Circuit Court for Baltimore City
Case No. 122193005

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1963

September Term, 2023

DRESHAWN SCOTT

v.

STATE OF MARYLAND

Graeff,
Berger,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 3, 2025

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On June 28, 2023, a jury in the Circuit Court for Baltimore City convicted Dreshawn Scott, appellant, of attempted first-degree murder, use of a firearm in the commission of a crime of violence, reckless endangerment, and related firearms offenses, in connection with the non-fatal shooting of Rayshawn Roberts. The court sentenced appellant to a fifty-three-year period of incarceration, with all but thirty years suspended, followed by five years of supervised probation.[1]

On appeal, appellant presents the following questions for this Court's review,[2] which we have rephrased slightly, as follows:

[1] The court sentenced appellant to: (1) 40 years, all but 30 years suspended, for attempted murder; (2) 15 years concurrent, the first five without parole, for use of a firearm in the commission of a crime of violence; (3) five years suspended sentence for reckless endangerment; (4) three years suspended sentence for the wear, carry, and transport of a loaded handgun; and (5) five years suspended sentence for the illegal possession of a regulated firearm by a disqualified person. The wear, carry, and transport of a handgun charge merged into the conviction for the wear, carry, and transport of a loaded handgun. All sentences included five years of supervised probation upon release.

[2] The questions presented by appellant were as follows:

I. WHETHER THE TRIAL COURT ERRED IN PERMITTING OFFICER BOATENG AND DET. ROSE TO IDENTIFY SCOTT AND OTHERS IN THE SURVEILLANCE VIDEO AND PERMITTING DET. ROSE TO NARRATE THE VIDEO, INCLUDING HOW MANY PEOPLE WERE SHOOTINGERS [sic]?

II. WHETHER THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION FOR ATTEMPTED FIRST-DEGREE MURDER?

III. WHETHER THE TRIAL COURT ERRED IN GIVING THE STATE'S REQUESTED SUPPLEMENTAL INSTRUCTION ON CONSIDERATION OF PUNISHMENT?

1. Did the circuit court err in permitting officer testimony narrating events and identifying appellant and others in surveillance video?

2. Was the evidence sufficient to support appellant's conviction for attempted first-degree murder?

3. Did the circuit court err in giving the State's requested supplemental jury instruction on consideration of punishment?

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

FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2022, Baltimore City police officers responded to the non-fatal shooting of Rayshawn Roberts outside the Taylor Mart on the 4100 block of Frederick Avenue. Appellant and alleged co-conspirator Kevin Peay were charged separately with attempted first-degree murder, conspiracy, and various other counts related to the shooting. Three surveillance videos, one inside and two outside the store, captured the shooting.

One surveillance video showed Mr. Roberts arriving in a vehicle outside the Taylor Mart at the corner of Frederick and Augusta Avenues. Mr. Roberts, who had a gun in his hand, met appellant in the street where appellant showed him the contents of a plastic bag. Appellant and Mr. Roberts, who was visibly carrying a handgun, then entered the Taylor Mart. They spoke for a few minutes and left the store. The video shows them arguing outside the store. Mr. Roberts, trailed by appellant, then re-entered the Taylor Mart, and the two continued their apparent verbal dispute. Appellant then again left the Taylor Mart with a gun in his hand. Soon after, Mr. Roberts, also armed, exited the store, and appellant appeared to be gesturing angrily toward Mr. Roberts as Mr. Roberts stood outside the door. Mr. Peay was also outside the store while Mr. Roberts and appellant argued.

Just prior to the shooting, bystanders began to scatter. Mr. Roberts then walked away from the store, with his back toward appellant. His gun was not visible in the video as he walked away from the store. Within seconds, Mr. Peay and appellant began shooting at Mr. Roberts. After appellant and Mr. Peay fired at Mr. Roberts, Mr. Roberts crouched behind a car and began returning fire. Mr. Peay chased Mr. Roberts down Frederick Avenue, while appellant fled the scene on foot on Augusta Avenue. Mr. Peay then turned around and ran back toward the Taylor Mart, then turned the corner, and continued on Augusta Avenue in the direction of appellant. Police arrived on the scene almost immediately and found Mr. Roberts suffering from gunshots wounds.

I.

Motion *in Limine*

On the first day of trial, appellant's counsel moved to exclude proposed officer testimony identifying appellant on the surveillance video. Counsel argued that the officers had never had a prior personal encounter with appellant, and they did not even know his name prior to the investigation. Counsel asserted that the officers had only seen appellant on the street and would be looking at "the same CCTV that the jury w[ould] be looking at," and "[t]he jury is the fact finder." He stated: "We don't need an officer to tell the jury the same thing that the jury is going to be looking at."

