Circuit Court for Prince George's County
Case No. CT190487X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1766

September Term, 2019

SUNJA SONG

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 19, 2020

A jury in the Circuit Court for Prince George's County convicted appellant, Sunja Song, of (1) receiving money or proceeds from the earnings of a person engaged in prostitution, (2) engaging in prostitution, (3) occupying a building for purposes of prostitution, (4) allowing a building to be used for prostitution, and (5) assignation. These convictions were based on activities occurring at appellant's business, Cozy, Inc., d/b/a CY Acupressure. Appellant timely appealed and presents the following questions, which we have rephrased for clarity:[1]

1. Did the trial court err in allowing Detective Hill to testify as to hearsay statements made by "April," a worker at CY Acupressure?

[1] The questions presented in appellant's brief were:

I. Did the court err in admitting the hearsay testimony of "April" through Detective Hill as substantive evidence of the Appellant's guilt?

II. Was the evidence in this case sufficient to convict the Appellant of receiving money from the earnings of a person engaged in prostitution?

III. Did the General Assembly intend that Md. Code Ann. Crim. Law § 11-304 -- outlawing a person from receiving money from the earnings of a person engaged in prostitution – apply to a person receiving money from earnings acquired as consideration for lawful conduct not constituting prostitution, but nonetheless from a person who may be a prostitute?

IV. Did the trial judge abuse his discretion by permitting the prosecution's expert to give his opinion that CY Acupressure was a brothel, and did this evidence unfairly prejudice the Appellant's right to a fair trial on all counts?

2. Was the evidence insufficient to convict appellant of receiving money from the earnings of a person engaged in prostitution?

3. Does Section 11-304 of the Criminal Law Article prohibit a person from receiving money from the legitimate and legal earnings of a person who is also engaged in prostitution?

4. Did the trial court abuse its discretion by permitting the State's expert witness to give an opinion on an ultimate issue of fact?

We answer each of these questions in the negative and affirm the convictions.

FACTUAL AND PROCEDURAL BACKGROUND

On January 29, 2019, Detective Antonio Hill of the Prince George's County Police Department participated in an undercover investigation of possible prostitution at CY Acupressure. The business was located inside an office building, and Detective Hill rang a doorbell in order to gain entrance to the suite. An unidentified "elderly" woman responded to Detective Hill's ringing by opening the door and asking him how long he wanted to stay. Detective Hill responded that he wanted to stay for one hour, and the woman indicated it would cost $60. Detective Hill agreed to that price, and the woman led him to a room with a massage table. Detective Hill handed her $60, and she left the room.

Shortly thereafter, a young, suggestively dressed woman came into the room and identified herself as "April." April verified that Detective Hill wanted an hour-long massage and informed him that although the "house" charged $60 an hour, if he wanted "extra," he would need to pay her directly. Detective Hill replied, "No problem." April instructed Detective Hill to undress and relax, and shortly thereafter proceeded to massage him. The massage began with Detective Hill lying on his stomach. After approximately five minutes, April told Detective Hill to "roll over," and when he did so, she pointed to

his genital region and asked him whether he wanted "extra." Detective Hill answered affirmatively, and indicated in explicit terms that he wanted vaginal and oral sex. April responded, "Okay. $100." Detective Hill asked whether the $100 was payment for the sexual services, and April replied, "Yes, yes. . . . That's what you want?" Detective Hill confirmed, and April left the room to retrieve a towel. With April gone, Detective Hill dressed and began to leave. When April returned, he explained that he needed to get money from his car and then left. Detective Hill did not pay April any money.

Investigation and surveillance of CY Acupressure continued into March of 2019. Notably, police learned that several internet listings described CY Acupressure as an "erotic massage parlor." Based on the continued surveillance, Detective Hill's experience, and the internet listings, on March 14, 2019, the police obtained a warrant to search the premises.

