Circuit Court for Prince George's County
Case No. CT210704X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1892

September Term, 2023

DAVID ISAIAH YATES

v.

STATE OF MARYLAND

Berger,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: January 14, 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 Rule 1-104(a)(2)(B).

Appellant, David Isaiah Yates, was convicted by a jury in the Circuit Court for Prince George's County of first-degree murder, two counts of first-degree assault, two counts of attempted first-degree murder, conspiracy to commit murder, and three counts of use of a firearm in the commission of a crime of violence.

Appellant presents the following questions for our review:

> "1. Was the evidence sufficient to support Mr. Yates' conviction both for conspiracy and for first-degree assault of Alexis Williams and use of a firearm in commission of that assault based on a mark Ms. Williams reported on her face but could not identify as having been made by a bullet?
>
> 2. Did the trial court abuse its discretion when it admitted the recovered casings into evidence without proof of their location?
>
> 3. Did the trial court abuse its discretion in preventing the defense from adducing from Officer Tucker testimony that the presence of casings at the scene indicated the use of a semi-automatic weapon, including testimony as to how a semi-automatic weapon worked?"

Finding no error, we shall affirm.

I.

The Grand Jury for Prince George's County indicted appellant for first-degree murder and related charges. Following a jury trial, a jury convicted appellant of first-degree murder, two counts of first-degree assault, two counts of attempted first-degree murder, conspiracy to commit murder, and three counts of use of a firearm in the commission of a crime of violence. The court imposed a term of life imprisonment on the attempted murder charges and various terms of incarceration for the other counts.[1]

[1] The court sentenced appellant as follows: Count 1 (first-degree murder): a term of incarceration of life imprisonment; Count 2 (use of a firearm in the commission of a

The relevant events occurred late in the evening on May 13, 2021, and early in the morning on May 14, 2021, at an Applebee's Restaurant in Prince George's County. Around 11:00pm on May 13, 2021, Applebee's server Brett Kolpack saw a man wearing a white t-shirt, who was later identified as appellant, in the restaurant with another man wearing black clothing. Mr. Kolpack testified that he spoke to appellant, who introduced himself as Smoke and tried to sell Mr. Kolpack cannabis. Mr. Kolpack observed appellant interact with two servers identified as Veronica and Donesha. Various other employees, including server Michael Marbury, recalled observing appellant and his companion, who was wearing a ski mask. Food expediter David Burch testified that the two men were waiting for those servers to get off work.

Around midnight, security officer David Fowler walked to each table to announce that it was closing time and ask the remaining ten or fifteen diners to pay their checks and leave, as was his duty. Bartender Alexis Williams testified that around fifteen or twenty minutes after Mr. Fowler made his announcement, appellant and his companion were still inside the restaurant waiting for Veronica and Donesha. Various witnesses testified that

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crime of violence): twenty years' incarceration, concurrent to Count 1; Count 4 (attempted first-degree murder): a term of incarceration of life imprisonment, all but fifty years suspended, consecutive to Count 1; Count 6 (first-degree assault), a term of twenty-five years' incarceration, concurrent to Count 4; Count 7 (use of a firearm in the commission of a crime of violence): a term of twenty years' incarceration, concurrent to Count 4; Count 9 (attempted first-degree murder): a term of incarceration of life imprisonment, all but thirty years suspended, consecutive to Count 4; Count 11 (use of a firearm in the commission of a crime of violence): a term of incarceration of 20 years, concurrent to Count 9; Count 14 (conspiracy to commit murder): a term of life incarceration, all but 20 years suspended, concurrent to Count 1, all followed by 5 years supervised probation.

appellant approached Mr. Burch and bartender Anthony Evans and said something along the lines of "What y'all say . . . . [Y]'all can see me outside." Mr. Fowler testified that he observed appellant and Mr. Burch get into an argument by the restaurant's back door and that he separated the parties and escorted appellant outside.

At that point, most of the remaining staff left in the restaurant went outside into the parking lot, where a physical altercation occurred. During the chaotic interaction, which lasted around 5 minutes, Mr. Burch was punched and ended up on the sidewalk unconscious. Ms. Williams, who was dating Mr. Burch, punched appellant. Mr. Fowler broke up the fight, escorted the employees back inside and he told appellant to walk away. Appellant left the parking lot and Mr. Fowler called for assistance to other police. No one answered.