The State opposed the motion, arguing that the officers would be available for cross-examination regarding their personal knowledge of appellant and their familiarity with him based on past patrols of the area. The State explained that the officers were interviewed

after a "Be on the Lookout" (BOLO) announcement was made at rollcall because they recognized appellant, were assigned to the area of the shooting, and had knowledge of the specific sector where the shooting took place. After viewing a booking photo, the officers identified appellant as the person in the video surveillance "[b]ased upon their knowledge and their encounters in that area." The officers would testify that they had seen appellant multiple times "over a course of . . . five years."

The court denied the motion *in limine* based on the proffer that the officers had seen appellant "over a period of years multiple times and that they [were] familiar with [appellant's] face, whether they kn[e]w his name or not." The court compared the situation to seeing someone that had worked in the clerk's office over many years, and not knowing his or her name or assigned unit, but still recognizing the person as a courthouse employee. The court stated that, based on the officers' repeated sightings of the appellant, actual interaction with him was not necessary to identify him in the video.

II.

Trial Testimony

A.

Officer Brett Gibson

Officer Brett Gibson, Baltimore City Police Department, Southwest District Patrol, was the first witness called by the State. Officer Gibson was a patrol and field training officer assigned to the Southwestern District for approximately six years. He was assigned to routinely patrol Sector II of the Southwestern District, which covered Edmonson

Village, some parts of Gwynn Falls, and some parts of Frederick Avenue. Officer Gibson was working the 3:00 p.m. to 11:00 p.m. shift on June 15, 2022, with a trainee. While standing at the intersection of Frederick and South Collins Avenues, Officer Gibson "heard a discharging coming from the adjacent intersection at Frederick Avenue and South Augusta Avenue." He approached the intersection on foot with his weapon drawn and radioed the dispatcher to report "an on view incident that was a shooting." When he arrived at the intersection of Frederick and South Collins Avenues, Officer Gibson observed an unoccupied Lincoln Navigator parked facing northbound with bullet holes in the glass.

At the intersection, Officer Gibson and his trainee were "directed towards an adult male who was suffering from multiple gunshot wounds" in front of Frederick Avenue, approximately 600 feet from the vehicle with bullet holes. Officers on the scene immediately began to render medical aid while waiting for the medic to arrive. The State introduced Officer Gibson's body-worn camera footage into evidence.[3] The footage depicted the moment Officer Gibson heard the discharge from the intersection of Frederick and Augusta Avenues, and it showed the Lincoln Navigator with bullet holes. The footage also showed a woman yelling for help and officers rendering aid to the victim, Mr. Roberts. When asked whether he saw who shot him, the victim responded "Uh-uh."

Officer Gibson and fellow officers maintained the crime scene until the Crime Lab arrived. The Crime Lab investigators photographed, collected, and marked the evidence.

[3] Appellant's objection to the audio portion of the body-worn camera footage based on relevance was overruled.

Officer Gibson testified that a blood trail started from the Lincoln Navigator to where the victim was found in front of Frederick Avenue. He discovered a firearm in the trash can at the intersection of Frederick and Yale Avenues, in between the site of the shooting and the location of the victim, and near the blood trail. The slide on the firearm, which held 15 rounds, was locked back, indicating that it was shot until the magazine was emptied.

B.

Detective Mustafa

Detective Najiyyah Mustafa, a Baltimore City Police homicide detective, testified that, on June 15, 2022, she responded to an "on-viewing shooting" in the 4100 block of Frederick Avenue. Officer Mustafa walked over to the Taylor Mart, where the initial crime scene was established, and located three surveillance cameras. Camera five was located inside the store, and it recorded the register as well as activity outside the front door. Camera six faced eastbound toward Frederick Avenue, and camera seven faced Augusta Avenue going westbound. Officer Mustafa reviewed the footage from all three cameras in the Taylor Mart with the assistance of the owner. She obtained a flash drive, played back the footage from cameras six and seven to a point just prior to the shooting, and downloaded relevant footage. Officer Mustafa downloaded seven videos in total from the three cameras found at the Taylor Mart. The State admitted the videos depicting the camera footage as exhibits 7A- 7G.[4]

[4] The court overruled appellant's objections to the authenticity of the videos, and that is not an issue raised on appeal.

C.

Snenzana Racic

Snezana Racic, a Forensic Scientist in the Baltimore Police Department, Firearms Analysis Unit, testified that, at the time of the shooting, she was a crime lab technician and responded as part of the crime scene processing team. After another technician surveyed the scene, identified and marked the location of evidence, and took photographs and notes, Ms. Racic sketched and measured the scene and evidence. The evidence included nineteen cartridge cases, three metal fragments, two projectiles, a handgun, suspected blood, clothing, and a vehicle. There were projectiles lodged in and under the vehicle, and casings were found on the sidewalk, street, and intersection areas of Augusta and Frederick Avenues.