On March 19, 2019, Detective Juan Hunt of the Prince George's County Police Department also visited CY Acupressure as an undercover agent posing as a customer. Similar to Detective Hill's experience, Detective Hunt rang the doorbell and was greeted by an "older" woman. The woman led Detective Hunt to a room, told him to disrobe, then left the room.

Shortly thereafter, a "younger female" later identified as appellant entered the room wearing a "black nighty" and asked for the $60 house fee. After receiving payment, appellant began massaging Detective Hunt in a sexually suggestive way, such as straddling his legs with her own while he lay on his stomach. After approximately fifteen minutes, appellant told Detective Hunt to roll over onto his back and asked him "how much more

massage [he] wanted." Detective Hunt answered, "A lot more. Everything." Appellant then looked toward Detective Hunt's genital area, then back up to his face. Detective Hunt told her "Full service," an indication of vaginal intercourse. Appellant then dimmed the lights and left the room. While waiting for appellant to return, Detective Hunt heard "moans and groans" which he perceived to be "sexual sounds" coming from another room. When appellant returned, Detective Hunt handed her another $60 but told her he had received an emergency call and needed to leave.

Shortly after Detective Hunt's departure, police executed their search warrant and arrested appellant. Inside the premises, police found sex toys inside shower rooms; lingerie and other clothing apparently belonging to CY Acupressure's female employees; over $3,000 in total cash among several of the rooms; and numerous personal effects. In addition to appellant, the police arrested two other women at the scene.

The police were unable to trace the cash Detective Hunt gave to appellant that day because they failed to record the serial numbers of the bills used. Although appellant consented to a limited search of her car, the police instead impounded it and obtained a warrant to search it two days later. During that search, police recovered a trash bag that contained used condoms and ledger pages from CY Acupressure.

Agent Jay Lee, a Department of Homeland Security investigator, interviewed appellant on March 19, 2019. During that interview, appellant characterized the $60 Detective Hunt paid upfront as a "house fee." Agent Lee asked appellant, "And whatever happens inside, the prostitution, they take that money?" Appellant answered in the

affirmative, but later claimed ignorance as to what took place inside the rooms at CY Acupressure.

Following an indictment, appellant's case proceeded to trial. At trial, Detectives Hill and Hunt testified as to their respective experiences at CY Acupressure. Additionally, Lieutenant David Martini testified as an expert in the field of human trafficking and prostitution. Lieutenant Martini described the organizational structure typically found in illicit massage parlors, how money is often divided among the different hierarchy levels, and the typical physical conditions of illicit massage parlors. According to Lieutenant Martini, illicit massage parlors have, at the lowest level, workers who provide the massages and sexual services. Above them is typically a manager who "works inside the building," escorting clients back to rooms and generally supervising the operation. At the top of the hierarchy is the business owner, who visits the location once or twice a week to collect money. Lieutenant Martini opined that the "house fee," paid upfront before receiving any services, would likely go to either the manager or the owner. Because the businesses typically do not pay the workers a wage, they keep the fee customers pay for the agreed-upon sexual service. Lieutenant Martini testified that illicit massage parlors often have showers and sex toys, and it is common to find clothing and personal items at the parlors because the workers often live there. Additionally, a customer will typically have to ring a doorbell to be allowed into the establishment whereas legitimate massage parlors do not lock their doors during business hours. After describing how illicit massage parlors usually operate, Lieutenant Martini stated, "it's kind of easy to figure out what's legitimate and what's not."

On cross examination, appellant asked Lieutenant Martini whether any of the indicia of illegal massage parlors were found in this case. In response, he acknowledged that he was unfamiliar with the specific facts of appellant's case. On redirect, he clarified that his testimony was an overview of "how these operations can and sometimes do work."

