s residence], you met with Mr. [K.]?
>
> [SERGEANT MOODY]: Yes, ma'am.
>
> [DEFENSE COUNSEL]: Did Mr. [K.] refuse to meet with you?

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[5] Sergeant Moody testified that he oversaw the photo array as a "blind administrator." He explained that blind procedures serve to eliminate any inadvertent influence, suggestion, or bias by the lineup's administrator:

> [SERGEANT MOODY]: And the reasoning behind that is [that] I don't know who the suspect is. So that way . . . I can't point or nudge or, you know, kind of give whoever . . . this victim or witness is, . . . a heads up on who the person is. So I come. I read the instructions and literally just let that person flip through the pictures and . . . find out or decide if they recognize any of the people [who are] depicted in that lineup.

> [SERGEANT MOODY]: No, ma'am.
>
> [DEFENSE COUNSEL]: Did he tell you that he was afraid to participate in this photo array?
>
> [SERGEANT MOODY]: No, ma'am.
>
> [DEFENSE COUNSEL]: Did he tell you that he doesn't remember the alleged incident?
>
> [SERGEANT MOODY]: No, ma'am.
>
> [DEFENSE COUNSEL]: Did he say anything that would give you the indication that somehow he couldn't actively participate in the photo array?
>
> [SERGEANT MOODY]: No, ma'am.

Detective Hardy's testimony confirmed the significance of Mr. K.'s failure to identify Mr. Smith during the photo array:

> [DEFENSE COUNSEL]: Detective, as lead investigator, is there anything in the whole world of information that you got, anything, everything, emails, clarification, text message, photo array, anything at all whatsoever that leads you to believe that Mr. [K.] identified Mr. [] Smith as the attacker?
>
> [DETECTIVE HARDY]: I don't have any belief. I just went with the facts of the case, ma'am.
>
> [DEFENSE COUNSEL]: Is there anything in the world of the facts, anything whatsoever, as far as the eye can see, anything at all --
>
> [DETECTIVE HARDY]: Only thing I have is what's documented on the photo array, ma'am.
>
> [DEFENSE COUNSEL]: And so there is no documentation that says Mr. [K.] identified Mr. Smith as the attacker.
>
> [DETECTIVE HARDY]: If it's not -- if it's not in the supplements and they're not on that photo array, it's not there.
>
> [DEFENSE COUNSEL]: And if you're not saying it from the stand, it's not there, right?
>
> [DETECTIVE HARDY]: Yes, ma'am.

> [DEFENSE COUNSEL]: Okay. And you're not saying that from the stand. What you're saying is there is nothing in your investigation that says Mr. [K.] said Mr. Smith attacked him, correct?
>
> [DETECTIVE HARDY]: Correct.

Notably, Mr. K. did not testify during trial. Relying on these deficiencies, the defense implored the jury to infer that Mr. Smith was not Mr. K.'s attacker.

4. State's Exhibit 14

During Detective Hardy's testimony, the State successfully offered into evidence State's Exhibit 14, which included a loaded "30-round magazine" and "a set of six []9 millimeter rounds[]" recovered from Mr. Smith's residence.

5. Motion for Judgment of Acquittal ("MJOA")

At the close of the State's case, defense counsel moved for judgment of acquittal "as to all counts." Beginning with Count III,[6] first-degree assault, the defense argued:

> With regard to assault first[-]degree, there's just literally no evidence of permanent or protracted injury. And again, if use of a firearm is the garden variety of the assault first[-]degree, there is no evidence in the record that we can see that this person brandished or had or used a firearm in the commission of an assault second[-]degree.

Next, defense counsel presented her argument as to Count VI, use of a firearm in the commission of a felony or crime or violence:

> With regard to number 6, handgun use in a felony or crime of violence, so by definition, a handgun has to meet the Public Safety Article definition of either propelling a projectile with the use of gunpowder or [a] similar substance. There's been

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[6] For clarity and consistency, we present the relevant charges in an order that deviates from the sequence set forth in Mr. Smith's MJOA.

> no testimony here from any firearms examiner or expert that says whatever it is that was expelled when it was expelled did so to even meet the definition of a handgun. . . .
>
> If the crime of violence is assault, maybe assault [in the] first[-degree.] . . . [W]e heard nothing from Mr. [K.] that he was injured or harmed or an assault in the first[-]degree was committed on him. You could physically see a test -- again, it's our position that's not [Mr.] Smith. But nevertheless, the crime of violence at this point would necessarily be assault [in the] first[-degree]. But since there's no testimony that [the] suspect . . ., [Mr.] Smith, fired a firearm, . . . [the] handgun definition is not met nor is the crime of violence that would be the predicate offense to get to Count VI.

The defense then addressed the evidence supporting the reckless endangerment charge:

> As to Count V, we'd also make a motion for acquittal on reckless endangerment. At best, we think there's a tussle between Mr. [K.] and the suspect. The truth is . . . there is no conduct meeting the definition of reckless endangerment. I know the jury instructions say even if someone did have a firearm, . . . if you were to believe that Mr. Smith had a firearm, the mere carrying of a firearm is not sufficient. It has to be used in a manner that puts someone in imminent danger of death or serious bodily injury. Again, we don't see that on him. That was not presented in the State's case.

Finally, defense counsel contested the sufficiency of the evidence pertaining to Count VII, discharging a firearm in Baltimore City:

> As to what is listed as discharging a firearm in Baltimore County, Count VII, certainly, the elements require that there be, even at this low burden stage, evidence that the accused in fact discharged a firearm in Baltimore City. At this point, the evidence is testimony from the stand and CCTV footage that a window was shot out. Certainly, the witness has surmised because MTA doesn't leave their property damage for too long[,] [i]t had to have happened during the scuffle.

> There was also testimony that it is unclear when this shooting occurred. And from what we can see in the CCTV footage, (indiscernible – 10:57:51) believe this is [Mr.] Smith. There's a struggle inside of the [Metro Station] at the top of the escalator. The witness would certainly have to surmise that when the fire[arm] would have gone off -- but again, there is no testimony that [Mr.] Smith fired or discharged a weapon.
>
> You can see in the CCTV footage that Mr. [K.] brandished and pointed a weapon and the person that the State is presenting[] . . . as [Mr.] Smith is "running away." So with regard to the discharge of a firearm, there is literally no evidence that this person discharged a firearm in Baltimore City, Your Honor.

After discussing the specific elements of each charged offense, the defense argued that the State had presented insufficient evidence to conclusively identify Mr. Smith as the individual depicted in the surveillance video:

> I'll wrap up with this. As to all of the counts, certainly, the State has the obligation of establishing that [Mr. Smith] was the person [in the surveillance footage]. We did just hear from [Detective Miller] that in fact [Mr.] Smith does have a pretty distinct tattoo on [the] lower right portion of his arm. . . . [T]here's nothing presented in the record that shows th[e] person in the white and the blue has the tattoo on any of his arms. Though [Detective Miller] thought [the tattoo] was on the upper part, it was in fact on the mid to lower part. We think identification is still the issue.
>
> So the only in-court identification is from [Detective Miller] . . . and what is in evidence from a photo from 11/2020, so we've had it for some time now, is a person that does not match the description on the CCTV footage or even the BOLO, Your Honor.
>
> So for these reasons, we're asking for judgment of acquittal as to Counts I through VII.

The State opposed the motion, responding, in relevant part, that the evidence was sufficient to establish Mr. Smith's identity as the assailant because two witnesses—

Sergeant Madden and Detective Miller—had independently recognized Mr. Smith in the surveillance footage. The State further argued that the evidence from both the defense and the State "leads to a reasonable . . . and certain conclusion that the individual displaying the firearm, discharging the firearm, [and] getting into the scuffle [with Mr. K.] was [Mr.] Smith." According to the State, these findings "are left for a jury[,] [a]nd a reasonable factfinder can look at the evidence and conclude that these counts are sustainable."

After defense counsel rested, she renewed the MJOA without providing any additional substantive support:

> [DEFENSE COUNSEL]: We would renew our [MJOA] as to all counts understanding that the burden of proof -- the burden hasn't shifted but the level --
>
> THE COURT: Right.
>
> [DEFENSE COUNSEL]: -- the threshold has certainly shifted. And we will just incorporate in my reference to my . . . arguments we made at the close of the State's case.

The circuit court ultimately denied the defense's motion and its renewal "[i]n light of the testimony and the evidence, viewing it in the light most favorable to the State[.]"

B. Parties' Contentions

On appeal, Mr. Smith argues that "[t]he evidence is insufficient to show that [he] committed any of the alleged offenses." He specifically contends that "there was insufficient evidence of criminal agency."[7] Citing to *Johnson v. State*, 227 Md. 159, 165

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[7] Evidence of criminal agency is necessary to establish a criminal defendant's participation in an offense. Thus, to secure a conviction, the State must prove both the (continued)

(1961), Mr. Smith postulates that "there is no evidence which would allow a finding of criminal agency based on anything more than conjecture and surmise, and the circumstantial case against [him] is fully consistent with a reasonable hypothesis of innocence."

The gravamen of his contention appears to be the absence of corroborative testimony by Mr. K. identifying Mr. Smith as his assailant. In support of this proposition, Mr. Smith emphasizes that "Mr. [K.], the State's alleged victim, did not testify at trial. The evidence did show, however, that when Mr. [K.] was shown a photo array, he did not identify the photograph of Mr. Smith as a person involved in his altercation." Mr. Smith contests the reliability of an identification derived from the CCTV footage, positing that the "distinctive tattoo on his arm" was imperceptible in the video and the corresponding photographs. He also challenges the validity of Detective Miller's "identifi[cation of] the man in the white shirt in the surveillance video as Mr. Smith[]" because Detective Miller was not present at the crime scene.

Citing to no supportive case law, the State responds that "[m]ost of [Mr.] Smith's appellate evidentiary-insufficiency arguments were not preserved" for our review. The State contends that "defense counsel did not argue[, in support of her MJOA,] that the evidence was insufficient to show that [Mr.] Smith was [the suspect in the video] because [Mr. K.] did not testify at trial, [Mr. K.] did not identify [Mr.] Smith before trial, [and]

elements of the charged offense and "'criminal agency (including [the defendant's] presence at the scene where pertinent)' beyond a reasonable doubt." *State v. Simms*, 420 Md. 705, 722 (2011) (quoting *Schmitt v. State,* 140 Md. App. 1, 30 (2001)).

Detective Miller was not present at the scene of the crime." Although the State stipulates that "defense counsel mentioned the lack of testimony by [Mr. K.] in the [MJOA,]" it clarifies that any such reference "was in the context of arguing that the evidence was insufficient as to certain elements of first-degree assault and second-degree assault. Those arguments did not raise the issue of criminal agency as to all charges 'with particularity.'" Thus, according to the State, the issue of criminal agency is not properly before this Court.

Alternatively, the State contends that, even if Mr. Smith's criminal agency argument was preserved for our review, "the evidence was sufficient[]" to uphold his convictions. To validate this claim, the State relies on the "two videos of the incident[,]" "the parties' arguments regarding the videos," and the jury's "observation of [Mr.] Smith during the [four]-day trial[.]" The State emphasizes that "two witnesses[, namely, Sergeant Madden and Detective Miller,] identified [Mr.] Smith on the surveillance video." The State underscores the veracity of Detective Miller's identification, in particular, by arguing that "he was familiar with [Mr.] Smith because he had previously conducted a 20-minute 'face-to-face' interview of [Mr.] Smith 'relative to an unrelated matter.' During the interview, the lighting was 'bright' and [Detective Miller] was '[l]ess than 3 feet' away from [Mr.] Smith." (Fourth alteration in original.)

C. Standard of Review

"In reviewing a claim of insufficiency of the evidence, we do not 'undertake a review of the record that would amount to, in essence, a retrial of the case.'" *Riggins v. State*, 155 Md. App. 181, 209 (2004) (quoting *State v. Albrecht*, 336 Md. 475, 478

(1994)). Instead, "[w]e give 'due regard to the jury's findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *State v. Suddith*, 379 Md. 425, 430 (2004) (citations omitted); *see also Derr v. State*, 434 Md. 88, 129 (2013) (acknowledging that "the finder of fact has the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony"). "[A]bsent clear error in its fact-finding, an appellate court is required, in deference to the trial court, to accept those findings of fact." *Jones v. State*, 343 Md. 448, 460 (1996) (citation omitted). This "standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted).