D.

Farah Narmouq

Farah Narmouq, another crime lab technician with the Baltimore City Police Department, took approximately 426 photographs of the crime scene. Ms. Narmouq recovered a handgun from a trash can on the sidewalk adjacent to 4403 Frederick Avenue. She noted that the victim was found at 4224 Frederick Avenue, and there was a trail of blood "throughout the sidewalk and the street between 4200 all the way down to 4403 Frederick Avenue."

E.

Christian Boateng

Christian Boateng, a patrol officer in the Southwest District of the Baltimore City Police Department, testified that he frequently patrolled Windsor Mill and certain intersections of Frederick Avenue, including Frederick and Augusta Avenues, because they were dangerous areas and "hot spots for crime." He usually patrolled the intersections of Frederick and Augusta Avenues and Frederick and Collins Avenues three times per shift, 15 minutes per day, and worked five shifts per week. Officer Boateng did not respond to the shooting on June 15, 2022, but Detective Rose, the detective in charge at the crime scene, asked Officer Boateng to come to the police station to make an identification related to the shooting.

Detective Rose showed Officer Boateng a video of the shooting, and Officer Boateng was able to recognize an individual shown in the footage based on his frequent patrol of the area. He had never interacted personally with the individual, but he had seen him "enough times [on the block] prior to being shown the video that [he was] able to recognize [him]." Officer Boateng was able to identify the location of the video footage as the corner store at Frederick and Augusta Avenues because he was familiar with the area from responding to emergency calls there for narcotics and trespassing. Officer Boateng identified appellant at trial as the person in the video.

On cross-examination, Officer Boateng confirmed that he did not know appellant, but he had seen him before on the streets. He acknowledged that he saw "[q]uite a few"

young black men every day on the streets of Baltimore, but he testified that, as a patrol officer, it was his job to become familiar with the people who frequent his patrol area.

F.

Detective Nigel Rose

Detective Nigel Rose, a detective in the Southwest District of the Baltimore City Police Department, responded to the scene of the shooting after hearing patrol officers issue a "discharging call" in his immediate area. Detective Rose went to the crime scene at the corner of Frederick and Augusta Avenues and requested a crime lab to assist with the collection and marking of evidence. He also located interior and exterior surveillance cameras at the Taylor Mart and at the Prime Gas Station across the street from the shooting. Detective Rose was able to observe the shooting on footage from the cameras located at the Taylor Mart. He printed still photographs from the video footage and created flyers to assist in the identification of the individuals.

At trial, the State introduced footage from the Taylor Mart, date and time stamped as June 15, 2022, at 8:22 p.m., into evidence. Observing a portion of the video played by the State, Detective Rose testified, without objection, that the man wearing a baseball cap was the victim, Rayshawn Roberts, and the man in a white t-shirt was appellant.[5] The video footage showed Mr. Roberts exiting the front passenger side of a vehicle and approaching a group of individuals standing in front of the Taylor Mart. Mr. Roberts had

[5] Detective Rose also identified appellant in the courtroom.

a handgun in his hand.[6] Detective Rose testified that the video showed Mr. Roberts arguing with appellant, and Mr. Roberts "appeared to be agitated."

Detective Rose testified that 19 shell casings, four fragments, and two projectiles were recovered from the crime scene. He did not know, however, how many of the 19 shell casings came from the handgun that was recovered from the trash can at the crime scene. The video showed three individuals shooting their weapons at the crime scene, and two different caliber bullets were recovered – nines and 40s. Detective Rose could not determine "how many shots came from what person."

The State next played video footage from an exterior camera showing Augusta Avenue. When the State asked whether Detective Rose could identify Mr. Roberts and appellant in this footage, appellant's counsel objected, arguing that the jury could make that determination themselves. The court overruled the objection, stating that Detective Rose had already identified them in the prior video. Detective Rose again identified Mr. Roberts and appellant in the second surveillance video.

The State admitted a third video into evidence from a camera facing northbound at the corner of Frederick and Augusta Avenues. Detective Rose identified Mr. Roberts in the video standing on the other side of an SUV and appellant standing on the walkway of

[6] The court sustained appellant's objection to the State's question regarding whether the video showed appellant holding anything when he re-entered the Taylor Mart on the basis that "the video speaks for itself."

the Taylor Mart. From a different vantage point, Detective Rose identified Kevin Peay, appellant's alleged co-conspirator, wearing a black hoodie with an Under Armor logo.[7]

Detective Rose interviewed appellant at the Southwest District police station on June 21, 2022. The State played a video recording of the interview for the jury.[8] Detective Rose read appellant his *Miranda* rights and explained that he was investigating the June 12, 2022 shooting on Frederick Avenue. Appellant stated that he was outside the store when the shooting occurred. He heard "shots fired" and saw a "lot of people running. That's all." He stated that the shots came from Frederick Avenue, but he did not see who was shot or any of the shooters.