At the close of the State's case, appellant moved for judgment of acquittal on Counts 1 (receiving money or proceeds from the earnings of a person engaged in prostitution) and 5 (assignation). Appellant's primary argument was that, because Detective Hill testified that he gave no money to April, the State did not prove that appellant received any money from the earnings of a person engaged in prostitution, *i.e.*, April. The court denied the motion. Appellant presented no evidence and, after renewing the motion for acquittal, the case was submitted to the jury. As stated above, the jury found appellant guilty of all counts.

DISCUSSION

I. HEARSAY

Appellant first argues that April's statements, as recounted in Detective Hill's trial testimony, constituted inadmissible hearsay evidence. Appellant contends that the trial court erred in admitting the statements pursuant to Rule 5-803(a)(4) and (5), exceptions to the hearsay rule that provide:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> (a) A statement that is offered against a party and is:
>
> . . .

> (4) A statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment; or
>
> (5) A statement by a coconspirator of the party during the course and in furtherance of the conspiracy.

In appellant's view, because the State "offered absolutely no connection between April and [a]ppellant," it failed to show that April was appellant's agent or employee as required by Rule 5-803(a)(4) or a coconspirator as required by subsection (a)(5).

The following colloquy constitutes the entirety of Detective Hill's testimony containing statements April made:[2]

[THE STATE]:	What happened next?
[DETECTIVE HILL]:	She said, How long do you want to stay? I said, An hour. She said, You want extra? I said, Yes. She smiled, and then she left the room. She came back. She says, You get undressed and relax. So I did; I laid down. She left the room again, and then came back and then began giving me a massage.
[THE STATE]:	Prior to the massage being conducted, when she initially asked you how long you wanted to stay, at any point -- or what, if anything, did she say to you about money?
[DETECTIVE HILL]:	So what she said was -- she said, How long do you want to stay? I told her an hour. She said, $60. And then she asked me did I want extra. And she said -- I said, Yes. She said, You pay house $60. You pay me for extra. I said, Okay. No problem.

[2] The formatting of this exchange has been altered to promote readability and understanding.

[THE STATE]:	What happened when April came back to the room?
[DETECTIVE HILL]:	So when she came back in, she began to give me a massage, and I was on my stomach. She began giving me the massage. Maybe like five minutes, then she turned -- she said, Roll over. So I rolled over, and then she pointed to my genital area and she said, Do you want extra? And I said, Yeah, I want extra. And she started making a circular motion. Something to this effect, and I was like, No, I don't want that. And she -- so she said, What you want? I said, I want to f**k and s**k. And she said, Okay. $100.00. I said -- so I said, Let me make sure I'm straight. It's a hundred dollars to f**k and s**k? She said, Yes, yes. She said, That's what you want? I said, yes. So she left again to go get a towel. When she left again, I got up and I got dressed, and I began to -- as I was getting ready to walk out of the room she says, Where are you going? I said, I don't have all the money. I have to go to my car and get it. So I went -- and I said, I'll be right back. She said, Oh, no, no. I said, I'll be right back. So I left, and I got in my car and I left.

At trial, appellant objected to statements April made to Detective Hill, arguing that they constituted inadmissible hearsay. Appellant's counsel asserted that April's statements did not fall under the hearsay exceptions for employees or coconspirators because appellant was not charged with conspiracy and "there's no connection between April and [appellant]." The court overruled appellant's objection "subject to [the State] making that connection." At the close of the State's case, the court found that there was "sufficient evidence that April was an agent or employee of [appellant]. [Appellant] undisputedly was the owner of the business, April was working there, and the statements were made while she was working there in the scope of that agency."

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 5-801(c). Rule 5-802 prohibits the admission of hearsay "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes." As noted, the hearsay exceptions ostensibly relevant here are Rule 5-803(a)(4) and (5), concerning statements by a party's agent or employee made during the agency or employment relationship and statements made by a coconspirator.