"The fact-finder 'possesses the ability to choose among differing inferences that might possibly be made from a factual situation,'" *Reeves v. State*, 192 Md. App. 277, 302 (2010) (quoting *Suddith*, 379 Md. at 430), and we, accordingly, "defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *State v. Mayers*, 417 Md. 449, 466 (2010). "Even in a case resting solely on circumstantial evidence, . . . if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury . . . ." *Ross v. State*, 232 Md. App. 72, 98 (2017). "An inference drawn from circumstantial evidence 'need only

be reasonable and possible; it need not be necessary or inescapable.'" *State v. Smith*, 374 Md. 527, 539 (2004) (quotation omitted).

Thus, our concern is "only with whether the verdicts were supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Albrecht*, 336 Md. at 479. "When reviewing a criminal conviction for sufficiency of the evidence, [w]e will consider the evidence adduced at trial sufficient if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime[] beyond a reasonable doubt." *Beckwitt v. State*, 249 Md. App. 333, 351 (2021) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)); *see also Fraidin v. State*, 85 Md. App. 231, 241 (1991) (explaining that the question is not "whether the evidence *should have* or *probably would have* persuaded the majority of fact[-]finders but only whether it *possibly could have* persuaded *any* rational fact[-]finder"). Similarly, we review "all reasonable inferences deducible from the evidence in a light most favorable to the State." *Smith*, 415 Md. at 186 (citation omitted).

D. The Preservation Requirement

"A defendant may move for judgment of acquittal on one or more counts[] . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence." Md. Rule 4-324(a). "Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion." *Whiting v. State*, 160 Md.

App. 285, 308 (2004). "In a jury trial, the only way to raise and to preserve for appellate review the issue of the legal sufficiency of the evidence is to move for a judgment of acquittal *on that ground*." *Fraidin*, 85 Md. App. at 244 (emphasis added).

"The issue of sufficiency is not preserved when the defendant's [MJOA] is on a ground different than that set forth on appeal." *Hobby v. State*, 436 Md. 526, 537-38 (2014). Thus, in challenging the denial of a MJOA, "[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal. . . ." *Starr v. State*, 405 Md. 293, 303 (2008) (quotation omitted); *see also Jones v. State*, 213 Md. App. 208, 215 (2013) (explaining that our evaluation excludes "[g]rounds that are not raised in support of a [MJOA] at trial") (citing *Graham v. State*, 325 Md. 398, 417 (1992)) (further citation omitted).

Maryland Rule 4-324(a) requires a defendant to "state *with particularity* all reasons why the motion should be granted." (Emphasis added.) Under this Rule, a defendant is required to "argue[] *precisely* the ways in which the evidence is lacking[,]" *Hobby*, 436 Md. at 539 (emphasis added), and articulate "the particular elements of the crime as to which the evidence is deficient." *Fraidin*, 85 Md. App. at 244-45. "The language of the rule is mandatory, *State v. Lyles*, 308 Md. 129, 135 (1986), and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his [MJOA]." *Whiting*, 160 Md. App. at 308 (citations omitted). "[A] motion which merely asserts that the evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with [Maryland Rule 4-324(a)] and thus does not preserve the issue of sufficiency for appellate review." *Brooks v. State*, 68 Md. App. 604, 611

(1986) (citations omitted); *see also Garrison v. State*, 88 Md. App. 475, 478 (1991) (holding that a defendant who moves for judgment of acquittal "without articulating the particularized reasons . . . waive[s] any complaint with respect to the sufficiency of the evidence").

Here, in moving for judgment of acquittal at the close of the State's case, and again following the presentation of all the evidence, defense counsel contended that the State had introduced insufficient evidence to prove the elements of the charges against Mr. Smith. First, the defense asserted that the State's witnesses did not provide compelling testimony that Mr. Smith "fired or discharged a weapon[,]" as required to sustain a conviction for discharging a firearm in Baltimore City. Second, regarding the use of a firearm in the commission of a felony or crime of violence charge, defense counsel argued that the absence of testimony from a firearms examiner or expert witness left the firearm's operability and conformity with the statutory definition unestablished. Third, as to the charge of reckless endangerment, the defense maintained that the interaction between Mr. K. and the suspect amounted to no more than a "tussle," which, contrary to the State's position, did not constitute conduct posing an imminent risk of death or serious injury. Fourth, the defense contended that the evidence failed to demonstrate a permanent or protracted injury, necessary to support the first-degree assault charge.

Mr. Smith now argues, for the first time on appeal, that the State produced insufficient evidence of criminal agency, based *specifically* on Detective Miller's absence from the crime scene, Mr. K.'s refusal to testify during trial, and Mr. K.'s inability to

positively identify Mr. Smith as his assailant beforehand. Nevertheless, at the conclusion of his MJOA, the defense *generally* contended that the surveillance video's failure to clearly display Mr. Smith's arm tattoo significantly undermined the State's identification theory:

> [DEFENSE COUNSEL]: We did just hear from [Detective Miller] that in fact [Mr.] Smith does have a pretty distinct tattoo on [the] lower right portion of his arm. While he hesitated -- there's nothing presented in the record that shows th[e] person in the white and the blue has the tattoo on any of his arms. Though [Detective Miller] thought [the tattoo] was on the upper part, it was in fact on the mid to lower part. *We think identification is still the issue.*
>
> So the only in-court identification . . . is [of] a person [who] does not match the description on the CCTV footage or even the BOLO, Your Honor.

(Emphasis added.)

Therefore, we will resolve any "uncertainty as to preservation in favor of appellant and reach the merits." *Pinkney v. State*, 151 Md. App. 311, 325 (2003).

E. Sufficiency of the Evidence

In reviewing the sufficiency of the evidence, this Court does not "distinguish between circumstantial evidence and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence." *Montgomery v. State*, 206 Md. App. 357, 385 (2012). Because "[c]ircumstantial evidence is as persuasive as direct evidence[,]" *Mangum v. State*, 342 Md. 392, 400 (1996) (quotation omitted), "[n]o greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the trier of

fact must be convinced beyond a reasonable doubt of the guilt of the accused." *Hebron v. State*, 331 Md. 219, 226-27 (1993) (quotation omitted).

"[C]ircumstantial evidence alone is 'sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.'" *Handy v. State*, 175 Md. App. 538, 562 (2007) (quotation and citations omitted); *see also Pinkney*, 151 Md. App. at 327 ("[G]enerally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts."). "It is not necessary that the circumstantial evidence exclude every possibility of the defendant's innocence, or produce an absolute certainty in the minds of the jurors." *Hebron*, 331 Md. at 227 (quotation omitted). Similarly, "[i]t is not necessary that there be an eyewitness placing" the defendant at the scene at the time of the crime. *Whiting*, 160 Md. App. at 308.

Ultimately, circumstantial evidence "may corroborate other testimony and may be used to prove any element of the crime, such as . . . the criminal agency of the accused." *Nichols v. State*, 5 Md. App. 340, 350 (1968).

Thus, we are unpersuaded by Mr. Smith's assertion that "there was insufficient evidence of criminal agency" simply because Mr. K. failed to identify him during the photo array and/or at trial. Mr. Smith is essentially asking us to substitute our judgment for the jury's and conclude that the absence of Mr. K.'s testimony outweighs the CCTV footage, the law enforcement identifications, and the physical evidence recovered from his residence. *See Winston v. State*, 235 Md. App. 540, 576 (2018) (explaining that the

appellant's "sufficiency argument . . . is simply an invitation to reweigh the evidence, which we cannot do").

Contrary to Mr. Smith's position, neither Mr. K.'s refusal to testify as an eyewitness nor the State's inability to recover a firearm diminishes the sufficiency of the evidence presented during trial. *Whiting*, 160 Md. App. at 308; *Pinkney*, 151 Md. App. at 327. These facts merely indicate that the State's case properly relied on circumstantial, rather than direct, evidence. *See Mangum*, 342 Md. at 400 (holding that "[c]ircumstantial evidence is as persuasive as direct evidence"); *Hebron*, 331 Md. at 226 ("Maryland has long held that there is no difference between direct and circumstantial evidence.") (citations omitted). As explained below, the circumstantial evidence adduced by the State is sufficient to support Mr. Smith's convictions because "the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of [] guilt . . . ." *Handy*, 175 Md. App. at 562 (quotation and citations omitted).

The State's evidence establishing criminal agency consisted primarily of two distinct sets of surveillance videos: the Metro Station's recordings (State's Exhibit 5A) and Hertz's CCTV footage (State's Exhibit 7). Each exhibit independently documented the events that transpired on June 27, 2022, from different perspectives, with concordant timestamps. Because circumstantial evidence "may be used to prove . . . the criminal agency of the accused[,]" *Nichols*, 5 Md. App. at 350, the jury, upon thorough examination of the videos, direct observation of Mr. Smith during the four-day trial, and careful consideration of the parties' respective arguments, could draw its own reasonable conclusions and inferences as to the identity of the perpetrator in the footage. *See*

Mayers, 417 Md. at 466 (describing the jury's obligation to draw reasonable inferences from admitted evidence).

Moreover, two law enforcement officers—Sergeant Madden and Detective Miller—positively identified Mr. Smith as the individual in the white shirt depicted in the two videos. Relying on the Metro Station's surveillance footage, the signed BOLO, and the physical evidence amassed after the shooting, Sergeant Madden testified that "[t]he individual on the left is [Mr. Smith]." Similarly, after examining the BOLO and CCTV footage presented by Detective Hardy, Detective Miller recognized Mr. Smith as "the individual in the white t-shirt[.]" Detective Miller testified about his personal familiarity with Mr. Smith and his extensive 28 years of experience with the Baltimore City Police Department. He elaborated that, approximately six weeks prior to the shooting, he had conducted a "face-to-face" interview with Mr. Smith for approximately 20 minutes in a "bright" room, at a relative proximity of less than three feet.

Notwithstanding Mr. Smith's challenges to the reliability of both identifications during cross-examination, the jury retained the exclusive authority to assess the credibility of Sergeant Madden's and Detective Miller's testimony and to accept or reject, in whole or in part, any evidence presented during trial. *See Pryor v. State*, 195 Md. App. 311, 329 (2010) ("A fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony.") (citation omitted).

Moreover, the execution of a search warrant at Mr. Smith's residence and vehicle uncovered physical evidence, including a loaded 30-round magazine, six 9 millimeter

rounds, and a learner's permit in his name.

Collectively, when evaluated in the light most favorable to the State, *see Beckwitt v. State*, 249 Md. App. 333, 351 (2021) (quotation omitted), we conclude that the direct and circumstantial evidence presented at trial was legally sufficient to establish Mr. Smith's criminal agency. *See Ross v. State*, 232 Md. App. 72, 98 (2017) (describing the jury's role in drawing reasonable inferences from circumstantial evidence); *Pinkney*, 151 Md. App. at 327 (explaining that the State may prove the defendant's guilt through circumstantial evidence). In the interest of completeness, however, we summarize the evidence establishing each element of the four crimes of which Mr. Smith was ultimately convicted.

1. First-Degree Assault

In Maryland, first-degree assault is a statutory crime. *See* Md. Code Ann., Criminal Law Article ("CR") (2002, Repl. Vol. 2021) § 3-202. CR § 3-202(b) enumerates two distinct modalities of first-degree assault:

> (1) A person may not intentionally cause or attempt to cause serious physical injury[8] to another.

[8] Maryland law defines "serious physical injury" as physical injury that:

> (1) creates a substantial risk of death; or
>
> (2) causes permanent or protracted serious:
>
> (i) disfigurement;
>
> (ii) loss of the function of any bodily member or organ; or
>
> (iii) impairment of the function of any bodily member or organ.

CR § 3-201(d).

> (2) A person may not commit an assault with a firearm, including:
>
> > (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or a short-barreled rifle, as those terms are defined in § 4-201 of this article;
> >
> > * * *
> >
> > (iv) a regulated firearm, as defined in § 5-101 of the Public Safety Article.