Mr. Burch, Mr. Evans, and Ms. Williams returned inside to finish cleaning up, a process that took around forty-five minutes. Afterward, the employees—including Mr. Burch, Mr. Evans, Ms. Williams, Mr. Marbury, Mr. Kolpack, and Ronald Fisher, who was a friend of Mr. Evans—exited the restaurant and stood around discussing their plans for the remainder of the evening. Mr. Kolpack testified that around 5 to 7 minutes passed before a car pulled into the parking lot. Various witnesses testified that they observed a small, four-door dark car pull into the lot, and that a man wearing a white t-shirt leaned out the passenger window of the car, yelled something along the lines of "which one of y'all jumped me" and that they then heard gunshots. The witnesses did not agree on the number of shots that were fired: Mr. Marbury recalled hearing between ten and twelve shots; Mr. Fisher recalled thirteen; Linwood Watkins, an Applebee's regular who observed the

incident recalled 5 or 6. The car then left the parking lot. Mr. Evans had been shot a few times and was lying on the ground, and Mr. Marbury was shot in the stomach and hip. Ms. Williams realized later that her face had been grazed. Ms. Williams testified that she was not sure whether she received the graze during the earlier fight or during the later gunfire. Mr. Burch testified that he did not observe any blood on Ms. Williams' face when they exited the restaurant immediately prior to the gunfire incident, but that he noticed blood on her face after the shooting.

Mr. Evans died from his injuries. Later medical examination revealed he was shot in the thigh, leg, and head. Mr. Marbury received hospital care for his injuries, and Ms. Williams did not report receiving any medical care. Mr. Marbury identified the man who fired the gun as the man who had been fighting Mr. Burch earlier that night.

At trial, Keith Cook testified pursuant to a plea deal and identified himself as appellant's companion that night. Mr. Cook corroborated most of the prior account of the night with a few additional details. As to the first fist fight outside Applebee's, Mr. Cook testified that he noticed appellant begin to pull out a weapon and he pushed his arm so that he could not draw the gun and escalate the fight. After, the two crossed the street and began walking while appellant called a friend for a ride. When the friend arrived, appellant and Mr. Cook borrowed her car, a small, four-door vehicle. Appellant instructed Mr. Cook to drive because appellant said he was too drunk, and appellant sat in the passenger seat. Mr. Cook testified that he wanted to drive home, but appellant "forced [him] to drive back to the Applebee's to get his phone," which appellant said he lost. Mr. Cook drove back to

Applebee's, and, during the drive, appellant spoke about killing the Applebee's employees, testifying as follows:

> "[PROSECUTOR]: Did [Yates] say anything along the way?
>
> COOK: Lunching, because we were arguing a couple times, but I stopped arguing because, you know, he had his gun on him.
>
> [PROSECUTOR]: When you say 'lunching,' what do you mean by that?
>
> COOK: Like just saying stuff, crazy stuff, like he's going to kill, like who we was talking about, like just arguing.
>
> [PROSECUTOR]: What were you arguing about?
>
> COOK: Like me not driving back right there, and he just, Man, drive back right there. Like cussing and stuff like.
>
> [PROSECUTOR]: What was his mood like?
>
> COOK: Mad, crazy.
>
> [PROSECUTOR]: Did he say anything about the people who had been in the fight?
>
> COOK: No. Well, he just kept saying, They jumped us, they jumped us.
>
> [PROSECUTOR]: Why did you stop arguing?
>
> COOK: Because I -- I just kept quiet.
>
> [PROSECUTOR]: Did you go back to the Applebee's?
>
> COOK: Yes."

Mr. Cook drove into the parking lot and stopped a bit away, asking appellant where his phone was, when, "out of nowhere" according to Mr. Cook, appellant yelled out the window "Did y'all jump me" and began firing his gun. Mr. Cook said he "blacked out and just started driving fast out of there." Mr. Cook drove appellant home and left the car there.

He then called an Uber. Mr. Cook testified that he learned two days later that people had been shot outside the Applebee's.