After the interview, the State brought charges against appellant and obtained a search warrant for his residence and his girlfriend's vehicle. The police recovered a pair of pants and tennis shoes from appellant's home that appeared to the be the same ones he wore on the date of the shooting. They were introduced into evidence.

G.

Motion for Acquittal and Jury Instructions

At the close of the State's case, appellant's counsel made a motion for judgment of acquittal on all counts. Regarding the charge of attempted first-degree murder, counsel

[7] Detective Rose testified that all three individuals he identified in the video footage were charged with crimes. The State charged the victim with a handgun violation because he was prohibited from possessing a firearm, and Mr. Peay was charged with the same counts as appellant.

[8] Appellant's counsel objected to the introduction of the interview recording, arguing that it was hearsay and prejudicial. The court overruled the objection.

stated that appellant acted in self-defense, and there was no premeditation or specific intent to kill anyone.[9] Counsel also asserted that the court should dismiss all the gun charges because the State did not present a firearms expert to testify regarding the gun projectiles and shell casing collected as evidence. He also noted that there were two guns but three shooters identified and "[w]e don't know which gun belong[ed] to who." Counsel further contended that there was no evidence that the gun appellant "was alleged to have had was operable or that it[] actually fired the projectile." Appellant's counsel argued that the State had a duty to present proof that the shell casings came from three different guns.

The State argued that appellant demonstrated an intent to kill and assault Mr. Roberts by pointing his gun at him, firing several times, and hitting him three times. Regarding the reckless endangerment charges, the State noted that appellant and Mr. Peay "were just shooting guns recklessly regardless of who was around, aiming at the victim" and the video showed "people jumping literally into traffic, trying to avoid gunfire."

[9] In his opening statement, counsel for appellant argued that appellant should be found not guilty based on the doctrine of self-defense. Counsel told the jury that they would "hear and see what happened" and explained that Mr. Roberts got out of a vehicle "[g]un in hand, very agitated and confront[ed]" appellant. He also told the jury they would see appellant and Mr. Roberts on the video and would "hear from the detectives who have watched hours upon hours of the video and wrote reports." Counsel asserted that Mr. Roberts "said something to [appellant] that put him in great fear for his life." He argued that appellant "had an absolute right to defend himself and that's what he did."

Addressing the firearms counts, the State asserted that the guns were clearly operable because shell casings were recovered and Mr. Roberts was shot.[10] Although there was no gun recovered from appellant, there was video footage of appellant holding a gun and firing it at the victim. The State also noted that officers in the area at the time of the shooting heard gunshots, and video from inside and outside the Taylor Mart showed appellant "carrying a gun, holding a gun, shooting a gun; all of those things."

The court denied appellant's motion for acquittal on all but one count.[11] It noted that the law did not distinguish between circumstantial and direct evidence, and it found that the State presented sufficient evidence that appellant was one of the shooters at the crime scene, and he shot at the victim with a loaded handgun.

The defense did not present any witnesses or testimony. The court gave the jury a self-defense and missing witness instruction at the request of appellant's counsel.

In closing argument, appellant's counsel told the jury that this was a "classic self defense case," and Mr. Roberts was the first aggressor. Counsel acknowledged that appellant had a gun, but he argued that appellant "had an absolute right to defend himself."

[10] The parties stipulated that appellant was convicted of a crime that disqualified him from possessing a firearm.

[11] The court reserved ruling on Count Fourteen -- wear, carry, and knowingly transporting a handgun within 100 yards of a place of assembly -- because there was no evidence presented that the Taylor Mart was a "place of assembly." Prior to trial, Count Fourteen was removed from the verdict sheet.

After approximately five hours of deliberation, the jury convicted appellant of attempted first-degree murder, reckless endangerment, and various firearms offenses. On November 21, 2023, appellant was sentenced to 53 years of incarceration.

This appeal followed.

DISCUSSION

I.

Officer Testimony

Appellant contends that the court erred in permitting Officer Boateng and Detective Rose to identify appellant, Mr. Peay, and Mr. Roberts in the surveillance videos and in allowing Detective Rose to "narrate the video, including how many people were shooting." He argues that Maryland law prohibits lay witnesses from "giving conclusions or making inferences that invade[ ] the jury's fact-finding province or that they are capable of deciding on their own." He asserts that the error was not harmless beyond a reasonable doubt, and if we conclude that the argument was unpreserved, we should review it under the plain error doctrine.