Although the trial court admitted April's statements pursuant to an exception to the hearsay rule, we conclude that the statements at issue were not hearsay. We begin with the principle that commands are not "statements" within the contemplation of the hearsay rule. *See Wallace-Bey v. State*, 234 Md. App. 501, 539 (2017) ("In general, orders and commands are not factual assertions."). Thus, April's statements, "You get undressed and relax" and "Roll over" are clearly not hearsay.

The balance of the purported hearsay statements pertain to negotiations for prostitution-related services and, as such, are not considered to be assertions under the hearsay rule.[3] Instead, those statements qualify as admissible "verbal acts" under established caselaw. We explain.

In *Garner v. State*, 414 Md. 372 (2010), Alphonso Garner was arrested during a traffic stop, and a search of his vehicle revealed thirteen baggies of cocaine. *Id.* at 375.

[3] A question is frequently not hearsay, unless it implies an assertion. "For example, the question, 'Do you need change?' impliedly asserts that the questioner has change." *Garner v. State*, 183 Md. App. 122, 139 (2008) (quoting *Carlton v. State*, 111 Md. App. 436, 443 (1996)).

Police confiscated his belongings upon arrival at the police station. *Id.* at 376. Among his belongings was a cell phone which rang numerous times following his arrest. *Id.* at 376–77. "Trooper Gussoni subsequently answered the cell phone. Gussoni was allowed to testify, over objection, that after he said 'hello' a male caller replied, 'can I get a 40,' and then hung up when asked his name." *Id.* at 376. This testimony was used to convict Garner of possession of cocaine with the intent to distribute. *Id.*

Garner argued on appeal that "can I get a 40," despite being a question, contained an implied assertion and was therefore inadmissible hearsay. *Id.* at 381. The Court of Appeals instead viewed the utterance as a "verbal act," quoting language from this Court's opinion in *Garner*:

> The making of a wager or the purchase of a drug, legally or illegally, is a form of contract. There is an offer and an acceptance. The telephoned words of the would-be bettor or would-be purchaser are frequently categorized, therefore, as verbal parts of acts. They are not considered to be assertions and do not fall under the scrutiny of the Rules Against Hearsay.

Id. at 382 (citation omitted) (quoting *Garner v. State*, 183 Md. App. 122, 140 (2008)). The Court discussed caselaw and treatises on the issue of verbal acts and hearsay, mostly concerning telephone conversations with unidentified speakers seeking to place bets or buy drugs. *Id.* at 382–88. The Court ultimately concluded:

> While there may be an "implied assertion" in almost any question, in the case at bar, the only assertion implied in the anonymous caller's question was the assertion that the caller had the funds to purchase the drugs that he wanted to purchase. Because the caller's request did not constitute inadmissible hearsay evidence, the rule against hearsay does not operate to exclude evidence of the "verbal act" that established a consequential fact:

> Petitioner was in possession of a telephone called by a person who requested to purchase cocaine.

Id. at 388.

One of the cases cited with approval in *Garner* is particularly instructive: *Little v. State*, 204 Md. 518 (1954). There, two undercover police officers entered a poolroom operated by Little on suspicion that it was being used for gambling. *Id.* at 520–21. The officers were permitted to testify over objection that they asked a man there, Edward Capel, about placing a bet on a horse. *Id.* at 521. "Capel wrote the bet on a slip of paper and accepted $7 from the witnesses. Capel then went to the back of the room, where the proprietor, Little, and other men were standing, and when he returned told them: 'I got it up.'" *Id.* A jury found Little "guilty of accepting bets on horse races and maintaining premises for such purpose." *Id.* at 520. On appeal, Little challenged the trial court's admission of Capel's statement "I got it up" as hearsay. *Id.* at 522. The Court of Appeals concluded that the statement was a verbal act:

> The statement did not purport to repeat anything said to Capel by Little, or even to implicate him directly in the transaction. It merely indicated an acceptance of their offer by Capel, either on his own account or for an undisclosed principal. The verbal act of taking a bet, with or without the knowledge or consent of Little, was germane to the charge of maintaining premises for gambling.