Thus, "[t]o prove first-degree assault, . . . the State must prove [] that appellant either used a firearm to commit an assault, or that he intended to cause serious physical injury in the commission of the assault." *Snyder v. State*, 210 Md. App. 370, 380 (2013) (citing CR § 3-203). To establish a defendant's guilt under either theory, the State need not demonstrate that he inflicted a "serious physical injury" or even a "completed injury." *Brown v. State*, 182 Md. App. 138, 178-79 (2008).[9]

CR § 3-202(b)(1) authorizes a conviction for first-degree assault based on an *attempt* to cause serious physical injury. *See Lamb v. State,* 93 Md. App. 422, 433 (1992) (explaining that "assault" includes attempted battery); *see also* CR § 3-201 ("[T]he crimes of assault, battery, and assault and battery[ ] retain their judicially determined meanings."). In those cases, the requisite intent may be deduced from the defendant's conduct because the jury "may infer that one intends the natural and probable

[9] As a threshold matter, defense counsel's argument in the MJOA that "there's just literally no evidence of permanent or protracted injury" rests on a fundamental misapprehension of the applicable law. Because the State was not required to prove "serious physical injury" to obtain a conviction for first-degree assault, *Brown*, 182 Md. App. at 179, we decline to further address the substantive merits of this contention.

consequences of his act." *Chilcoat v. State*, 155 Md. App. 394, 403 (2004) (quotation and internal marks omitted).

Alternatively, under CR 3-202(b)(2), "any assault with a 'firearm' qualifies as first-degree assault." *Brown*, 182 Md. App. at 179.

In the underlying case, the State argued at trial that Mr. Smith committed "the second modality of assault in the first-degree, which is using a firearm in the commission of an assault[.]" Section 5-101(n) of the Public Safety ("PS") Article of the Maryland Code, (2003, Repl. Vol. 2022), defines a "[f]irearm" as "a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive[.]" PS § 5-101(h)(1)(i). The statute defines a "handgun" as "a firearm with a barrel less than 16 inches in length[,]" which may "include[] signal, starter, and blank pistols."

"Maryland's appellate courts have held that evidence to support a conviction for a handgun crime is insufficient unless a jury can find beyond a reasonable doubt that the weapon used met the statutory definition of a 'handgun.'" *Brown*, 182 Md. App. at 166 (citations omitted). Nevertheless, "tangible evidence in the form of the weapon is not necessary to sustain a conviction; the weapon's identity as a handgun can be established by testimony or by inference." *Id.*

Here, the sequence of events depicted in the Metro Station's surveillance footage established the predicate factual basis to sustain Mr. Smith's first-degree assault conviction.

First, the evidence introduced at trial furnished multiple interrelated bases for the jury to conclude that "the weapon used met the statutory definition of a 'handgun.'" *Id.* (citations omitted). Relying on more than 11 years of relevant experience with the MTA, Sergeant Madden testified that the three casings recovered from the Metro Station were "discarded -- from a handgun." During cross-examination, he verified that "the caliber shell that was used was a .40 caliber." Based on his direct observation of the surveillance footage, Sergeant Madden unequivocally stated that "[he] observed a struggle and the aftermath tells [him] that a firearm was discharged based on the evidence[] there." While acknowledging that the footage had "no sound," he reaffirmed that "there was a firearm used [in that struggle]." Thus, even though the State produced no "tangible evidence in the form of the weapon," we conclude that its "identity as a handgun" was sufficiently "established by testimony or by inference." *Id.* (citations omitted).

Second, the evidence confirms that Mr. Smith "commit[ed] an assault with [that] firearm." CR § 3-202(b)(2). Sergeant Madden's testimony placed Mr. Smith at the crime scene during the time of the shooting. Upon thorough examination of the relevant footage, Sergeant Madden identified Mr. Smith as the individual in the white shirt, who followed Mr. K. up the escalator to the location where the shooting occurred. In turn, Hertz's CCTV footage provided critical details about the events that transpired after Mr. Smith and Mr. K. exited the Metro Station. After reviewing the footage, Detective Hardy characterized the incident as an "altercation where Mr. Smith and Mr. [K.] [] f[ought]" in the "vestibule area of the Metro [S]tation." Detective Hardy testified that "[he] could see a black object[,]" which he recognized as a "weapon." He explained that Mr. Smith

"[took] [] a crouching angle to discharge [the] weapon" in Mr. K.'s direction and "gain[ed] control of the weapon . . . when the strikes occurred. . . ." Because the State established that Mr. Smith "used a firearm to commit an assault," the evidence accordingly "prove[s] first-degree assault." *Snyder*, 210 Md. App. at 380 (citing CR § 3-203).

We, therefore, conclude that the evidence, when viewed in the light most favorable to the State, *see Beckwitt*, 249 Md. App. at 351 (quotation omitted), was sufficient to sustain Mr. Smith's first-degree assault conviction.

2. Use of a Handgun in the Commission of a Felony or Crime of Violence

"A person may not use a firearm in the commission of a crime of violence[.]" CR § 4-204(b). PS § 5-101(c)(3) provides an exhaustive list of qualifying crimes of violence, including "assault in the first . . . degree." To sustain a conviction for "use of a firearm in the commission of a felony or crime of violence," the State must prove the following elements beyond a reasonable doubt: "(1) that a firearm was used by the defendant, and (2) that he used it in the commission of a felony or crime of violence." *Hallowell v. State*, 235 Md. App. 484, 507 (2018) (citing *Hoffert v. State*, 319 Md. 377, 379-80 (1990)).

Here, the predicate crime of violence is first-degree assault. Because the evidence supported Mr. Smith's conviction for first-degree assault with a firearm, it similarly suffices to uphold his conviction for use of a firearm in the commission of the same

underlying crime of violence. *See Sequeira v. State*, 250 Md. App. 161, 191 (2021) (explaining that "overlapping factual allegations in the lead count . . . and the lower count . . . compel[] the conclusion that the mode of commission of the crimes was the same, even though not specified") (citation omitted).

3. Reckless Endangerment

"The crime of reckless endangerment is 'purely a statutory crime.'" *Marlin v. State*, 192 Md. App. 134, 155 (2010) (quoting *Holbrook v. State*, 364 Md. 354, 365 (2001)). Pursuant to CR § 3-204(a)(1), "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another . . . ." "The elements of . . . reckless endangerment are: 1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly." *Jones v. State*, 357 Md. 408, 427 (2000).

"Reckless endangerment is quintessentially an inchoate crime." *Williams v. State*, 100 Md. App. 468, 480 (1994). "The *actus reus* of the crime of reckless endangerment is 'conduct that creates a substantial risk of death or serious physical injury to another person.'" *Id.* at 495 (citation omitted). "[R]eckless endangerment does not require that the defendant actually cause harm to another individual" because the statute "is aimed at deterring the commission of potentially harmful conduct before an injury or death occurs." *State v. Albrecht*, 336 Md. 475, 500-01 (1994); *see also Minor v. State*, 326 Md. 436, 442 (1992) ("It is the reckless conduct and not the harm caused by the conduct, if any, which the statute was intended to criminalize."); *Williams*, 100 Md. App. at 480

(explaining that the reckless endangerment statute is "designed to punish potentially harmful conduct even under those fortuitous circumstances where no harm results"). "It is enough that a substantial risk or threat of such harm be created and then consciously disregarded." *Williams*, 100 Md. App. at 482. "It is undisputed that the *actus reus* . . . is to be measured objectively, not subjectively[,] . . . on the basis of the physical evidence in the case." *Hall v. State*, 448 Md. 318, 330 (2016) (quotation omitted).

The mere use of a firearm does not evince the substantial risk of harm sufficient to support a conviction for reckless endangerment. *See Williams*, 100 Md. App. at 498 ("[E]ven if a gun is fired, that standing alone, is not enough to constitute the commission of the crime. *The use of the gun must create a risk.*") (quotation omitted). "The proper inquiry is into whether the gun was handled in a manner that created a substantial risk sufficient to find reckless endangerment." *Perry v. State*, 229 Md. App. 687, 700 (2016).

"Under almost all circumstances, the gratuitous pointing of a deadly weapon at one civilian by another civilian would almost certainly be negligence *per se*, if not gross negligence *per se*." *Albrecht*, 336 Md. at 501 (quotation omitted). A civilian defendant who lacks both the training and authorization "to discharge a weapon leveled at a specific target" acts with "reckless behavior that create[s] the substantial risk[.]" *Compare Perry*, 229 Md. App. at 706 (holding that the evidence was sufficient to establish reckless endangerment because the civilian defendant was not a police officer and "was not authorized to carry or discharge a weapon" without "the highly nuanced 'arc of danger' analysis") *with Albrecht*, 336 Md. at 73-74, 81 (applying an "arc of danger" analysis

when the appellant was a police officer trained to carry and discharge a gun, and the exact line of fire was known and established).

We turn next to the *mens* rea element for the crime of reckless endangerment. "The state of mind of recklessness, in the context of reckless endangerment . . ., is [] described as an attitude wherein the criminal agent, conscious of the life-endangering risk involved, nonetheless acts with a conscious disregard of or wanton indifference to the consequences." *Williams*, 100 Md. App. at 474. "To commit the crime of reckless endangerment . . . a defendant need not intentionally cause a result or know that his conduct is substantially certain to cause a result. 'Recklessness' . . . exists when one is aware that his conduct *might* cause the result, though it is not substantially certain to happen." *Minor v. State*, 85 Md. App. 305, 316 (1991), *aff'd*, 326 Md. 436 (1992) (citation omitted).

Ultimately, the test for recklessness is "whether the appellant's misconduct, viewed *objectively*, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish." *Minor*, 326 Md. at 443 (emphasis added). This "objective determination" must "be made by the trier of fact from all the evidentiary circumstances in the case." *Id.* The Supreme Court of Maryland has explained that the defendant's subjective intent is inapposite. *Holbrook*, 364 Md. at 367 ("[G]uilt under the statute does not depend upon whether the accused intended that his reckless conduct create a substantial risk of death or serious injury to another.") (quotation omitted); *Minor*, 326 Md. at 443 ("[W]hether an accused's conduct . . . was reckless . . . is not . . . a

subjective determination predicated upon [the defendant's] actual perception or state of mind[.]"

Here, the evidence supports Mr. Smith's reckless endangerment conviction. In terms of *actus reus*, Detective Hardy's testimony demonstrates that Mr. Smith did not merely brandish or carry a firearm in Mr. K.'s presence. *See Williams*, 100 Md. App. at 498 (determining that the use of a firearm does not constitute reckless endangerment unless it creates a risk) (citation omitted). Rather, Detective Hardy's review of Hertz's CCTV footage revealed that Mr. Smith discharged a firearm during an active physical altercation in a confined public space within close proximity to Mr. K. Detective Hardy provided additional insight into the limited physical distance between the two men by noting that "Mr. Smith and Mr. [K.] [we]re fighting" and that he "[could] really see them struggling over that weapon." Detective Hardy then explained that Mr. Smith "[took] [] a crouching angle to discharge a weapon" and that "two projectiles [] struck [the] glass." Sergeant Madden corroborated Detective's Hardy testimony by referring to the interaction between Mr. K. and Mr. Smith as "a struggle" and concluding that "a firearm was discharged[.]" The "manner" in which Mr. Smith handled the firearm and Mr. K.'s proximity to the unreasonably dangerous behavior, therefore, generated "a substantial risk of death or serious physical injury" to Mr. K. *Jones*, 357 Md. at 426 (quotation and citation omitted).

Furthermore, there was no evidence to suggest that Mr. Smith was a police officer, possessed formal firearms training, or was authorized to discharge a firearm within a public transit station. Thus, "the reckless behavior that created the substantial risk"

originated from Mr. Smith's act of discharging a firearm as a civilian who lacked the formal training and authorization to do so. *Perry*, 229 Md. App. at 706.

When "measured objectively," *Hall*, 448 Md. at 330 (quotation omitted), this evidence indicates that Mr. Smith's actions created a substantial risk sufficient for the jury to find that his conduct recklessly endangered Mr. K. *Perry*, 229 Md. App. at 700 (defining the *actus reus* of reckless endangerment).

The evidence also sufficiently establishes the *mens rea* element of reckless endangerment. By discharging a firearm at Mr. K. from a close range, Mr. Smith demonstrated that he was "conscious of the life-endangering risk involved, [and,] nonetheless act[ed] with a conscious disregard of or wanton indifference to the consequences." *Williams*, 100 Md. App. at 474. "[V]iewed objectively," this misconduct "was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish." *Minor*, 326 Md. at 443.

Accordingly, we hold that the evidence, considered in the light most favorable to the State, *see Beckwitt*, 249 Md. App. at 351 (quotation omitted), was sufficient to sustain Mr. Smith's conviction for reckless endangerment.

4. Discharging a Firearm in Baltimore City

For similar reasons, we hold that there is sufficient evidence to uphold Mr. Smith's conviction of discharging a firearm in Baltimore City.