Officer Steven Tucker testified that he responded to the crime scene around 1:20 a.m. the morning of May 14, 2021. He observed a large crowd and two males who had been shot, as well as a female with blood on her face. After attempting to assist the victims, Officer Tucker collected evidence, including shell casings, from the scene, testifying as follows:

> "OFFICER TUCKER: I pretty much picked up each shell casing, put them in one big bag, then I put them in my cruiser to transport them back to our station. At that point in time, that's when I take each one out, put them in its own bag, and then enter that into the program.
>
> [PROSECUTOR]: Where did you recover those items from?
>
> OFFICER TUCKER: From the road. So pretty much where the parking lot was."

From a photograph of Applebee's, Officer Tucker indicated where he found the casings. Officer Tucker indicated the bottom part of the screen, which the State asked him to confirm was in front of the marked parking spaces. Officer Tucker confirmed.

The State offered the casings into evidence and defense counsel objected, stating as follows:

> "[DEFENSE COUNSEL]: There are many shell casings there, Your Honor. And I'm sure they weren't all in one pile there. And he should be able to testify where he found each one of these particular shell casings. And he pointed to a general area, but there are about 10 shell casings and I'm sure each one had a separate location.
>
> ***
>
> THE COURT: You want him to say where each bag was found?

> [DEFENSE COUNSEL]: Yes, Your Honor, where each casing was found on the parking lot. And if it was on his body cam, asking that they would show, should have to show, before these are admitted.
>
> THE COURT: Why is that?
>
> [DEFENSE COUNSEL]: To authenticate they are from this particular incident and where they were fired from. I am sure that these shell casings bounce around some, but if they're in a line, if they're all in a pile, unless they're shown where they came from, there's no chain of custody. There's no evidence that they're even connected to this particular incident at this particular Applebee's."

The court overruled defense counsel's objection:

> "Well, I disagree. He's testified that he got them off the ground of that parking lot. The other issue is, you know, a rightful cross-examination or in your closing argument to the jury, but as far as admissibility, I believe he's testified competently that they were located on the grounds of the alleged incident and I'll admit it over your objection."

During cross examination, defense counsel asked Officer Tucker about the shell casings he recovered and whether they indicated use of a semiautomatic weapon. The State objected.

> "[DEFENSE COUNSEL]: Okay. And when you found these shell casings, were they all in a pile?
>
> OFFICER TUCKER: I believe they were spread out.
>
> [DEFENSE COUNSEL]: Okay. And generally speaking, not always, but generally speaking, when you find shell casings, that means that a semiautomatic was used as opposed to a revolver; isn't that correct?
>
> OFFICER TUCKER: Generally, correct.
>
> [DEFENSE COUNSEL]" Okay. And with most semiautomatics, when a shot is fired, the shell casing is ejected out to the right; isn't that correct?
>
> [PROSECUTOR]: Objection.

THE COURT: Sustained."

After defense counsel asked Officer Tucker about his firearm, a bench conference occurred. The court noted Officer Tucker was not qualified as an expert and information regarding how his gun operates was not relevant. Defense counsel then asked Officer Tucker questions regarding his firearm and training, ending with "And the handgun that you're issued is a semiautomatic handgun; isn't that correct?" The State objected, and a bench conference followed:

> "[PROSECUTOR]: Your Honor, I feel like this is going to potentially be a lengthy back and forth of the question and objection. Just so the record is clear, I'm objecting because I don't believe it's relevant, how Officer Tucker's service weapon operates with respect to this case.
>
> [DEFENSE COUNSEL]: Your Honor, this is ludicrous to me, that anybody who's been to the police academy knows about how semiautomatic handguns work, and the shells just don't drop, just fall out of the gun when they're ejected at some distance.
>
> And I want to find out where those casings were found and how they were found and where each one was to see if that car, allegedly, the shells came from, was moving at the time that the shots were fired or whether it was stationary.
>
> And also, there are many other factors, too. I want to find out basically who, what, where, when, and how that I talked about in opening statements. I want to find out what happened. And you can't do that if—anybody whose [sic] watched a TV show knows that some guns eject shells and some guns, the cartridge stays inside the gun and—
>
> THE COURT: Yeah, but that's the difference between a revolver and a semiautomatic.
>
> [DEFENSE COUNSEL]: Right."