Id. at 523.

Here, statements April made as part of a prostitution transaction, *i.e.*, asking Detective Hill how long he wanted to stay, whether he "wanted extra," and stating the price for the proposed services, were admissible verbal acts. *Cf. Cherry v. State*, 18 Md. App. 252, 257–64 (1973) (discussing solicitation of prostitution as a verbal act not protected by

the First Amendment). As in *Little*, the statements did not purport to repeat anything appellant said to April. April's verbal act of soliciting prostitution was relevant to several of the charges against appellant, including receiving money or proceeds from the earnings of individuals engaged in prostitution. Indeed, appellant makes no argument that the statements were irrelevant. Because the hearsay rule is not implicated, we reject appellant's argument that the court erred in admitting April's statements.

Assuming, *arguendo*, that the statements were hearsay, the trial court's finding that April was an agent or employee of appellant was not clearly erroneous. "A holding of 'clearly erroneous' is a determination, as a matter of law, that, even granting maximum credibility and maximum weight, there was no evidentiary basis whatsoever for the finding of fact." *State v. Brooks*, 148 Md. App. 374, 399 (2002). Here, the State presented evidence that appellant was an owner of CY Acupressure, that April was working at CY Acupressure during appellant's ownership, and that April's interaction with Detective Hill was consistent with appellant's own description of the business operation. Based on this evidence, the court was not clearly erroneous in concluding that April was appellant's agent or employee and that her statements were "made during the agency or employment relationship concerning a matter within the scope of the agency or employment[.]" Rule 5-803(a)(4). Thus, April's statements would not be excluded by the hearsay rule.[4]

[4] In light of our holding that April's statements were not hearsay, and our view that they would be admissible in any event under Rule 5-803(a)(4), we need not address whether the statements would be admissible as statements of a coconspirator under (a)(5).

II. SUFFICIENCY OF THE EVIDENCE

Appellant next argues that the evidence presented at trial was insufficient to prove that she received the earnings of a person engaging in prostitution.[5] Appellant succinctly states her sufficiency argument: "[T]here is no evidence that April made a penny from prostitution, and therefore there is no evidence that [a]ppellant could have received a portion of the earnings of April from prostitution."

Section 11-304(a) of the Criminal Law Article provides:

> A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to:
>
> (1) promote a crime under this subtitle;
>
> (2) profit from a crime under this subtitle; or
>
> (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle.

Md. Code (2002, 2012 Repl. Vol.), § 11-304(a) of the Criminal Law Article ("CR").

We view the evidence in the record in the light most favorable to the State "solely to determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Fuentes v. State*, 454 Md. 296, 307 (2017) (emphasis omitted) (quoting *McKenzie v. State*, 407 Md. 120, 136 (2008)). "We 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,

[5] As stated above, at trial, appellant moved for a judgment of acquittal as to both receiving the earnings of a person engaged in prostitution (Count 1) and assignation (Count 5). Appellant does not challenge on appeal the sufficiency of evidence as to the assignation conviction.

refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Id.* at 308 (citing *State v. Smith*, 374 Md. 527, 557 (2003)).

We find *Mazer v. State*, 231 Md. 40 (1963), instructive. In that case, Mazer, the manager of a nightclub that employed exotic dancers, was convicted of violating Art. 27, § 430, the predecessor to the current CR § 11-304. Mazer would allow the dancers, when not scheduled to be on stage, to sit and drink with the customers. *Id.* at 43. One of the dancers testified that, "on a number of occasions," she would leave with a male customer prior to her performance for the purposes of prostitution. *Id.* She testified that, "on each such occasion she paid Mazer $20.00 in order to avoid her salary being docked, and that after leaving the club for such a purpose she would not return later the same night." *Id.* She further testified that she and Mazer never discussed the amount to be paid nor the reason why she was leaving. *Id.* In holding the evidence sufficient to sustain the conviction, the Court of Appeals stated:

> [W]e think that the testimony adduced, if believed, and reasonable inferences to be drawn therefrom were sufficient to warrant the verdict of guilty. It was, we think, permissible for the jury to find that the State's witness was a woman engaged in prostitution and to draw the inferences that the defendant knew it and knew that her early departures from the night club where she was employed were for the purpose of engaging in prostitution, and that the money which she gave him when she left on such expeditions represented earnings from prostitution. That was enough.