As a preliminary matter, Sergeant Madden expressly testified that the shooting

occurred at the Charles Center Metro Station in Baltimore City. That single, uncontroverted statement satisfies the geographic element of the offense.

The convergence of physical, testimonial, and video evidence provides an adequate foundation to demonstrate that the firearm was discharged. As stated above, both Sergeant Madden and Detective Hardy testified that Mr. Smith had discharged a firearm. Sergeant Madden testified that, upon his arrival at the crime scene, he "immediately noticed that the glass panel of the Metro [S]tation was shot out" and that "casings [were] on the ground and some bullet fragments." During the resulting investigation, law enforcement collected two .40 caliber shell casings and three bullet fragments, which were accepted into evidence as State's Exhibit 2. Sergeant Madden specified that "two bullet casings and two fragments were recovered at the top side of the [Metro S]tation . . . [a]nd then one was collected at the bottom of the escalator . . . ." Based on this evidence, he concluded that "a firearm was discharged" at the Metro Station.

In turn, Detective Hardy provided additional affirmative evidence of discharge. He explained that, in Hertz's CCTV footage, "[he] could see a black object[,]" which he thereafter referred to as a "weapon." Detective Hardy also testified that "two projectiles [] struck [the] glass[,]" which reinforces Sergeant Madden's observation that the glass panel of the Metro Station was "shot out." Finally, and perhaps most notably, Detective Hardy described the "crouching angle" that Mr. Smith assumed "to *discharge* a weapon." (Emphasis added.)

"[T]he mere fact that [law enforcement] did not witness [the defendant] discharge a firearm is not dispositive." *Holmes v. State*, 209 Md. App. 427, 442 (2013). Maryland appellate courts have long held that circumstantial evidence alone is sufficient to support a handgun conviction. *See Curtin v. State*, 165 Md. App. 60, 71 (2005) ("We have considered and upheld numerous convictions where no tangible evidence was presented at trial establishing the use of a handgun, and it is well settled that circumstantial evidence alone will often suffice."). Here, Sergeant Madden's testimony provided circumstantial evidence that established a temporal nexus between the discharge of the firearm and the shooting at the Metro Station:

> [THE STATE]: Is the [] Metro Station property managed by the [MTA]?
>
> [SERGEANT MADDEN]: Yes.
>
> * * *
>
> [THE STATE]: So all [of] those facilities, the escalators, the windows, all of that is under the maintenance of the [MTA]?
>
> [SERGEANT MADDEN]: Correct.
>
> * * *
>
> [THE STATE]: In your experiences responding to crime scenes [] -- on different parts of MTA property and where . . . there's window damage or property damage, is it in your experience that MTA would leave this property damaged after the fact?
>
> [SERGEANT MADDEN]: No.
>
> [THE STATE]: What is your experience?
>
> [SERGEANT MADDEN]: [MTA] would replace whatever's damaged.

> [THE STATE]: Okay. And . . . you don't necessarily know personally that that window was shot on June 27th, 2022, correct?
>
> [SERGEANT MADDEN]: Correct.
>
> [THE STATE]: But based off your experience, that window would not have been left shot in its current state from a prior incident, correct?
>
> [SERGEANT MADDEN]: Correct.

From this testimony, the jury could rationally infer that the shot-out glass panel and the shell casings were the direct product of the June 27, 2022 shooting, rather than remnants of a prior, unrelated incident.

Viewed in a light most favorable to the State, *see Beckwitt*, 249 Md. App. at 351 (quotation omitted), the testimony and physical evidence presented at trial, including two shell casings, three bullet fragments, and a shattered glass panel, were sufficient to sustain Mr. Smith's conviction for discharging a firearm in Baltimore City.

II. THE STATE'S COMMENTS ABOUT MR. K.'S "FEAR IN BALTIMORE CITY" WERE WITHIN THE PROPER SCOPE OF REBUTTAL CLOSING ARGUMENT.

A. Relevant Background

During closing argument, the defense repeatedly emphasized Mr. K.'s failure to positively identify Mr. Smith, suggesting that this was the "only evidence that has been uncontradicted." Defense counsel maintained that Mr. K. had definitively excluded Mr. Smith during the photo array and urged the jury to credit Mr. K.'s initial statements to law enforcement "because [Mr. K.] was there, and you heard on cross-examination [that] he didn't equivocate, he was cooperative." To substantiate this assertion, defense counsel detailed the thoroughness and clarity of Mr. K.'s comportment during the photo array:

> [DEFENSE COUNSEL]: And, then, of course, . . . they did a photo array. [Mr. K.] was there in the room, went through each image one by one by one. He didn't skip any. He didn't say he was confused[,] that he didn't understand, that he couldn't remember. That wasn't presented. What was presented is [Mr. K.] was shown [photographs,] but he said no.
>
> * * *
>
> So the blind administrator said we'll go through and write. So what does Mr. [K.] do? Again, goes through each individual image and says no. . . . It doesn't get [plainer] than that.
>
> * * *
>
> The State had asked how long did [Mr. K.] take to look at the photos. He took as much time as he needed. He said no. . . . When asked in terms of the photo array, did anyone tied [to] Mr. [K.] come back and say I changed my mind or I'm confused or let me make a modification or let me make a correction[?] When asked did that happen, again the answer was no.
>
> * * *
>
> Detective Hardy never told you that somehow Mr. [K.] couldn't remember anything.
>
> * * *
>
> [Sergeant Moody] described to you that Mr. [K.] wasn't confused. [Mr. K.] wasn't holding back.

The defense, therefore, contended that "nothing about [the photo array] implie[d] that Mr. [K.] was not cooperative, was confused. None of that."

Defense counsel subsequently argued that, in light of this evidence, it was a "shame" that the State had proceeded to trial in this case:

> You have a detective from Baltimore City Police Department [who] says this individual looks familiar, looks similar to

> someone [whom] [he] spoke with in May. And therefore, [he's] going to say it's [Mr.] Smith. What a [] shame that that is the extent of the State's presentation. Here you have Mr. [K.] [who] said emphatically it is not [Mr. Smith].

Defense counsel revisited her "shame" argument later in her presentation:

> The fact that we have gotten this far, the fact that you are sitting here and you're being asked to do away with what Mr. [K.] has done and emphatically said is not [Mr. Smith] is a shame. The assertion that Mr. [K.] got into an altercation on June 27th, 2022, that's not being argued with. We can see that. But where does [Mr.] Smith have anything to do with that, the answer has and always will be no. No. No hoping, no praying, no wishing will make it so. No.

To the defense, the evidence affirmed that Mr. K. had cooperated with law enforcement throughout the investigation and that, therefore, the outcome of the photo array represented a voluntary reflection of his own recollection, rather than a product of confusion.

Critically, the defense expressly preempted any suggestion by the State that Mr. K.'s absence from trial and/or failure to recognize Mr. Smith beforehand resulted from fear:

> So if the State said, well, [Mr. K.] didn't come because he was scared, there's no evidence of that. The only reason I say that[,] *and I preempt any type of such argument*[,] is that many times people like to say that. There's no evidence of that.

(Emphasis added.)

On rebuttal, the State responded directly to the defense's argument regarding Mr. K.'s failure to identify Mr. Smith in the photo array. The State postulated that "fear in Baltimore City" provided a legitimate, alternative explanation for Mr. K.'s decision to

refrain from calling 911 and reticence in speaking with law enforcement. The pertinent exchange proceeded as follows:

> [THE STATE]: The great shame and the only great shame [is] that the defense made this case about putting the victim on trial. Ladies and gentlemen, the victim is not on trial.
>
> Let's put this in consideration. Let's not forget the fact that we're in Baltimore City. Let's not forget the fact that this incident involved a fire[arm]. A fire[arm] was presented and aimed and discharged in a man's face. There was no 911 call. [Mr. K.] ran. There was no indication that [Mr. K.] reported this to the police until MTA actually showed up at his residence. . . . Mr. [K.] only talked to the police because the police literally knocked on his front door. Because we know there is a fear in Baltimore City.
>
> [DEFENSE COUNSEL]: Objection
>
> [THE STATE]: We know --
>
> THE COURT: Overruled.
>
> [THE STATE]: -- that there [are] concerns. An individual just pulled a gun in front of your face. What would be the reasonable feeling that you have?

As the transcript reflects, the court overruled defense counsel's objection to the State's assertion that "there is a fear in Baltimore City."

Shortly thereafter, the State again referenced Mr. K.'s fear, eliciting a renewed objection from the defense:

> [THE STATE]: Going back to the fear of Mr. [K.], we also know that [the] detectives[] . . . had to pull information from him. He wasn't talking. [Mr. K.] wasn't talking. He didn't want to put himself in that kind of situation because in Baltimore City, who knows the risk that could bring.
>
> [DEFENSE COUNSEL]: Objection.

Once again, the court overruled the defense's objection.

B. Parties' Contentions

On appeal, Mr. Smith contends that the portions of the State's closing argument alluding to a causal connection between Mr. K.'s purported "fear in Baltimore City" and his uncooperative behavior constitutes reversible error because these statements introduced facts not admitted into evidence. Citing to *Lee v. State*, in which the Supreme Court of Maryland reversed a conviction after the State invoked "the law of the streets" to explain a witness's non-cooperation, 405 Md. 148, 168 (2008), Mr. Smith analogizes that, here, the State's comments about "the culture of Baltimore City" also relied on facts outside the trial record. He classifies the State's remarks as "severe" and argues that the absence of a curative instruction, combined with the relatively insufficient evidentiary record, exacerbates the resulting prejudice.

The State responds that the "fear" comments were "proper because [they were made] in response to defense counsel's claim about the inference to be drawn from the same piece of evidence, [were] accompanied by references to record evidence that [Mr.] Smith does not dispute, and [were] a proper inference based on matters of common knowledge and common sense." To reinforce this proposition, the State distinguishes Mr. Smith's situation from that in *Lee*, 405 Md. at 173-74, by indicating that "[Mr.] Smith points to no [] vagueness or ambiguity in the term 'fear' in the context of a person who tried to shoot the victim."[10]

[10] The State also argues that "since [*Lee*], there has been further development in Maryland case law" regarding the prevalent "'no snitching' phenomenon[.]" In addition to discussing *Montague v. State*, in which the Supreme Court of Maryland recognized (continued)

C. Standard of Review

"A trial court is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case." *Ingram v. State*, 427 Md. 717, 726 (2012) (citation omitted). *See Shelton v. State*, 207 Md. App. 363, 386 (2012) (explaining that trial courts have broad discretion in assessing the scope of closing argument). "The determination whether counsel's remarks in closing were improper and prejudicial, or simply a permissible rhetorical flourish, is within the sound discretion of the trial court to decide[.]" *Sivells v. State*, 196 Md. App. 254, 271 (2010) (quotation and marks omitted). Accordingly, we will "not interfere with the trial court's ruling as to the permissible scope of closing argument unless there has been an abuse of discretion of a character likely to have injured the complaining party." *Collins v. State*, 318 Md. 269, 279 (1980) (citation omitted), *abrogated on other grounds by State v. Jones*, 466 Md. 142, 161 n.8, 162-64 (2019).

An inappropriate remark by the State during summation does not necessarily or automatically constitute reversible error. *Spain v. State*, 386 Md. 145, 158-59 (2005). If "[an appellate court] cannot say that the assailed argument constituted 'a material factor

---

that the '"stop snitching' culture . . . encourages silence and threatens retribution against those who cooperate with law enforcement[,]" 471 Md. 657, 689 n.10 (2020), the State cites to several cases that generally discuss its various legal implications.

Upon review, although many of these cases involve explicit declarations by prospective witnesses refusing to "snitch," the instant appeal contains no comparable statement by Mr. K. that explains his inability to identify Mr. Smith or his refusal to testify at trial. Thus, these "snitching" cases are not directly analogous, and we decline to address them further in the context of this specific argument.

in the conviction' result[ing] in 'substantial prejudice to the accused' or that 'the verdict would have been different had the improper closing argument not been made[,]' then [it] must necessarily conclude that no prejudicial error resulted from the argument." *Wilhelm v. State*, 272 Md. 404, 431 (1974) (internal quotations omitted). Indeed, "[r]eversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused[.]" *Lawson v. State*, 389 Md. 570, 592 (2005) (second alteration added) (quotation omitted).