The court noted that one needed to be an expert to testify "whether shells popped to the left or the right or what conditions affect them[,]" and defense counsel responded "you don't have to be an expert to testify as to how." The court ruled the questions were not relevant, explaining as follows:

> "Number one, you're not asking about how it works. You're talking about where the shells eject, and that's not something that a layperson has. That's not something that every person, again, who has a firearm legally can testify about. They can testify, you know, what they see, but that's about it. And his experience with his own gun is not relevant to the gun in question."

Firearms examiner Corporal Jenna Deacon testified that she examined the various bullets and casings recovered in the case and concluded that they were all consistent with having been fired from the same unknown firearm.

Appellant testified in his defense and admitted to being the Applebee's customer in a white t-shirt who entered Applebee's around 11:00 PM on May 13, 2021. Appellant testified that, while he was sitting at Applebee's with Veronica and Donesha, Mr. Burch "rudely interrupted" by not acknowledging appellant while informing Donesha that her company had to "roll out." He stated that he had to address this, because he did not like Mr. Burch's tone, and he had never been disrespected before, that he asked Mr. Burch outside to "address the situation," and once outside, Mr. Burch threw the first punch. Appellant tripped and fell, and the crowd began beating him up. When appellant fell, his gun jammed, and he fixed the slide so it would not go off. Appellant testified that he and Mr. Cook ran to the car waiting to pick up Veronica and Donesha, but the occupants would not give him a ride. Appellant called the gun a "neighborhood gun" and testified that he left it in the car. He then ran off with Mr. Cook on foot and, at Mr. Cook's suggestion, the

pair split up. Appellant reported that he walked thirty or forty minutes to his car, drove home, and went to sleep. He denied returning to Applebee's or having any involvement with the shooting.

Defense counsel moved for judgment of acquittal on all counts. Defense counsel argued that no witness had identified appellant and that there was no evidence of conspiracy:

> "I don't believe that the defendant has been identified, even in the light most favorable to the State, for any of these 14 counts that he's charged with. And I would also submit respectfully that Count 14, which is conspiracy, did conspire with others unknown to the State feloniously, willfully, et cetera, et cetera, to kill employees of Applebee's. That count should go out the window.
>
> When Keith Cook testified, Mr. Cook testified, well, I was forced by Mr. Yates, the defendant, to go -- to drive back to Applebee's and I didn't know he was going to shoot anybody. But he shoots people and then I just drive away and take him to his house.
>
> And I don't think that any of that evidence, Your Honor, even in the light most favorable to the State, is a prima facie case of murder. And I would ask that all 14 counts be granted a judgment of acquittal. Thank you very much."

The court denied the motion. After appellant testified, defense counsel renewed the motion, "adopt[ing] the arguments that [he] made at the halfway point." The court denied the motion. The jury returned guilty verdicts, and following sentencing, appellant noted this timely appeal.

II.

Before this Court, appellant argues that the evidence was not sufficient to support his conviction for conspiracy with Mr. Cook or his conviction for first-degree assault of

Ms. Williams and use of a firearm in commission of that assault. First, appellant asserts that the only evidence of conspiracy was Mr. Cook's statement that appellant asked him to drive back to Applebee's. Appellant emphasizes that Mr. Cook testified that appellant "forced" him to drive and that they went to pick up appellant's phone. Mr. Cook did not testify that he agreed to drive appellant back on the agreement to exact revenge. Appellant argues that Mr. Cook's testimony shows that appellant acted alone in firing his gun. Second, appellant argues that the only evidence that Ms. Williams had been shot was her testimony. No one observed her being shot, she received no medical care, and Ms. Williams testified that she was not sure where the graze came from. Appellant contends that this objection to the sufficiency of the evidence was preserved even though appellant did not argue the lack of evidence to support appellant's conviction vis a vis Ms. Williams as grounds for his motion for judgment of acquittal.