The State contends that this argument "is wholly unpreserved," and we should not "afford [appellant] plain-error review." On the merits, the State argues that the court properly exercised its discretion in allowing the challenged testimony and "control[ing] the presentation of evidence." Additionally, it asserts that, to the extent that there was any error in allowing the testimony, it was harmless error.

A.

Preservation

We address first the State's contention that appellant did not preserve his claim regarding the officer's testimony because he failed to contemporaneously object each time testimony on this issue was elicited. Appellant argues that Maryland law is "not so myopic" as to require repeated objections when it is clear that the court is going to admit the evidence. He contends that objecting to the testimony here, after the court denied his motion *in limine*, would have been futile.

Maryland Rule 4-323(a) provides, in pertinent part, that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." When "an objection is initially raised in a pretrial motion, and the pretrial ruling results in the admission of evidence, the objection must be renewed at trial to preserve the issue for appeal." *Woodlin v. State*, 254 Md. App. 691, 708 (2022), *aff'd*, 484 Md. 253 (2023). A renewed objection "is required to let the court know that the party still believes the evidence should be excluded, and gives the court the opportunity to make a more informed decision with the benefit of the evidence adduced since the initial ruling." *Huggins v. State*, 479 Md. 433, 447 n.7 (2022). "In the absence of a continuing objection, specific objections to each question are necessary to preserve an issue on appeal." *Schreiber v. Cherry Hill Const. Co.*, 105 Md. App. 462, 481 (quoting *Beghtol v. Michael*, 80 Md. App. 387, 394 (1989)), *cert. denied*, 340 Md. 500 (1995). Without a continuing objection, "an 'appellant

waive[s] its objection to [the] admission [of testimony] by permitting subsequent testimony to the same effect to come in without objection.'" *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 763-64 (2007) (alterations in original) (quoting *State Road Comm'n v. Bare*, 220 Md. 91, 95 (1959)), *aff'd*, 403 Md. 367 (2008).

As appellant notes, however, when a circuit court makes a ruling on a motion *in limine* immediately prior to or during testimony, restating the objection only a short time after the court's ruling is not necessary when it would "exalt form over substance." *Watson v. State*, 311 Md. 370, 372 n.1 (1988). *Accord Norton v. State*, 217 Md. App. 388, 397 (2014) (contemporaneous objection not required when court ruled on motion *in limine* just a short time before disputed testimony). Appellant also asserts that repeated objections are not required where another objection would not "lead a reasonable person to believe that the trial judge would reconsider his decision on the motion." *Cure v. State*, 421 Md. 300, 322 (2011).

Here, we agree with appellant that he properly preserved his objections to the officers' identification testimony for appeal. After the court denied his motion *in limine*, appellant's counsel renewed his objection to the identification testimony, as follows, when the State asked Officer Boating how he knew appellant:

> [State]: And you were able to explain to why you're familiar with that person to Detective Rose?
>
> [Off. Boateng] Yeah because he just frequent[s] the area quite a few. So – because I did not interact with him personally but I have seen him on the block.

[State]: You've seen him quite frequently enough that you were able to recognize him in the video?

[Off. Boateng]: Yeah.

[Appellant]: Objection.

The Court: Sustained as to the form of the question.

Based on the record here, the court's view on the issue was apparent. Any further objection by counsel, when Officer Boateng was asked just a few questions later to identify appellant as the person he recognized in the video footage, would have been futile. *See Jamsa v. State*, 248 Md. App. 285, 311 (2020) (objection soon after ruling on motion *in limine* "would have been an exercise in futility . . . inasmuch as it had so recently been overruled"). The same is true with respect to Detective Rose's identification testimony, elicited immediately after Officer Boateng's testimony.[12] Accordingly, we will address the issue on the merits.

B.

Analysis

Maryland Rule 5-701 governs the admission of lay testimony. It provides that a lay witness may testify to opinions or inferences that are "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the

[12] Appellant's counsel did object the second time the State asked Detective Rose to identify appellant in video footage but, because appellant's counsel did not object to an earlier identification question, the court overruled the objection. Detective Rose then identified appellant, Mr. Roberts, and Mr. Peay in several other video clips without objection.

determination of a fact in issue." Rule 5-701. *Accord Moreland v. State*, 207 Md. App. 563, 569 (2012); *Paige v. State*, 226 Md. App. 93, 125 (2015). Personal knowledge of the matter is a prerequisite to the allowance of lay testimony because, "[e]ven if a witness has perceived a matter with his senses, he must also have the experience necessary to comprehend his perceptions." *Paige*, 226 Md. App. at 125 (alteration in original) (quoting *Rosenberg v. State*, 129 Md. App. 221, 255 (1999)). Although a "witness may proffer narrative testimony within the permissible confines of the rules of evidence, we have held he may not 'interpret' audio or video evidence, as such testimony invades the province of the jury, whose job is to make determinations of fact based upon the evidence." *Harrod v. State*, 261 Md. App. 499, 537-38 (2024) (quoting *Paige*, 226 Md. App. at 129).