D. Legal Framework

"The first step in [the] analysis is to determine whether the prosecutor's statements, standing alone, were improper. *Sivells*, 196 Md. App. at 277. It is an axiomatic legal principle that "[a]ttorneys are afforded great leeway in presenting closing arguments[.]" *Degren v. State*, 352 Md. 400, 429 (1999). In *Wilhelm*, the Supreme Court of Maryland discussed the permissible scope of closing argument:

> [I]t is, as a general rule, within the range of legitimate argument for counsel to state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts, in evidence; and such comment or argument is afforded a wide range. . . . Generally, counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom; the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the (prosecution) produces.

272 Md. at 412 (citations omitted).

Accordingly, the State "is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Degren*, 352 Md. at 429-30 (quotation omitted). Because "there are no hard-and-fast limitations within which [a closing] argument . . . must be confined[,]" the State "may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. [The State] may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions." *Id.* at 430 (quotation omitted).

"[F]air and reasonable deductions" from admitted evidence are within the proper scope of closing argument. *Wilhelm*, 272 Md. at 413. The State is permitted to "discuss . . . all reasonable and legitimate inferences which may be drawn from the facts in evidence[.]" *Id.* at 412. Relatedly, "it is proper for counsel to argue to the jury—even though evidence of such facts has not been formally introduced—matters of common knowledge," *id.* at 438 (citation omitted), which refers to information "[that] every informed person possesses." *Jones v. State*, 217 Md. App. 676, 692 (2014) (quoting *Wilhelm*, 272 Md. at 439). The State may "remind[] [jurors] of what everyone else knows, and the[] [jurors] may act upon and take notice of those facts which are of such general notoriety as to be matters of common knowledge within the cognizance of the jury from their own observations." *Wilhelm*, 272 Md. at 439, 445 (citations omitted).

Additionally, "under certain circumstances, a prosecutor's argument during rebuttal [] in response to comments made by the defense during its closing are proper." *Degren*, 352 Md. at 431. Indeed, the State may respond to "arguments [of] opposing counsel" with "liberal freedom." *Id.* at 413. *See, e.g.*, *Blackwell v. State*, 278 Md. 466,

480-81 (1976) (holding that the State's rebuttal comment "that [two notorious criminals] had, in fact, received the death penalty but were only serving life [sentences]" merely responded to the defense's argument that "certain celebrated criminals . . . deserved the death penalty but were only serving life sentences"); *James v. State*, 31 Md. App. 666, 679-80 (1976) (determining that the State's rebuttal reference to the victim's suffering was merely a proper "argument" made in response to defense counsel's attempt during closing to "minimize the effect of a .25 caliber weapon, having called it 'puny' and a 'slingshot'"). *But see Johnson v. State*, 325 Md. 511, 517 (1992) (holding that "the prosecutor utilized his privilege to be the last to have the ear of the jury to rebut [defense counsel's] argument").

"Notwithstanding the wide latitude afforded prosecutors in closing arguments, a defendant's right to a fair trial must be protected." *Lee*, 405 Md. at 164 (citations omitted). As such, "arguments of counsel are required to be confined to the issues in the cases on trial," *Degren*, 352 Md. at 430, and the State is expressly prohibited from making statements "that invite the jury to draw inferences from information that was not admitted at trial" or "appeal to the passions or prejudices of [the] jury." *Lee*, 405 Md. at 166-67 (citations omitted). "[So] long as 'counsel does not make any statement of fact not fairly deducible from the evidence[,] his argument is not improper[.]'" *Anderson v. State*, 227 Md. App. 584, 589 (2016) (second and third alterations added) (quoting

Wilhelm, 272 Md. at 412).[11]

E. Analysis

The State's rebuttal must be understood in its proper adversarial context. During closing argument, the defense constructed a narrative designed to establish that Mr. K. remained cooperative, cognizant, and uncoerced at every stage of the underlying investigation and that, therefore, his failure to identify Mr. Smith was a voluntary and accurate representation of his memory of the incident. Defense counsel encouraged the jury to "believe Mr. [K.] . . . because he was there, and you heard on cross-examination he didn't equivocate, he was cooperative."

In describing Mr. K.'s behavior during the administration of the photo array, defense counsel emphasized that "[h]e didn't skip any [images]. He didn't say he was confused[,] that he didn't understand, that he couldn't remember." Thus, the defense maintained that "[t]he State is asking [the jury] to believe that somehow [Mr. K.] [who] was distinct in what he said is confused." Defense counsel reiterated, however, that "nothing about this engagement implies that Mr. [K.] was not cooperative, was confused. None of that." As support, the defense cited to Sergeant Moody's testimony that "Mr.

[11] "[N]ot every ill-considered remark made by counsel[] . . . is cause for challenge or mistrial." *Wilhelm*, 272 Md. at 415 (citations omitted). "What exceeds the limits of permissible comment depends on the facts in each case," *id.* at 415 (citations omitted), and "the State bears the burden of proving that [the] error is harmless and must prove beyond a reasonable doubt that the contested error did not contribute to the verdict." *Lee*, 405 Md. at 174 (citation omitted).

We do not apply these reversible error rules here, however, because, as we explain above, we discern no error in the contested statements.

[K.] wasn't confused. He wasn't holding back." The defense also argued that "Detective Hardy never told [the jury] that somehow Mr. [K.] couldn't remember anything."

After portraying Mr. K. as a calm, cooperative, and unequivocal victim, the defense moved to preemptively foreclose the inference that Mr. K.'s taciturnity was directly attributable to fear, specifically asserting that "there's no evidence" that "[Mr. K.] didn't [testify] because he was scared[.]" This statement opened the door to the precise rebuttal argument that it was intended to discredit.

In direct response to defense counsel's closing argument, the State contended that "fear in Baltimore City" constituted a viable explanation for Mr. K.'s reluctance to assist law enforcement with the investigation. The State's commentary about Mr. K.'s ostensible fear was entirely collateral to the determination of Mr. Smith's guilt. *See Degren*, 352 Md. at 431 (holding that "[t]he prosecutor's comment that criminal defendants have a motive to lie did not bear directly on petitioner's guilt or innocence[] [because] [it] was made in response to the defense counsel's comments during closing argument that the . . . State's witnesses . . . had various motives to lie"). Instead, the State's remarks about an overall "fear in Baltimore City" constitute permissible rebuttal "argument" insofar as they present an alternative explanation for a position promulgated *first* by defense counsel in her closing argument. *See James*, 31 Md. App. at 679-80 ("With respect to the statements of the prosecutor made in rebuttal, we think the trial court was correct in characterizing his remarks as 'argument' inasmuch as defense counsel had himself attempted to minimize the effect of a .25 caliber weapon . . . ."). Each of the contested remarks by the State, therefore, reflects a mere extrapolation based

on statements initially made in the defense's closing argument. *See Degren*, 352 Md. at 413 (explaining that the State may respond to the defense's closing argument with "liberal freedom").

Furthermore, because the State's remarks were limited to "matters within the cognizance of the jury from their own observations[,]" they permissibly appealed to the jurors' shared experience of residing in Baltimore City. *Wilhelm*, 272 Md. at 445. Thus, any inference deduced from the State's responsive "fear" argument constituted common knowledge because "every informed person possesse[d] it." *Jones*, 217 Md. App. at 692.

In arguing that the State's comments exceeded the bounds of the jury's common knowledge, Mr. Smith analogizes to *Lee*, in which the Court determined that the State committed reversible error by repeatedly invoking "the law of the streets" to account for a witness's non-cooperation. 405 Md. at 168. This argument is unavailing for two reasons.

First, in *Lee*, the State utilized the phrase "the law of the streets" in "two entirely different connotations" during closing argument, "[leaving] the jurors to surmise, on their own, what was contemplated by the phrase." *Id.* at 173-74. The Court explained that "there was nothing on the record from which the jury could derive what was meant[]" and determined that the basis for reversal was the ambiguous definition of the phrase within the context of the trial. *Id.* at 173. Here, by diametric contrast, Mr. Smith points to no vagueness or structural ambiguity in the State's use of the phrase "fear in Baltimore City." Our review of the trial transcripts indicates that the State consistently adopted this phrase during rebuttal closing argument to infer a correlation between Mr. K.'s fear and

his reluctance to cooperate with the ongoing criminal investigation and prosecution.

Second, the State's "law of the streets" argument in *Lee* was not tethered to any admitted evidence describing the witness's actual conduct. *Id.* at 173-74. Here, however, the State's rebuttal specifically identified the following pieces of admitted evidence and testimony as supporting its "fear" argument: "[t]here was no 911 call[by Mr. K.]"; "[t]here was no indication that [Mr. K.] reported this [incident] to the police until MTA actually showed up at his residence"; "Mr. [K.] only talked to the police because the police literally knocked on his front door"; and "detectives[] . . . had to pull information from [Mr. K.] He wasn't talking. [Mr. K.] wasn't talking." Moreover, Detective Hardy's testimony that Mr. K. "wasn't voluntary[,] . . . forthcoming[,] and upfront during the initial interview" and, instead, provided "false" information about the location of the firearm corroborates the inference generated from the State's depiction of Mr. K.'s demeanor during the investigation.

We, accordingly, hold that the State's use of the phrase "fear in Baltimore City" was not impermissible because the inference that the State invited the jury to draw was "fairly deducible from the evidence[.]" *Anderson*, 227 Md. App. at 589 (quotation omitted).

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING STATE'S EXHIBIT 7 INTO EVIDENCE.

A. Relevant Background

On the day after the shooting, Detective Hardy visited Hertz, a business adjacent to the Metro Station, and reviewed its live surveillance recordings from June 27, 2022, at

approximately 6:00 p.m. At trial, the State initially proffered this CCTV footage[12] as State's Exhibit 7 during Sergeant Madden's testimony:

> [THE STATE]: Now I'm going to show you what's going to be pre-marked for identification purposes only as State's Exhibit 7.
>
> It'll be three videos from . . . [Hertz] --
>
> * * *
>
> Now, Sergeant Madden, do you recognize what's on the screen?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: And what is on the screen?
>
> [SERGEANT MADDEN]: That's showing the back side of the entrance to the Metro Station --
>
> [THE STATE]: Okay.
>
> [SERGEANT MADDEN]: -- on the east side.
>
> [THE STATE]: And you had mentioned that the security officer pulled it up for you, correct?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Do you remember -- could you describe for the jury what he did? Well, let me ask. Did he use a computer?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Okay. And what did he do on the computer that you recall?
>
> [SERGEANT MADDEN]: He put in the time and date that we requested and allowed me to view it.
>
> * * *
>
> [THE STATE]: Okay. And you -- and what happened when he put in the time that was requested?

[12] All mentions of "CCTV footage" in this section of the opinion refer to State's Exhibit 7 only.

[SERGEANT MADDEN]: When he put in the time and date, which was that day, he just -- he played [the CCTV footage].

[THE STATE]: Okay. And was the playback smooth?

[SERGEANT MADDEN]: Yes.

[THE STATE]: Did there appear to be any way to edit or alter the image --

[SERGEANT MADDEN]: No.

[THE STATE]: -- that was received? Okay. And was there a timestamp located on the image you saw on June 27th?

[SERGEANT MADDEN]: Yes.

[THE STATE]: Okay. And was that the same timestamp that matched the timestamps from the Metro Station CCTV?

[SERGEANT MADDEN]: Yes.

[THE STATE]: Okay.

[SERGEANT MADDEN]: I believe so.

[THE STATE]: And now what's being displayed which has been marked for identification purposes only as State's Exhibit 7, is there a timestamp there?

[SERGEANT MADDEN]: Yes.

[THE STATE]: Okay. And is that the same timestamp that you [] -- saw on June 27th, 2022?

[SERGEANT MADDEN]: Yes.

[THE STATE]: Okay. And do[] there appear to be any changes or alterations?

[SERGEANT MADDEN]: No.

[THE STATE]: Okay. And is this a true and accurate depiction of what you saw that day on June 27th, 2022?

[SERGEANT MADDEN]: Yes.

[THE STATE]: I'll play a bit for you[,] as well. And the little bit that I have played, that five seconds that I played, [were] there any changes or alterations?

[SERGEANT MADDEN]: No.

> [THE STATE]: And again, this is a true and accurate depiction of what you saw on June 27th, 2022[,] at [Hertz] from the security guard?
>
> [SERGEANT MADDEN]: Yes.
>
> [THE STATE]: Your Honor, at this time, the State would move into evidence State's Exhibit 7.
>
> [DEFENSE COUNSEL]: Same objection. Foundation.