Appellant next argues that the trial court abused its discretion in admitting into evidence the recovered casings. Appellant argues that there was no proof of the location of these casings and that this location was essential both to authenticating the evidence and to proving the State's case that the shots were fired from a car into the group of Applebee's employees. Without proof of location, he argues, the evidence was irrelevant.

Appellant asserts that the trial court abused its discretion in preventing defense counsel from adducing from Officer Tucker testimony that the presence of casings at the scene indicated the use of a semi-automatic weapon, including testimony as to how a semi-automatic weapon worked. Appellant sought to elicit from Officer Tucker the way a semi-automatic weapon ejects casings to determine whether the location of the casings offered

proof as to whether the shots were fired from a gun in a car and whether that car was moving. Appellant asserts that this testimony was permissible lay opinion testimony based on his personal observations as an officer who used firearms and knew how they worked. Appellant contends that the error was not harmless because without this testimony, there was no proof regarding the location of the casings, and therefore the presence of the casings could not be used to prove that Mr. Cook was working in concert with appellant to support the conspiracy charge.

The State argues that appellant's challenge to the sufficiency of the evidence supporting his convictions for conspiracy and for offenses against Ms. Williams was not preserved for our review. The State asserts that appellant was required to state with particularity all the reasons why his motion for judgment of acquittal should have been granted, which he did not do. Even if preserved, on the merits, the State argues that the evidence is sufficient. The State points to this Court's deferential review and highlights Mr. Cook's testimony, arguing it was sufficient to show appellant and Mr. Cook entered an agreement to return to Applebee's and murder the employees.

The State argues next that the evidence supports an inference that appellant used a firearm to assault Ms. Williams. Ms. Williams testified that she first noticed she had been injured and was bleeding just after the shooting. Although she testified that she was not sure whether the injury occurred during the earlier fight or during the shooting, if it happened during the earlier fight, Ms. Williams would have been oblivious to a bloody scrape on her face during the forty-five-minute restaurant closing process. Her boyfriend,

Mr. Burch, testified that he did not notice any injuries on her face after the fight but did after the shooting.

According to the State, the trial court admitted the shell casings properly into evidence. The State asserts that they were relevant despite Officer Tucker not recalling precisely where he recovered them. Officer Tucker did provide proof as to where the casings were recovered by indicating a specific part of a picture of the crime scene. This was enough proof, the State contends, to make the evidence relevant. In the alternative, the State argues any error was harmless because the evidence was cumulative of other testimony that appellant fired a gun from the car Mr. Cook was driving.

The State argues that, to the extent addressed, the trial court soundly exercised its discretion in controlling the cross examination of a lay witness. The State first asserts that, because the court did not prevent Officer Tucker from testifying about how a semi-automatic weapon ejects casings but rather about how *his* specific firearm worked, appellant's claim is unpreserved. The State also argues that the court was within its discretion to preclude the evidence because appellant could have asked additional questions regarding how a semi-automatic weapon ejects casings and abandoned his claim by failing to do so. The State next argues that the court was correct to limit cross-examination because the testimony was not relevant and would be based on specialized knowledge, skill, experience, training, or education such that Officer Tucker could only offer the testimony as an expert witness, but not as a lay witness. Regardless, the State contends any error was harmless because Corporal Deacon also offered details about the ejection of shell casings.

III.

We address first appellant's sufficiency of the evidence argument. We review the sufficiency of the evidence to determine "whether, 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Scriber v. State*, 236 Md. App. 332, 344 (2018). As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Id*. at 344. The question before us 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." *Id.* (emphasis in original). We give "deference to all reasonable inferences the factfinder draws, regardless of whether we would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004) (internal citation omitted). "An inference need only be reasonable and possible; it need not be necessary or inescapable." *Cerrato-Molina v. State*, 223 Md. App. 329, 338 (2015) (internal citation omitted). It is well established that a valid conviction may be based solely on circumstantial evidence. *Suddith*, 379 Md. at 430. This Court has described a conspiracy as follows:

> "Proof of a criminal conspiracy requires a showing of an unlawful agreement which is a combination of two or more persons to accomplish some unlawful purpose. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose or design. The conspiracy is complete when the unlawful agreement is reached, so that no overt act in furtherance of the agreement need be shown . . . . A conspiracy may be shown by circumstantial evidence, from which a common design may be inferred."