Id. at 48–49.

Mazer is instructive because, despite the lack of evidence that Mazer directly received a portion of the dancer's earnings or even knew she was a prostitute, the Court found the evidence sufficient based on permissible inferences from the totality of the

evidence. Although appellant is correct that Detective Hill testified that he never gave April any money for sex, we reject appellant's myopic view of the evidence and conclude, as in *Mazer*, that the evidence as a whole was sufficient to convict appellant of receiving or acquiring "money or proceeds from the earnings of a person engaging in prostitution" with the purpose of "promot[ing] a crime under this subtitle." CR § 11-304(a)(1). In our view, the State presented sufficient evidence that prostitution was occurring at CY Acupressure, and that, as an owner of the business, appellant received money or proceeds from prostitution-related services being conducted at the business. First, Detectives Hill and Hunt both testified that they were offered sexual services for money at CY Acupressure. Second, in her recorded interview played for the jury, appellant acknowledged that she was aware that the business premises were being used for prostitution (indeed, appellant engaged in prostitution there).[6] She further described how the operation worked and corroborated April's reference to the $60 "house fee." She indicated that the gross receipts for the business amounted to "barely a thousand" dollars a day, which the jury could infer included "house fees." Although appellant stated that some of those funds were deposited into the Cozy, Inc. business account to pay utility and cable bills as well as the rent, the jury could also infer that appellant used cash from the gross receipts to directly pay what appellant characterized as "[a] lot" of money to the house

[6] Agent Lee asked appellant, concerning the workers at CY Acupressure, "And whatever happens inside, the prostitution, they take that money?" Appellant responded, "Yeah." Although appellant asserts that this was an ambiguous compound question, the jury could reasonably infer that appellant's answer to this question, in context, constituted an admission that she knew prostitution was occurring on the premises.

manager. Third, Lieutenant Martini provided expert testimony on the organizational structure of a prostitution operation, placing the owner of the business at the top of the business hierarchy. Lieutenant Martini described how the "house fee" was integral to a typical prostitution operation, confirming that a customer at an "illegal massage parlor" would have to first pay the house fee. A jury could reasonably conclude from this evidence that appellant, an owner of CY Acupressure, personally received or acquired at least a portion of the cash "house fee"; that the "house fee," as a predicate for sexual services, represented a portion of the earnings of a person engaged in prostitution; and that appellant had the intent to promote a prostitution-related crime as proscribed by CR § 11-304(a)(1). We therefore reject appellant's sufficiency argument.

III. APPLICATION OF CR § 11-304

Appellant's third argument is that the State "convinced the judge that if April earned money by giving a massage, and any part of the money was received by [appellant], then [appellant] had received the earnings of a prostitute." In other words, appellant asserts that under the State's interpretation of CR § 11-304, a person can be convicted if she receives money from a prostitute whether or not that money is legally earned. Disagreeing with that interpretation, "[a]ppellant interprets the statute to mean that a person may not receive money from the *illicit* earnings of another person engaged in prostitution[,]" and states, "it is improbable that the [S]tate can enact a constitutionally valid criminal statute that makes it a crime to conduct all financial transactions of any type with a prostitute."