A circuit court's decision to admit lay opinion testimony is reviewed for an abuse of discretion. *Paige*, 226 Md. App. at 124. "An abuse of discretion is found where the decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Freeman v. State*, 487 Md. 420, 429 (2024) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)).

1.

Identification of Persons in the Video

In *Moreland*, 207 Md. App. at 572-73, we held that police testimony identifying a defendant shown in a surveillance video was admissible where the officer had "substantial familiarity" with the defendant, making him "better able to identify [the defendant] in the video recording and still photographs than the jurors." The officer in *Moreland* was neither

present during the crime nor involved in the investigation, but he recognized the defendant "having known him for 40 to 45 years." *Id.* at 568, 573.

Appellant argues that *Moreland* should not apply because Officer Boateng and Detective Rose did not have "long-standing familiarity with [appellant]" or an "intimate knowledge" of his appearance. In *Moreland*, however, we adopted the majority view that "the intimacy level of the witness' familiarity with the defendant goes to the weight to be given the witness' testimony, not the admissibility of such testimony." *Id.* at 572 (quoting *Robinson v. Colorado*, 927 P.2d 381, 384 (Colo. 1996)). "[A]lthough the witness must be in a better position than the jurors to determine whether the image captured by the camera is indeed that of the defendant," this does not require that the witness be "intimately familiar" with the defendant. *Id.* at 572-73 (quoting *Robinson*, 927 P.2d at 384).

Here, the court properly applied this standard and did not abuse its discretion in determining that Officer Boateng and Detective Rose were in a better position than the jurors to identify appellant, Mr. Roberts, and Mr. Peay in the video footage. Officer Boateng testified that he recognized appellant from the video because appellant frequented the vicinity of Frederick and Collins Avenues, an area that Officer Boateng patrolled three times per shift, five days per week. Officer Boateng explained that he had seen appellant "enough times prior to being shown the video" to be able to recognize him. He also noted that he was familiar with the area of the shooting due to frequent calls for trespassing and narcotics activity there.

Similarly, Detective Rose interviewed appellant just five days after the shooting, and appellant identified himself to the detective during the custodial interview and admitted that he was present at the Taylor Mart at the time of the shooting. Based on the proximity between the interview and the shooting, Detective Rose was "more likely to correctly identify" appellant in the video footage than a juror seeing the video and appellant for the first time at trial. *Moreland*, 207 Md. App. at 572. Detective Rose also explained that he created still photographs from the video footage, which he shared with Officer Boateng, to assist in the identification of appellant, Mr. Roberts, and Mr. Peay. Detective Rose thus became familiar with the suspects as the investigation progressed.

The detectives here had experiences observing appellant that the jurors did not. Their testimony was helpful to the jury. Moreover, the jury could give the officers' testimony the weight that they believed it deserved. *See Tobias v. State*, 37 Md. App. 605, 616-17 (no abuse of discretion in "allowing the authenticating witness to identify the people shown in the video tape" where "[t]he jury saw the tape, and could judge for itself what it showed and whether [the officer's] identifications were accurate"), *cert. denied*, 281 Md. 745 (1977). Indeed, the court advised the jury during instructions to consider a list of factors to assess the accuracy and reliability of the officers' identification of appellant, including the opportunity of each officer to observe appellant, the length of time of the observation, the circumstances surrounding the observation, and any personal motivations or biases. We perceive no abuse of discretion in allowing the officers to identify appellant from the video footage.

Even if the court did err in allowing the identification testimony, the court's ruling was harmless error. "A judgment may be affirmed, under certain circumstances, despite errors committed in the conduct of the trial." *Dorsey v. State*, 276 Md. 638, 647 (1976). The standard for harmless error is well established:

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

Gross v. State, 481 Md. 233, 254 (2022) (quoting *Dorsey*, 276 Md. at 659). "In determining whether an error prejudiced the defendant, that is, whether the error was harmless, 'the determinative factor . . . has been whether or not the [error], in relation to the totality of the evidence, played a significant role in influencing the rendition of the verdict, to the prejudice of the [defendant].'" *Sivells v. State*, 196 Md. App. 254, 288 (2010) (alterations in original) (quoting *Degren v. State*, 352 Md. 400, 432 (1999)). "We must 'be satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.'" *State v. Heath*, 464 Md. 445, 466 (2019) (quoting *Dorsey*, 276 Md. at 659).