At this juncture, the court sustained the defense's objection to the admission of State's Exhibit 7.

Later, during Detective Hardy's testimony, the State renewed its effort to admit State's Exhibit 7 into evidence. As a preliminary matter, Detective Hardy described Hertz's surveillance system and confirmed that its CCTV footage accurately comported with his observations "in real life":

> [THE STATE]: Okay. Now on June 28th of 2022, you did go to Hertz in an attempt to get that CCTV.
>
> [DETECTIVE HARDY]: Yes.
>
> [THE STATE]: So what happened when you walked in to [Hertz]?
>
> [DETECTIVE HARDY]: Made contact with a security guard who I believe -- trying to remember to the best of my recollection -- made contact with the manager who then showed me CCTV from the incident.
>
> [THE STATE]: And can you describe how they showed you the CCTV?
>
> [DETECTIVE HARDY]: [T]he[] system [that Hertz uses] is somewhat similar to like CitiWatch.[13] So it's a live feed

[13] "The CitiWatch Community Partnership ("CitiWatch") is a voluntary registry of video surveillance systems that contains the location and owner information of privately[-]owned cameras." *CitiWatch Community Partnership*, City of Baltimore, available at https://perma.cc/ME6C-57VU. In short, "CitiWatch . . . allows residents and (continued)

> where you can -- you can literally see what's going on in real time. So you'll have to -- you click on the camera that you want. You'll look at it and you can see what's going on.
>
> [THE STATE]: Okay. And so when you were there on June 28th, 2022, did you -- let me ask about this. Let me ask you this first. How was the security footage shown to you?
>
> [DETECTIVE HARDY]: It was on the screen. So just like you have screens in front of you all, you can literally look at the screen and a video could be played through that.
>
> [THE STATE]: Okay. And when you approached and saw the monitor, there was a live feed?
>
> [DETECTIVE HARDY]: It was currently live feed [at] that time, yes.
>
> [THE STATE]: Okay. And were you able to see that live feed?
>
> [DETECTIVE HARDY]: Yes.
>
> [THE STATE]: And was that live feed comporting to what you were seeing in real life?
>
> [DETECTIVE HARDY]: Yes.
>
> [THE STATE]: Okay. And there wasn't anything that was glitching or weird about what you were seeing compared to the monitor as opposed to real life?
>
> [DETECTIVE HARDY]: Not from what I saw.

Detective Hardy then provided detailed testimony about the reliability of the process through which the CCTV footage was retrieved and reviewed:

> [THE STATE]: Okay. Now how did the security guard pull up -- or did you ask the security guard to pull up specific footage?
>
> [DETECTIVE HARDY]: Yeah. I just asked [the security guard at Hertz], hey, there was a -- apparently there was a discharging here the other day. And I asked him -- the other

small business owners to . . . shar[e] vital information" with law enforcement "to help identify criminals and make Baltimore safer." *Id.*

> day which would be the day before. I said can you pull footage from that incident.
>
> [THE STATE]: Okay. And so what, if anything, did you observe him do?
>
> [DETECTIVE HARDY]: Normally, what they do -- because this is my first time dealing with [Hertz] -- place -- they would just click on a camera and at the bottom of the monitor, you can drag back or forward to get to a date or time of the incident that you're looking for.
>
> [THE STATE]: Okay. And was the footage date stamped?
>
> [DETECTIVE HARDY]: It was timestamped.
>
> [THE STATE]: Or timestamped. Sorry. And was that timestamp accurate to what you had requested?
>
> [DETECTIVE HARDY]: Yes. That was accurate.
>
> [THE STATE]: Okay. And did you see the CCTV footage from June 27th of 2022[,] at approximately 6 p.m.?
>
> [DETECTIVE HARDY]: Yes.

The State then elicited direct testimony supporting the authenticity of the CCTV footage:

> [THE STATE]: Your Honor, if I may?
>
> THE COURT: What?
>
> [THE STATE]: For identification.
>
> THE COURT: Oh, I see.
>
> [THE STATE]: What's previously marked for identification purposes only as State's Exhibit 7.
>
> * * *
>
> [THE STATE]: Now, Detective, do you recognize what's on your screen?
>
> [DETECTIVE HARDY]: Yes.
>
> [THE STATE]: And what's on your screen?
>
> [DETECTIVE HARDY]: So what's on my screen is the courtyard area of Charles [E]ast. We call it east side because

the west side is on the opposite side f[a]rther down Baltimore Street heading toward[] Howard Street.

[THE STATE]: Okay. And do you know where this image is coming from?

[DETECTIVE HARDY]: It's coming from [Hertz]. . . . That cleaners is connected to that CCTV network.

[THE STATE]: Okay. And is this a true and accurate depiction of what you saw on June 28th of 2022?

[DETECTIVE HARDY]: Yes, sir.

[THE STATE]: Okay. Now after seeing -- That's the fourth file, Your Honor. Court's indulgence.

Now do you recognize the image on your screen from the third file?

[DETECTIVE HARDY]: Yes, sir.

[THE STATE]: And what is this?

[DETECTIVE HARDY]: That'll be [Mr. Smith] to your left. So it'll be Mr. Smith right there during the day of the incident.

[THE STATE]: So what is the geographic area that's being shown on this part of the CCTV?

[DETECTIVE HARDY]: That was [Mr. Smith] exiting the courtyard going toward[] Fayette Street.

[THE STATE]: Okay. And was this also part of [Hertz's] CCTV footage?

[DETECTIVE HARDY]: Yes.

[THE STATE]: Okay. Is this a true and accurate depiction of what you saw on June 22nd of 2022?

[DETECTIVE HARDY]: You mean that day when I pulled it, the 28th?

[THE STATE]: Yes.

[DETECTIVE HARDY]: Yes.

[THE STATE]: Okay. No alterations, edits[,] or changes have been made[?]

[DETECTIVE HARDY]: No.

[THE STATE]: Okay. Now for the second file. Do you recognize this image?

[DETECTIVE HARDY]: Yeah.

[THE STATE]: And what does this image capture?

[DETECTIVE HARDY]: It captures Mr. Smith running eastbound on Fayette Street to his vehicle.

[THE STATE]: What geographic area does it capture?

[DETECTIVE HARDY]: That [] will be the Fayette Street side which is also part of -- that has a cleaners which is also part of [Hertz's] CCTV.

[THE STATE]: Okay. And is it a true and accurate depiction of what you observed on June 28th of 2022[,] at [Hertz]?

[DETECTIVE HARDY]: Yes.

[THE STATE]: No alterations, changes[,] or edits[?]

[DETECTIVE HARDY]: No alterations, sir.

[THE STATE]: Okay. And the first file. Do you recognize this image?

[DETECTIVE HARDY]: Yes. That is still part of Fayette Street.

[THE STATE]: Okay. And this is a true and accurate depiction of what you observed on June 28th of 2022?

[DETECTIVE HARDY]: Yes.

[THE STATE]: No edits or alterations or changes?

[DETECTIVE HARDY]: No edits, alterations[,] or changes, sir.

[THE STATE]: Now on each of those files, were there timestamps?

[DETECTIVE HARDY]: Yes.

[THE STATE]: And were those timestamps accurate to what you saw on June 28th of 2022?

[DETECTIVE HARDY]: Yes.

[THE STATE]: Okay. Now after observing the CCTV at [Hertz] on June 28th of 2022, what, if anything, happened after viewing it on their system?

[DETECTIVE HARDY]: It was then burned to a flash drive so the files were transferred over to a flash drive. Now when a person (indiscernible – 2:16:50) had that's currently at my district . . . is 128 gigabyte flash drive that contains CCTV of this incident.

* * *

[THE STATE]: Was it the security guard [who] created the file?

[DETECTIVE HARDY]: We're talking about a year ago. So [to] the best of my recollection, I believe the security guard did. I'm still trying to remember. It's a little hard to piece together. But usually, the security guard will take -- clip the time frame I'm asking for and place it on a flash drive. And that'll be done with it.

[THE STATE]: Okay. And so you observed the security guard take the file and place it directly on your flash drive.

[DEFENSE COUNSEL]: Objection.

[DETECTIVE HARDY]: I believe --

THE COURT: Sustained. Can you ask the direct examination question, please?

[THE STATE]: Simply voir diring, Your Honor, but absolutely.

When -- how did you obtain the files on your flash drive?

[DETECTIVE HARDY]: I just put in a hard drive or DVR system. I'm trying to remember the layout there.

[THE STATE]: Okay.

[DETECTIVE HARDY]: But I usually put it there. It'll create a folder[,] and it will just say "Upload."

[THE STATE]: Okay. And how did you receive the files on your flash drive at [Hertz]?

[DETECTIVE HARDY]: I believe, like I said, I believe it's the security guard or the manager [who] made the copy to me while I was standing there.

[THE STATE]: Did you observe them make that -- or did you observe the download of that file to your hard drive?

[DETECTIVE HARDY]: Yes, I was watching them make the upload, yes.

[THE STATE]: Okay. And did you have an opportunity after obtaining that -- or did you have an opportunity after leaving [Hertz] to view those files again from your thumb drive?

[DETECTIVE HARDY]: Yes. Every time I get CCTV on my thumb drive, depending on what my case load is and what other (indiscernible – 2:18:53) we have for the day, I may not watch it in -- there.

[THE STATE]: Okay.

[DETECTIVE HARDY]: But I will probably watch it at my desktop. And I always make a copy on my desktop to keep the files there just in case anything were to happen to my hard drive.

[THE STATE]: Okay. And in this instance, did you make copies on your desktop?

[DETECTIVE HARDY]: Yes.

[THE STATE]: Okay. And did you have the opportunity to review those copies on your desktop?

[DETECTIVE HARDY]: Yes. I [reviewed] them and [wrote] a supplement [about] where I got them and everything that I've used. I created a [BOLO] bulletin. These are still images created from [Hertz].

[THE STATE]: And the copies that you viewed on your desktop, they were obtained from your thumb drive, correct?

[DETECTIVE HARDY]: Yes.

[THE STATE]: And were those at all edited or changed or altered from what you observed on June 28th, 2022[,] at [Hertz]?

[DETECTIVE HARDY]: No.

[THE STATE]: And there is no reason to believe -- strike that. And there were no glitches on the system while you were there?

[DETECTIVE HARDY]: No.

[THE STATE]: Okay.

> [THE STATE]: Your Honor, at this time, the State would move into evidence State's Exhibit 7[,] which is the CCTV footage recovered from [Hertz].

Once again, defense counsel objected to the admission of State Exhibit 7:

> The objection is as to foundation, authenticity. And I am incorporating the argument regarding the last witness for [Hertz]. One, the State is trying to use the silent witness theory of authenticating the Hertz video [files]. They at least need the business records exception complied with under Maryland Rule 5-803(b)(6). I did ask the State in advance whether there was a records custodian [who] went along with the footage that we're now talking about. And the State advised the answer is no, they don't have that. So while [Detective Hardy] testified that this is his first time dealing with [Hertz], he believes the system works similar or close to what they do at MTA, he hasn't given us the how of that.
>
> In terms of whether there are glitches, [Detective Hardy] didn't ask. He doesn't know. And I can appreciate he's saying you don't think so but there was really nothing laid to demonstrate how and why he would conclude there's no glitches. That's one in terms of whether the system was operating and functional.
>
> Number two, despite [Detective Hardy] saying that he believes either a security guard or manager downloaded these or uploaded the images to -- of the video to the flash drive, again, we don't have anything in terms of documenting when that was done. Again, he said it happened while he was there. But he has no present recollection of whether or not it was actually done at that time.
>
> Now at the end of the day, even if the State is using the video to say this is a fair and accurate representation of the area, all we have is footage [that] was clipped and given to me. Meaning, to the witness. So we have an authentication issue. Then, as the [d]efense, we have a completeness issue because the testimony thus far is that there was some engagement outside, then there was some engagement inside. It appears this is supposed to be somewhere outside. And then the testimony prior to that is that then there is an engagement outside again.

> At this point, all we have is, that's in pieces, an acknowledgement that the video was clipped. So I think it will be intellectually dishonest to say, well, this is a fair and accurate representation of the "incident." And the [d]efense can't come back in the interest of completeness to say, hey, ladies and gentlemen of the jury, here's where you have a third person or a fourth person. There is testimony that there were three people engaged not two. And at this point, we're only hearing something about Mr. Smith according to this witness.
>
> So for all those reasons, we do not believe, even if [Detective Hardy] is saying [he] think[s] the system is similar to MTA, we don't have enough in terms of foundation. And then on top of that, we asked but don't have the business records certificate pursuant to [Rule 5-803(b)(6)], which the State has to have to put this in evidence.