We need not delve into statutory interpretation or analyze the constitutionality of this statute, however, because the State made no such argument at trial. Instead, the State

argued that the $60 house fee was earned through prostitution because, "[b]ut for paying the $60, you would not get to the prostitution. The $60 is directly related to that. It's something that [appellant] earns. She's profiting the $60 from a business that's operating as . . . an illegal massage parlor where prostitution is occurring, and she's receiving the funds from that." At no point did the State argue that CR § 11-304 proscribes a person from receiving money, legitimately and legally earned, from a person who also engages in prostitution.

Moreover, the court's jury instruction coincided with the State's theory of the case that appellant could be found guilty if the evidence demonstrated that she received money or proceeds from the earnings of a person engaged in prostitution-related conduct. The court instructed the jury as follows:

> The Defendant is charged with the crime of receiving earnings from prostitution. In order to convict the Defendant of receiving the earnings of a prostitute, the State must prove: First, that the Defendant received or acquired money or proceeds from the earnings of a person engaged in prostitution; and, second, that the Defendant did this with the intent to promote the crime of prostitution, assignation, or with the intent to profit from the crime of prostitution or assignation.

Accordingly, we perceive no error and decline appellant's invitation to opine whether CR § 11-304 prohibits an individual from receiving money from a prostitute where the source of the funds is derived from legal activity unrelated to prostitution. *See Pizza di Joey, LLC v. Mayor of Balt.*, ___ Md. ___, No. 41, Sept. Term 2019 (filed August 17, 2020) ("[R]endering purely advisory opinions [is] a long forbidden practice in this State." (quoting *Hickory Point P'ship v. Anne Arundel Cty.*, 316 Md. 118, 129–30 (1989))).

IV. EXPERT TESTIMONY

We confess having some difficulty understanding appellant's final arguments concerning Lieutenant Martini's expert testimony. The only case that appellant relies on in this section of her brief is *Cook v. State*, 84 Md. App. 122 (1990). Appellant argues that Lieutenant Martini gave an impermissible expert opinion on an ultimate issue of fact in violation of *Cook*.[7] Before we address appellant's substantive argument, we note that appellant did not object to Lieutenant Martini being qualified as an expert "in the field of human trafficking and prostitution." Moreover, appellant neither objected to nor moved to strike any testimony on the basis that Lieutenant Martini impermissibly opined on an ultimate fact. Thus, her arguments based on *Cook* are unpreserved.

Even if preserved, we would reject them. In *Cook*, appellants Cook and Darby were convicted of various crimes relating to the distribution of cocaine. *Id.* at 126. At trial, Officer Trogdon offered "expert opinion as to the roles of appellants and others in the drug distribution operation." *Id.* at 135. Officer Trogdon testified, "It would be my opinion that [Cook] would be the head of the cocaine organization for that dwelling since he was the person having the currency and also the gun displayed when we entered the dwelling." *Id.* at 136. He further stated, "Mr. Darby was working in conjunction with Mr. Cook conspiring to distribute and sell cocaine from that dwelling." *Id.*

[7] Appellant also argues, primarily in her reply brief, that Lieutenant Martini improperly suggested to the jury that, because appellant is Korean, her massage parlor therefore provides sexual services. We see no support for appellant's allegation.

We reversed the judgments of conviction, explaining that, "[i]n opining that appellant Cook was the head of the cocaine organization for that house and that appellant Darby was a distributor of the cocaine, Officer Trogdon was, in effect, stating an opinion that both appellants were guilty of all charges[.]" *Id.* at 137. Although "the opinion of an expert, even on the ultimate issue of fact, is admissible if it is relevant and will aid the trier of fact," *id.* at 138–39 (quoting *Cider Barrel Mobile Home v. Eader*, 287 Md. 571, 584 (1980)), Officer Trogdon's testimony "was highly prejudicial without being of any appreciable help to the jury," *id.* at 139. Notably, we stated that,

> Since the court had accepted Officer Trogdon as an expert in the field of drug dealing and operations involving the illicit business of storing, packaging, and distribution of controlled dangerous substances, it would certainly have been permissible for the officer to describe how such operations are normally or typically conducted. If such expert description of the typical drug organization operating out of a house such as the one Officer Trogdon and the other policemen raided on this occasion were to include testimony that the head of the organization is normally armed and usually has the organization's money on his person, the jury would have been just as capable as the witness to draw a conclusion that appellant Cook, who was armed and the only person in the room with money, was, indeed, the head of the organization.