Here, there was no question that appellant was at the scene of the shooting or in the video, or that Mr. Roberts was the person shot. Appellant's counsel argued in opening and closing statements that appellant acted in self-defense, and he acknowledged that there was video footage of appellant at the scene firing a weapon. Appellant's counsel told the jury

that they would see appellant and Mr. Roberts "on the video, you will see it, you will hear from detectives who have watched hours upon hours of the video." If admission of the officers' identification testimony was error, it did not prejudice appellant and was harmless error.

2.

Three Shooters

Appellant next contends that the circuit court erred in allowing Detective Rose to narrate that there were three shooters shown on the video footage. He argues that this testimony was improper because it invaded the province of the jury.

The State contends that the court "properly exercised its discretion when it allowed Detective Rose to testify" because his investigation of the case as a whole provided the proper foundation to describe what he saw on the videos. It relies on the reasoning in *Harrod*, 261 Md. App. at 537.

In *Harrod*, 261 Md. App. at 538, we held that the circuit court did not abuse its discretion in allowing police detectives "to testify about what they saw in the videos" because the officers were "familiar with the community and the camera locations" and "experienced working in the area." The circuit court permitted the detectives to establish the timeline of events, "the suspects' movements before and after the shooting," and the significance of a logo noted on apparel worn by one of the suspects, even though the detectives were not present when the shooting occurred. *Id.* We held that the officers' testimony was "helpful to the jury in understanding the events depicted in the videos . . .

and how the video evidence related to other evidence presented at trial." *Id.* The testimony "helped the jury understand the evidence without intruding into its exclusive realm." *Id.*

Here, unlike in *Harrod*, Detective Rose's testimony that there were three shooters was not helpful to the jury in determining how many people were shooting guns in the video footage. Detective Rose's investigation did not put him in a better position than the jurors to determine how many people were depicted shooting weapons in the video.

The State argues, however, that Officer's Rose's narration testimony was admissible based on the opening the door doctrine. It asserts that appellant's counsel opened the door to narrative testimony about the number of shooters when he asked Detective Rose on cross-examination the following questions:

> Q So based on your review of the cameras that you obtained as part of the investigation, you were able to view the footage that showed Mr. Roberts exit from the gray van; is that correct?
>
> A Yes, sir.
>
> Q And you could see him come out of the front passenger side of that van, correct?
>
> A Yes, sir.
>
> Q And then you see him approach a group of individuals who were standing in front of 4123 Frederick Avenue, correct?
>
> A Yes, sir.
>
> Q And he had a gun which – or he was holding that gun, correct?
>
> A Yes, sir.
>
> Q Could you determine – were you able to determine what color the gun was from the video?

A Dark in color would be the best description I could give you.

Q And you see him argue with another individual, correct?

A Yes, sir.

Q And that individual is Mr. Scott, correct?

A Yes, sir.

Q And he was (indiscernible - 2:48:00), correct? He appeared to be agitated, correct?

A Who appeared to be agitated?

Q M[r]. Roberts.

A Yeah.

The State argues that, because appellant's counsel asked whether Mr. Roberts' gun was visible in the video, it was permitted to ask Detective Rose about the number of shooters he observed. Appellant responds that his questions were "not the type, form or substance that would open the door to the wholly inappropriate conclusory statement of Det. Rose" regarding the number of shooters. We agree that the evidence was not admissible under the open door doctrine.

The opening the door doctrine "authorizes admitting evidence which otherwise would have been irrelevant in order to respond to … admissible evidence which generates an issue." *State v. Robertson*, 463 Md. 342, 352 (2019) (quoting *Clark v. State*, 332 Md. 77, 84-85 (1993)). It allows a party to "meet fire with fire" by introducing otherwise inadmissible rebuttal evidence to respond to evidence offered by an opponent. *Id.* (quoting

Little v. Schneider, 434 Md. 150, 157 (2013)). The opening the door doctrine does not "permit the admission of incompetent evidence – evidence that is inadmissible for reasons other than relevancy." *Battle v. State*, 252 Md. App. 280, 313 (2021) (quoting *Daniel v. State*, 132 Md. App. 576, 591 (2000)).

The opening the door doctrine involves a two-part inquiry: (1) did the party open the door to introduce rebuttal evidence; and (2) was the admitted rebuttal evidence a proportionate response to the evidence generating the issue. *Robertson*, 463 Md. at 359. "Courts review de novo the question of whether a party opened the door to rebuttal evidence." *Williams v. State*, 251 Md. App. 523, 560 (2021), *aff'd*, 478 Md. 99 (2022). The second inquiry "regarding the proportionality of a party's rebuttal evidence is a separate issue" reviewed for an abuse of discretion. *Id.* (quoting *Robertson*, 463 Md. at 367).