The court ultimately overruled defense counsel's objection, determining that "all six bases of the elements to establish an authentication and identification on State's Exhibit No. 7 ha[d] been met." The court then admitted State's Exhibit 7 into evidence:

> And then [Maryland Rule] 5-901(a) is the applicable rule for authentication. Authentication of automated surveillance video, (1) is do we have a witness [who has] testified to how [the] digital system works and how it's activated. In this case, (2), how and where the system stores images; (3) that in the witness' experience, the system produces accurate images; (4) how stored images were retrieved and transferred to [an] external drive or a DVD; (5) witness' accounts for the chain of custody; and (6) does the witness recognize the exhibit.
>
> So [] (indiscernible -- 2:27:25) [Sergeant Madden] was not there for the download, did not satisfy that last requirement of how the images were stored and retrieved and transferred to a DVD, this particular witness, Detective Hardy, testified that he, on 6/28/2022, went down to [Hertz], met with the security guard and the manager[,] and in his experience, that system that [Hertz] uses is similar to a CitiWatch camera where it records in real time and live TV. And he did actually see that

> system record or take images that were happening in real time.
>
> Then he asked for the security footage [from] June 27th, 2022[,] around 6 p.m. The security guard and the manager [were] present. Hold -- clipped -- let's see. He said he went down to the bottom of the monitor, clicked on the date and the time and then showed that footage and that he says that that was -- comports with the footage from the other -- 5A and 5B -- and that once he was sure that those were the files and the date and time that he wanted, the security guard in the presence of the manager made a copy. The files were transferred to a flash drive. They may -- from the hard drive to create a folder and then they uploaded it.

Upon admission, Detective Hardy testified that the footage "capture[d] Mr. Smith running eastbound on Fayette Street to his vehicle[,]" indicating that "Mr. Smith [was] right there during the day of the incident." Concerning how the MTA acquired the footage from Hertz, Detective Hardy explained that the files were subsequently "transferred over to a . . . 128 gigabyte flash drive that contains CCTV of this incident." Detective Hardy determined that the footage illustrated a confrontation between Mr. Smith and Mr. K.:

> [THE STATE]: Now, Detective Hardy, what observations did you make, if anything, based off the video?
>
> [DETECTIVE HARDY]: That was the incident that occurred that [Sergeant] Madden got called out to. It shows the altercation by the -- I guess we'll call it the vestibule area of the Metro [S]tation. It shows [an] altercation where Mr. Smith and Mr. [K.] [are] fighting. It shows Mr. Smith running away from the area and Mr. [K.] followed behind him. Mr. [K.] does place the weapon with the (indiscernible – 2:32:42) of his waistband that he obtained from Mr. Smith.
>
> [THE STATE]: And how do you know that [Mr. K.] obtained [the firearm] from Mr. Smith?

> [DETECTIVE HARDY]: You can see it during the fight when they're reaching down, grabbing. He's -- they're fighting over it. And I can't say what -- I'm trying to remember which arm it was[,] but *you can really see them struggling over that weapon*.
>
> * * *
>
> [THE STATE]: Now, Detective Hardy, was this the manner of what he zoomed in on the video?
>
> [DETECTIVE HARDY]: Yeah. Yeah. It will -- once you zoom in, you will see right before the altercation where *it looks like Mr. Smith gets -- takes like a crouching angle to discharge a weapon.*
>
> [THE STATE]: Is that the position that you were referring to?
>
> [DETECTIVE HARDY]: Yes. And there were two projectiles that struck [the] glass that came from -- that struck the glass heading -- that building next door with the gray (indiscernible – 2:34:41) is the Sun Trust building.
>
> [THE STATE]: And --
>
> [DETECTIVE HARDY]: Now you could see the black -- you could see a black object. If you continue a little bit further, you'll see -- right there. *Right in his hand.* [*Mr. K.*] *gains control of the weapon.* And then that's when the strikes occurred of Mr. Smith.

(Emphases added.)

B. Parties' Contentions

On appeal, Mr. Smith contends that the admission of State's Exhibit 7 was improper because Detective Hardy's testimony provided an insufficient foundation to authenticate the CCTV footage. Relying extensively on *Washington v. State*, 406 Md. 642 (2008), Mr. Smith asserts that Detective Hardy lacked the requisite technical expertise to explain the operation of Hertz's system, did not offer any testimony about the reliability of the system's hardware or software, and was unable to sufficiently describe

the process by which the footage was transferred to a flash drive. Mr. Smith argues that "[t]he admission of State's Exhibit 7 was not harmless beyond a reasonable doubt."

In response, the State maintains that "[t]he trial court did not abuse its discretion in admitting surveillance video evidence[]" from Hertz. Citing to *Mooney v. State*, 487 Md. 701 (2024), the State argues that testimony from both Detective Hardy and Sergeant Madden presented sufficient "indicia of reliability to satisfy a reasonable factfinder[.]" To support this assertion, the State emphasizes that the relevant testimony was provided by two law enforcement officers with extensive technical experience; that the footage from Hertz was a single, continuous video, rather than a composite compiled from multiple cameras by an unknown technician; and that State's Exhibit 7 was corroborated by the Metro Station's surveillance footage, which was admitted into evidence without objection.

C. Standard of Review

"An appellate court reviews for abuse of discretion a trial court's determination as to whether an exhibit was properly authenticated." *Id.* at 717 (citations omitted). Under this standard, we reverse 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." *Donati v. State*, 215 Md. App. 686, 708-09 (2014) (internal marks omitted) (quoting *King v. State*, 407 Md. 682, 697 (2009)).

D. Methods of Authentication

As a fundamental principle, "[a]uthentication refers to a process of laying a foundation for the admission of such nontestimonial evidence as documents and objects."

Jackson v. State, 460 Md. 107, 115 (2018) (quotation and internal marks omitted). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Md. Rule 5-901(a). Although the proponent bears the burden of demonstrating the evidence's authenticity, *see Washington*, 406 Md. at 655, this burden is "slight"; "the court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so." *Dickens v. State*, 175 Md. App. 231, 239 (2007) (citation and emphasis omitted).

To this end, Maryland Rule 5-901(b) describes several methods by which a proponent may authenticate evidence:

> (b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:
>
> (1) Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> * * *
>
> (4) Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.
>
> * * *
>
> (9) Evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.

This list is non-exhaustive. *Mooney*, 487 Md. at 705 (explaining that "Maryland Rule 5-901(b) sets forth a nonexclusive list of ways to authenticate evidence"); *Donati*, 215

Md. App. at 710 ("Rule 5-901(b), by its express language, . . . makes clear that the authentication methods listed in this Rule are not exhaustive.") (citation omitted).

Critical to the instant appeal, the Supreme Court of Maryland has held that photographs and videos are "subject to the same general rules of admissibility[.]" *Washington*, 406 Md. at 651 (citing *Dep't of Public Safety & Correctional Services v. Cole*, 342 Md. 12, 20 (1996)). Given the susceptibility of photographic and video evidence to external manipulation before trial, courts necessitate authentication "as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine." *Reddick v. State*, 263 Md. App. 562, 579 (2024) (citing *Washington*, 406 Md. at 651-52). "[F]or a trial court to admit a video, there must be sufficient evidence for a reasonable juror to find by a preponderance of the evidence that the video is authentic." *Mooney*, 487 Md. at 728.

The Supreme Court of Maryland has outlined two distinct methods for the authentication and admission of photographic and video evidence under Rule 5-901(b)(1): the "pictorial testimony" theory and the "silent witness" method. *Washington*, 406 Md. at 653-54 (quotation omitted). The Court has also recognized that "Maryland Rule 5-901(b)(4) permits a proponent of [video] evidence to authenticate it through circumstantial evidence[.]" *Mooney*, 487 Md. at 729.

1. Pictorial Testimony Theory of Authentication

Under the pictorial testimony theory, "photographic evidence [is] authenticated "through the testimony of a witness with personal knowledge" of the events depicted in the photograph. *Washington*, 406 Md. at 652 (citation omitted). That witness must

specifically "testif[y] . . . that the photograph fairly and accurately represents the scene or object that it purports to depict as it existed at the relevant time." *Cole*, 342 Md. at 21 (citations omitted).

2. Silent Witness Method of Authentication

"There is also, however, a second, alternative method of authenticating photographs [and videos][14] that does not require the testimony of a witness with first-hand knowledge." *Id.* "The 'silent witness' theory of admissibility authenticates [the evidence] as a 'mute' or 'silent' independent photographic witness because the [evidence] speaks with its own probative effect." *Id.* (citation omitted). Through the silent witness method, a proponent must "present[] [] evidence describing a process or system that produces an accurate result." *Reddick*, 263 Md. App. at 579-80 (quoting *Washington*, 406 Md. at 652).

Unlike the pictorial testimony theory, "the silent witness theory does not require personal knowledge of the content of video evidence or direct participation in its creation, but rather knowledge of the process by which it was created sufficient to establish its reliability." *Reddick*, 263 Md. App. at 582. In other words, authentication of photographic evidence does not require testimony of the person who took the photograph, "provided that someone with personal knowledge verifies that the photograph accurately

[14] In *Cole*, the Court explicitly extended the application of the silent witness theory to the authentication and admission of "videotape" evidence. 342 Md. at 26 ("[W]e agree that a videotape can be admissible under the 'silent witness' theory if properly authenticated.").

reflects its subject." *State v. Broberg*, 342 Md. 544, 553 n.5 (1996). That said, the video evidence must still be a "reasonably accurate and honest representation . . . of the facts it purports to represent[.]" *Cole*, 342 Md. at 23 (internal quotation and marks omitted).

Through the silent witness method, photographs and videos "may be admissible as probative evidence in themselves rather than merely as illustrative evidence to support a witness's theory, so long as sufficient foundational evidence is presented to show the circumstances under which it was taken and the reliability of the reproduction process." *Washington*, 406 Md. at 652 (citation omitted).

Although the Supreme Court of Maryland has "decline[d] to adopt any rigid, fixed foundational requirements" for authentication under the silent witness method, "[m]ost authorities and jurisdictions agree that in order to authenticate photographic evidence under [this] doctrine, the proponent must lay an adequate foundation assuring the accuracy of the process that produced the photo[graph or video]." *Cole*, 342 Md. at 26 (citations omitted). To authenticate photographic evidence in this manner, the proponent must call a witness who is both familiar with the system used to obtain the footage *and* capable of testifying to its reliability and authenticity. *Jackson*, 460 Md. at 117 (citation omitted).

In evaluating the authenticity of video evidence, a trial court may consider "the accuracy of the witness's knowledge of the system of collecting, storing, and downloading the videos, the reliability of that system, and whether the video is likely to have been altered." *Reddick*, 263 Md. App. at 582. The court may simultaneously analyze whether "the [] footage had [] been altered in any way" and whether "the []

footage was in the same form as the form in which [police] received it." *Campbell v. State*, 267 Md. App. 248, 304 (2025).

"The foundational basis [for admission] may be established through testimony relative to 'the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system.'" *Jackson*, 460 Md. at 117 (quotation omitted). Overall, "[w]hether videos are admissible under the silent witness theory of authentication is fact-specific, and trial judges have discretion in deciding whether counsel has laid a foundation sufficient to satisfy Maryland's evidentiary requirements." *Reddick*, 263 Md. App. at 580 (citing *Cole*, 342 Md. at 26). We briefly survey how Maryland appellate courts have previously analyzed this issue.