Id. at 139. The Court held that it was improper for the jury to hear Officer Trogdon's opinion concerning Darby's and Cook's specific roles in the drug organization. *Id.* at 142. Officer Trogdon instead "could have described the pattern of conduct normally, usually, or frequently associated with cocaine distribution operations and left it to the jury to decide whether appellants' conduct fit that pattern." *Id.*

We find *Diaz v. State*, 129 Md. App. 51 (1999), more analogous to the expert testimony presented in this case. In *Diaz*, two handguns and a large amount of heroin and

cocaine were found in a vehicle Diaz had been driving. *Id.* at 57–58. Diaz was charged with distribution of heroin, distribution of cocaine, use or transport of a handgun in a drug trafficking offense, and other related charges. *Id.* at 55. Agent Sheehy was admitted as an expert witness in the field of drug investigation, including "identification and packaging and distribution." *Id.* at 74. "Over defense objection, Agent Sheehy testified that, based on the method of packaging the heroin found in appellant's car, and the brand name labeling of the packages, it was his opinion that the packaging had been done by a professional organization outside of Baltimore." *Id.* He also testified that drug organizations are violent and frequently use weapons, especially semiautomatic weapons "because the greater firing potential of the weapons made them more deadly." *Id.* at 75.

Diaz argued on appeal that Agent Sheehy's expert testimony "was irrelevant and highly prejudicial" and was intended to make the jury believe Diaz was a "'dangerous and guilty' drug organizer from New York who should be convicted to 'protect our community' in Baltimore." *Id.* Diaz argued that the testimony "suggested that [Diaz] was a member of a large drug organization and used the most dangerous types of weapons to protect his drugs." *Id.* In affirming the trial court, we stated:

> In contrast to the expert witness who testified in *Cook*, Agent Sheehy simply offered general information as to the methods of drug packaging used by professional drug organizations and the types of weapons commonly used by such organizations. Agent Sheehy spoke in general terms about professional drug organizations and their various defining characteristics. Unlike the expert witness in *Cook*, he did not testify that [Diaz] was a member of any such organization. Instead, Agent Sheehy merely stated that the manner of packaging of the drugs found in [Diaz's] car was consistent with a professional, out-of-town organization, and that the guns found were the type generally used by drug dealers. . . . Agent Sheehy provided the jury

> with useful information about drug distribution enterprises that is unknown to most jurors.

Id. at 77–78.

Here, Lieutenant Martini merely "described the pattern of conduct normally, usually, or frequently associated with" massage parlors providing prostitution services and, admitting his lack of knowledge of the specific facts of appellant's business, "left it to the jury to decide whether appellant['s] conduct fit that pattern." *See Cook*, 84 Md. App. at 142.[8] The manner of operation of such businesses is information that is "unknown to most jurors," and therefore would be helpful to them in analyzing the facts.[9] We view Lieutenant Martini's testimony in line with the expert testimony we approved in *Diaz*.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[8] Both at trial and on appeal appellant argued that Lieutenant Martini's testimony "could not be probative because [he] had no familiarity with CY Acupressure." Lieutenant Martini's testimony related only to the general operation of illicit prostitution operations. His expert testimony did not require any specific knowledge of CY Acupressure.

[9] In a reference which appears related to appellant's argument that Lieutenant Martini opined on an ultimate fact, she asserts that Lieutenant Martini improperly passed judgment on her when he stated, "it's kind of easy to figure out what's legitimate and what's not." The short answer to this contention is that appellant interposed no objection to this statement.