Bordley v. State, 205 Md. App. 692, 723 (2012) (internal citations omitted).

The Maryland Supreme Court discussed the concept of conspiratorial meeting of the minds, explaining as follows:

> "[T]he parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy—the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. Absent that minimum level of understanding, there cannot be the required unity of purpose and design."

Mitchell v. State, 363 Md. 130, 145-46 (2001).

The intent required for a conspiracy to commit a crime is "not only the intent required for the agreement but also, pursuant to that agreement, the intent to assist in some way in causing that crime to be committed . . . . Thus, if the conspiracy is to commit murder, the intent must be to commit (or have someone commit) those acts that would constitute murder." *Id*.

Assuming that appellant's challenge was preserved, we hold that the evidence was sufficient to support appellant's conviction of conspiracy between appellant and Mr. Cook to commit murder. Mr. Cook and appellant went to Applebee's together, where they were both involved in a physical fight. The pair left the restaurant together. While in the car, appellant expressed his desire to kill the employees who he felt jumped him. Knowing this desire, Mr. Cook drove appellant back to the Applebee's, where appellant fired on the employees. After appellant fired his gun, Mr. Cook drove appellant home. A permissible inference, based on this circumstantial evidence, is that Mr. Cook and appellant worked together with the purpose of killing the Applebee's employees. This is not the only possible

inference, but it is not our job to determine the objectively correct interpretation. The jury was not required to believe Mr. Cook's testimony that he was forced to drive back to Applebee's. The jury's finding was reasonable, and we defer to that rational inference.

We hold that the evidence was sufficient to support appellant's convictions of first-degree assault of Ms. Williams. Although Ms. Williams could not say whether she received the wound on her face during the earlier fight or during the later gunfire, she testified that she first noticed the injury just after the shooting. As the State argues, if Ms. Williams had received the injury during the earlier fight, she could have been oblivious to it during the forty-five-minute clean-up of Applebee's. Ms. Williams's boyfriend, Mr. Burch, testified that he did not notice anything on Ms. Williams's face after the fight but did notice after the shooting that she had a mark on her face and blood. Taken together, this evidence could, and obviously did, convince a rational jury that Ms. Williams was injured by appellant's gunfire.

IV.

We address next appellant's challenge to the trial court's admission into evidence the shell casings. We review the question of relevancy, a legal question, *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011). Generally, relevancy is a low bar and evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" is relevant. Md. Rule 5-401. We review the trial court's decision for abuse of discretion. *Williams v. State*, 457 Md. 551, 563 (2018).

Officer Tucker presented proof of the location of the casings. During trial, Officer Tucker identified on a photo of the crime scene that he found the casings in the parking lot in front of the marked parking spaces. This evidence is relevant because it makes it more probable that appellant fired a gun outside the Applebee's. Contrary to what appellant argues, the State need not meet the high standard appellant insists upon: proving the exact location of the casings to prove that the casings were fired from a car that stopped, which would prove that appellant and Mr. Cook were working together in a conspiracy. Appellant demands more than is required. It is sufficient that the State offered evidence that the casings were recovered from the parking lot where the shooting occurred. From there, it was up to the jury to weigh this evidence. The trial court did not err in admitting the recovering casings into evidence.

V.

Finally, we turn to appellant's objection to the trial court precluding some of Officer Tucker's testimony.

Rule 5-702 governs expert testimony and provides as follows:

> "Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and

(3) whether a sufficient factual basis exists to support the expert testimony."

Rule 5-701 applies to lay testimony, and provides as follows:

> "If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."

The Supreme Court of Maryland in *Ragland v. State*, 385 Md. 706, 717 (2005) elucidates the distinction, stating as follows:

> "The language of the two Rules thus divides the universe of opinion testimony into two categories, each bearing restrictions that the other does not.
>
> Expert opinion testimony is testimony that is based on specialized knowledge, skill, experience, training, or education. Expert opinions need not be confined to matters actually perceived by the witness. Lay opinion testimony is testimony that is rationally based on the perception of the witness."