In *Cole*, the Supreme Court of Maryland held that a warden provided sufficient authentication for prison surveillance footage by testifying about the established process for extracting, labeling, and storing videos. 342 Md. at 27. In that case, the prison's warden was called to authenticate footage portraying a contentious encounter between a corrections officer and an inmate. *Id.* at 18-19. Although the warden was not physically present during the incident or the video's extraction, he testified in detail about the prison's surveillance system and the procedures employed in storing and retrieving footage and confirmed that he personally reviewed the footage at issue. *Id.* The warden explained that "[o]nce made[,] . . . the [video] tapes are marked with the date and time of the extraction, the names of the inmate and the extraction team members, and are maintained in a vault in the [prison's] security office." *Id.* The Court observed that "[n]o

issue was raised concerning the accuracy of the video process," nor was there any "suggestion that the video camera was working improperly or that the tape was altered." *Id.* at 27. The Court concluded that the videotape was "sufficiently authenticated as a 'silent witness' and was therefore properly admitted into evidence[.]" *Id.*

In *Jackson*, the Supreme Court of Maryland held that a bank's "Protective Services Manager" sufficiently authenticated video surveillance footage from one of the bank's ATMs by "describ[ing] the process he used to access the ATM video footage"; explaining that he "located the date, time[,] and cameras" for the bank "branch relative to the incident"; and confirming that he "was not able to modify, cut, paste, or enhance the video in any way." 460 Md. at 117. The manager testified that he had "access[ed] a Digital Video Recording program and pull[ed] up the . . . branch for that date and time and the cameras that [he] was looking for." *Id.* (internal quotation marks omitted). After obtaining the relevant footage, the manager then "exported the images into a digital file and emailed them to [the investigating detective]." *Id.* Because "[t]he State elicited through [the manager's] testimony the process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what the witness had viewed when he submitted a request for the video footage[,]" the Court determined that the video was properly authenticated. *Id.* at 119.

Similarly, in *Prince v. State*, this Court held that the trial court did not abuse its discretion in admitting video evidence because the authenticating witness, who owned the surveillance system, described in detail the process for retrieving footage and confirmed that the cameras operated continuously and automatically without manual activation. 255

Md. App. 640, 653-54 (2022). Although the witness did not personally retrieve or download the footage, he demonstrated to law enforcement how to access recorded footage. *Id.* at 653. Defense counsel also presented no evidence to suggest any malfunction of the cameras or alteration of the video. *Id.* Therefore, we concluded that the State established a sufficient foundation to authenticate the footage prior to its admission into evidence. *Id.*

Recently, in *Reyes v. State*, we held that a homeowner properly authenticated surveillance footage from his "Wi-Fi-enabled home security camera" under the silent witness theory after "testif[ying] to the camera's reliability, its process for automatically recording footage and sending alerts, and [the homeowner's] receipt of an alert on the night of the [relevant incident]." 257 Md. App. 596, 609, 631 (2023). Despite acknowledging that the homeowner "did not testify, among other things, to the maintenance schedule of his camera, its precise make and model, or its exact recording duration[,]" we nonetheless held that "there was still sufficient evidence for the jury to conclude that the footage was what the State claimed it to be[.]" *Id.*

In *Reddick*, the Supreme Court of Maryland held that "the State laid a sufficient foundation to render [a retailer's] surveillance video admissible under the silent witness theory." 263 Md. App. at 582. The State's witness, the "asset protection manager at the [retailer]," had "extensive knowledge of the video surveillance system, how it operated, and how video footage was collected, stored, and downloaded." *Id.* Although the manager did not personally download the footage or view the original video, the Court concluded that "he was able to describe the process by which the downloaded copy was

created and verify that only a person within his asset protection group had access to do so." *Id.* at 582-83. The Court also recognized the manager's testimony about the improbability of manipulating or altering the downloaded video as a fundamental indicator of its reliability. *Id.* at 583. Under these circumstances, the Court held that "[the manager's] testimony sufficiently authenticated the evidence, and the trial court did not abuse its discretion in admitting it at trial." *Id.*

Conversely, in *Washington*, the Court determined that the State failed to establish a sufficient foundational basis to authenticate the proffered video footage and still photographs from a bar's surveillance cameras. 406 Md. at 658. In that case, the bar's owner testified that the proffered video was taken by "an eight-camera digital video security system, [comprised of] six cameras inside and two cameras outside the bar." *Id.* at 646. Upon request from law enforcement, a technician visited the bar and produced a "compil[ation] [video] from the various cameras[.]" *Id.* Although the owner indicated that the cameras "operated 'almost hands-free'" and "recorded constantly[,]" he was unable to explain "how to transfer the data from the surveillance system to portable discs" or describe "the subsequent editing process[.]" *Id.* at 655. Because the bar owner's testimony did not identify *who* created the videotapes or explain *how* the videotapes were created, the Court held that it was inadequate to establish a foundation for authentication under the silent witness theory. *Id.* at 655-56. The Court then determined that the investigating detective's testimony "also failed to authenticate the video[] [because h]e testified that he saw the footage only *after* it had been edited by the technician." *Id.* at 655 (emphasis added).

3. Circumstantial Evidence

In addition to the pictorial testimony theory and the silent witness method, circumstantial evidence serves as an avenue for authenticating and, ultimately, admitting photographs and videos. In *Mooney*, the Court recognized that "[v]ideo footage can be authenticated in different ways under the rules governing authentication, including through the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1), circumstantial evidence under Maryland Rule 5-901(b)(4), or a combination of both[.]" 487 Md. at 730. The Court acknowledged that "[t]here need not be a witness with personal knowledge of every single event depicted in a video for the video to be authenticated." *Id.* at 730. "As with all determinations with respect to authentication under Maryland Rule 5-901(b), a trial court must assess on a case-by-case basis whether there is sufficient evidence for a reasonable juror to conclude more likely than not that video footage is what the proponent claims to be." *Id.* at 709-10.

E. Analysis

Here, the State laid an adequate foundation to render Hertz's CCTV footage admissible. For the following reasons, we conclude that the circuit court did not abuse its discretion in admitting State's Exhibit 7 because it was properly authenticated through a combination of silent witness testimony and circumstantial evidence.

1. Silent Witness Method

Detective Hardy's testimony provided sufficient details about (a) the operation of Hertz's system, (b) the reliability of Hertz's technical process for reproducing surveillance photographs and videos, and (c) the accuracy of the pertinent CCTV footage

generated from that process. *See Jackson*, 460 Md. at 119 (admitting video evidence after "[t]he State elicited . . . the process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what the witness had viewed when he submitted a request for the video footage").

a. Detective Hardy had personal knowledge of the process by which Hertz's system operated.

Regarding the operational process of Hertz's surveillance system, Detective Hardy testified to the retrieval, verification, and subsequent transfer of the CCTV footage. Just as the manager in *Jackson* provided a detailed explanation of the specific procedures employed to access and verify the bank's recording system, *see id.* at 117, Detective Hardy personally observed Hertz's system and defined its functionality in concrete terms. On direct examination, he described his request for video evidence that corresponded precisely to the date and time of the shooting, verified that "the timestamp was accurate to what [he] had requested[,]" and confirmed that he "did see the CCTV footage from June 27th of 2022, at approximately 6 p.m." Detective Hardy compared the Hertz system to "CitiWatch[,]" expounded that it operates as "a live feed" broadcasting "what's going on in real time[,]" and testified about the process for viewing footage from the monitor by "click[ing] on the camera that you want." He then elaborated that he watched the security guard select the appropriate camera and utilize the monitor's drag-and-scroll interface to navigate and access the footage at issue.

The fact that Detective Hardy neither installed nor maintained the operation of Hertz's recording system does not undermine the probative value of his testimony for

authentication purposes. *See State v. Broberg*, 342 Md. 544, 553 n.5 (1996) (holding that the silent witness method does not require testimony from the photographer, "provided that someone with personal knowledge verifies that the photograph accurately portrays its subject") (citation omitted). Because Detective Hardy conveyed his personal knowledge of the Hertz system, his testimony established the requisite evidentiary foundation to authenticate the CCTV footage, even without providing specific details of the system's maintenance, make, model, or recording duration. *Reyes*, 257 Md. App. at 631.

b. Detective Hardy testified to the reliability of Hertz's process for reproducing photographic and video evidence from this system.

Detective Hardy also testified about the process by which the CCTV footage was "burned" and "transferred over to a flash drive." He explained that he observed "the security guard or the manager ma[king] the copy . . . while [he] was standing [at Hertz]." Detective Hardy later retrieved the footage from his thumb drive and reviewed the copies on his desktop computer. His confirmation that the copies remained unedited "from what [he] observed on June 28th, 2022[,] at [Hertz,]" demonstrated the "general reliability of the entire system." *Jackson*, 460 Md. at 117 (quotation omitted).

Mr. Smith's reliance on *Washington* is, therefore, misplaced. In that case, "[t]he State did not lay an adequate foundation to enable the [circuit] court to find that the videotape and photographs reliably depicted the events leading up to the shooting and its aftermath" because "[t]here was no testimony as to the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures." *Washington*, 406 Md. at 655. Conversely, here, Detective

Hardy personally reviewed the live feed depicted on Hertz's monitor and verified that the images reliably and authentically "comport[ed] with what [he was] seeing in real life." When questioned about the presence of any anomalies or malfunctions in the monitor's display, Detective Hardy testified that he observed no "glitching or weird" movements. *See Campbell v. State*, 267 Md. 248, 304 (2025) (upholding admission of video evidence when witness testified that "the [] footage had not been altered in any way"). Likewise, nothing in the record "suggest[s] that the video camera was working improperly or that the tape was altered." *Cole*, 342 Md. at 27. Thus, the visual corroboration of the system's live output against Detective Hardy's personal observations constitutes a more reliable evidentiary foundation than the bar owner's testimony in *Washington*.

Additionally, in *Washington*, the Court recognized that "the foundational requirement [was] more than that required for a simple videotape" because the "recording, made from eight surveillance cameras, was created by some *unknown* person, who through some *unknown* process, compiled images from the various cameras to a CD, and *then* to a videotape." 406 Md. at 655 (emphases added). Following the compilation, the bar owner was unable to provide testimony regarding the editing process, and the detective conceded that he viewed the relevant footage "only after it had been edited by the technician." *Id.* at 655.

In contrast, here, nothing in the record indicates that the CCTV footage produced from Hertz's integrated surveillance system underwent any unsubstantiated editing process. Unlike in *Washington*, where the reliability of the proffered video evidence was compromised by both an unverified editing process and the inclusion of multiple cameras

covering distinct interior and exterior locations, *id.* at 655-58, Hertz's system presented unaltered footage from cameras concentrated on the same contiguous geographic areas on Fayette Street and Charles East, reinforcing the integrity and authenticity of State's Exhibit 7.

c. Detective Hardy's testimony provided details about the accuracy of the CCTV footage generated from Hertz's system.

During the authentication process, Detective Hardy confirmed that each segment of State's Exhibit 7 truly and accurately represented Hertz's CCTV footage without "alterations, edits[,] or changes." By correlating each segment to a precise geographic location and time, Detective Hardy effectively dispelled the fundamental uncertainty that characterized the authentication process in *Washington*.

Because the "burden of proof for authentication is slight," *Dickens v. State*, 175 Md. App. 231, 239 (2007) (citation and emphasis omitted), and the CCTV footage remained unaltered prior to its introduction at trial, we conclude that the State presented sufficient foundational evidence to show both the reliability of Hertz's reproduction process, *see Washington*, 406 Md. at 652 (recognizing that the proffering party must "show the circumstances under which [photographic evidence] was taken and the reliability of the reproduction process") (citation omitted), and the authenticity of the CCTV footage. *See Reddick*, 263 Md. App. at 582 (requiring the State to "present[] [] evidence sufficient to show that the evidence sought to be admitted is genuine") (quoting *Washington*, 406 Md. at 651-52). Thus, we hold that the trial court did not abuse its

discretion in admitting into evidence State's Exhibit 7 under the silent witness method of authentication.

2. Circumstantial Evidence

Additionally, the State presented sufficient circumstantial evidence for a reasonable jury to determine that the CCTV footage was an accurate depiction of the events culminating in the June 27, 2022 shooting. *Mooney*, 487 Md. at 728 (concluding that there must be "sufficient evidence for a reasonable juror to find by a preponderance of the evidence that the video is what it is claimed to be").

Accordingly, we conclude that the circuit court did not err in admitting State's Exhibit 7 because the CCTV footage was properly authenticated through both the silent witness method and the circumstantial evidence theory.

CONCLUSION

We hold that the evidence was sufficient to establish Mr. Smith's criminal agency and to sustain his convictions for first-degree assault, use of a firearm in the commission of a felony or crime of violence, reckless endangerment, and discharge of a firearm in Baltimore City. We also hold that the circuit court did not err in overruling defense counsel's objections to the State's closing remarks about Mr. K.'s "fear in Baltimore City." Finally, we hold that the court did not abuse its discretion in admitting State's Exhibit 7 because the CCTV footage was properly authenticated under the silent witness method and the circumstantial evidence theory.

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