Rules 5-701 and 5-702 "prohibit the admission as 'lay opinion' of testimony based upon specialized knowledge, skill, experience, training or education." *Id*. at 725. In determining that the testimony at issue was expert testimony, the court found significant that the prosecutor's questioning emphasized the connection between the officers' training and experience and their opinions, and that the officers offered their opinions that, among numerous possible explanations, the correct one was that a drug transaction had occurred. *Id*. at 725-26. We review the decision as to whether to require a witness to testify as an expert for an abuse of discretion. *Prince v. State*, 216 Md. App. 178, 198 (2014).

Maryland courts have found as permissible lay testimony not requiring specialized knowledge, skill, experience, training, or education identifying the smell of marijuana (*see In re Ondrel M.*, 173 Md. App. 223 (2007)) and observing the path of bullets and placing trajectory rods thought the bullet holes (*see Prince*, 216 Md. App. at 202). On the other hand, in *State v. Blackwell*, 408 Md. 677, 691 (2009), the Court held that an officer's testimony regarding the defendant's performance on a horizontal gaze nystagmus test, which examines eye movement to discern the test subject's level of alcohol impairment, constituted expert testimony based on the officer's specialized knowledge and training. The Court noted that the test is a scientific one, and "a layperson would not necessarily know that 'distinct nystagmus at maximum deviation' is an indicator of drunkenness; nor could a layperson take that measurement with any accuracy or reliability." *Id.*

One determinative factor in distinguishing expert testimony from lay testimony is the so-called "ken" of a layperson. In *Freeman v. State*, 487 Md. 420, 431 (2024), the Maryland Supreme Court explained as follows:

> "Expert testimony is required only when the subject of the inference is so particularly related to some science or profession that is beyond the ken of the average layperson; it is not required on matters of which the jurors would be aware by virtue of common knowledge. When a court considers whether testimony is beyond the 'ken' of the average layperson, the question is not whether the average person is already knowledgeable about a given subject, but whether it is within the range of perception and understanding."

In *Freeman*, the Court held that a detective's defining the term "lick" as slang for a robbery was permissible lay testimony. *Id.* at 440. The Court distinguished the detective's nontechnical definition for a colloquial slang term from the scientific nature of the HGN test in *Blackwell* and the breadth of technical data which was tailored down and interpreted

in *State v. Payne*. *Id*. at 437. In *State v. Payne*, the Court held that an officer must be qualified as an expert to testify about the process used to parse cell phone data because the process the officer used was beyond the ken of an average person. *State v. Payne*, 440 Md. 680, 700-01 (2014). "The rule of admissibility of lay opinion testimony is no different when . . . the lay opinion is offered by a police officer." *Warren v. State*, 164 Md. App. 153, 168 (2005).

Appellant's argument that the casings were only relevant if the jury knew that semi-automatic weapons normally eject a shell casing with a bullet is meritless. The presence of the casings is circumstantial evidence that makes it more likely a gun was fired at that location, even without knowledge of the type of weapon used. However, we defer to the trial court's determination that testimony regarding Officer Tucker's personal weapon was not relevant because it did not make it any more or less likely that appellant was involved in a shooting at this Applebee's.

We agree with the trial court that Officer Tucker's testimony constituted expert testimony, requiring qualification as an expert. Officer Tucker's articulation of the direction shells eject from a semiautomatic weapon is outside the ken of an average layperson. Defense counsel made paradoxical statements at trial. While he began by arguing, "anybody who's been to the police academy knows about how semiautomatic handguns work," he concludes by remarking, "anybody whose [sic] watched a TV show knows that some guns eject shells and some guns, the cartridge stays inside the gun." Someone who has received training from the police academy, however, is a different witness from anyone who has watched a TV show. While an average layperson may well

be familiar with the fact that some weapons emit casings, the average layperson would not be familiar with the specific direction in which these casings eject and fall to the ground. Defense counsel sought Officer Tucker's testimony to "see if that car, allegedly, the shells came from, was moving at the time that the shots were fired or whether it was stationary." This determination requires an observer to draw on experience and knowledge to make a subjective determination, akin to the deductions the officers made in *Ragland*. It is quite different from the nontechnical explanation offered in *Freeman*.

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