In *Battle*, 252 Md. App. at 313, we explained that the opening the door doctrine permits the admission of otherwise *irrelevant* evidence, but it does not permit the introduction of *inadmissible* hearsay statements as rebuttal evidence. We held that the court erred in allowing bodycam footage containing the hearsay statements of a witness as rebuttal evidence to testimony elicited by defense counsel on cross-examination of a police officer regarding that witness' demeanor. *Id.* at 313-14. We noted that "one cannot 'open the door' to hearsay." *Id.* at 313.

Similarly, here, as indicated, the testimony regarding the number of shooters shown on the video was inadmissible on grounds other than relevancy. Accordingly, Officer

Rose's testimony regarding the number of shooters was not permitted under the opening the door doctrine.

We do find the State's citation to *Harrod*, however, to be applicable in a different aspect. In that case, we stated that, even if the circuit court had erred in allowing the detectives to describe what they saw in the video, any error was harmless. *Harrod*, 261 Md. App. at 539. We noted that the shooting was captured in the video, and the jury was "free to view the videos themselves and judge the accuracy of the detectives' descriptions," and there was other evidence supporting that appellant was the person seen firing the gun. *Id*. Similarly, here, the jury could observe the shooting for itself on the video and determine whether appellant was one of the shooters. Moreover, counsel for appellant admitted that appellant was there, and he shot in self-defense. *See Mason v. State*, 258 Md. App. 266, 297 (2023) (a defense of self-defense is an acknowledgment that the defendant fired the weapon), *aff'd*, 487 Md. 216 (2024). Under these circumstances, Detective Rose's testimony that he observed in the video three shooters, including appellant, was harmless error that does not require reversal of appellant's convictions.

II.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to support his conviction for attempted first-degree murder. He asserts that the State failed to produce evidence of premeditation or a specific intent to kill someone, and the video evidence showed only an intent to defend himself.

The State contends that there was legally sufficient evidence to support appellant's conviction for attempted first-degree murder. It asserts that appellant's argument regarding the video evidence goes to the weight of the evidence, not the legal sufficiency of his convictions. The State notes that, by relying on self-defense, appellant acknowledged that he shot Mr. Roberts. The video showed him engaged in a verbal dispute with Mr. Roberts, where appellant was visibly angry. Appellant waited outside for Mr. Roberts, and when Mr. Roberts walked away from the store with his back turned, appellant fired at him. The State argues that, "[f]rom that conduct, the jury could infer that [appellant] had an intent to kill [Mr.] Roberts," and he acted with premeditation.

"The standard for appellate review of evidentiary sufficiency is 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." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (quoting *Darling v. State*, 232 Md. App. 430, 465 (2017)). The relevant 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." *Id*. (quoting *Darling*, 232 Md. App. at 465). "When making this determination, the appellate court is not required to determine 'whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Roes v. State*, 236 Md. App. 569, 583 (2018) (quoting *State v. Manion*, 442 Md. 419, 431 (2015)). "This is because weighing the credibility of witnesses and resolving conflicts in

the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber*, 236 Md. App. at 344 (quoting *Darling*, 232 Md. App. at 465).

First-degree murder can be established by evidence showing "a deliberate, premeditated, and willful killing." *See* Md. Code Ann., Crim. Law ("CR") § 2-201(a)(1) (2021 Repl. Vol.). "[T]he crime of attempt consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation." *Spencer v. State*, 450 Md. 530, 567 (2016) (quoting *State v. Earp*, 319 Md. 156, 162 (1990)). To establish that a killing is "willful"

> there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time. Their existence is discerned from the facts of the case.

Tichnell v. State, 287 Md. 695, 717-18 (1980), *cert. denied*, 466 U.S. 993 (1984). "[U]nder the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body." *Smallwood v. State*, 343 Md. 97, 104 (1996) (citation omitted). In addition, "[i]f the killing results from a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder." *Mitchell v. State*, 363 Md. 130, 148 (2001) (emphasis and citation omitted).

Here, the surveillance video shows appellant and Mr. Roberts engaged in a heated verbal dispute both inside and outside the store. After appellant leaves the store with a

gun, he stands outside the store and gestures angrily at Mr. Roberts. As appellant and Mr. Roberts continue to argue, people nearby start to scatter. Mr. Roberts then walks away from the store and crosses the street. As he crosses the street with his back turned to appellant, appellant fires a gun at him. Only after appellant fires at Mr. Roberts does Mr. Roberts crouch behind a vehicle and return fire. It is undisputed that Mr. Roberts sustained three gunshot wounds, and ballistics evidence from more than one gun was recovered at the crime scene. The video clearly shows appellant firing his weapon at Mr. Roberts before he flees down Augusta Avenue.

Appellant argues that he was simply "reacting to the unfolding scene of [Mr. Roberts] being fired upon by [Mr. Peay]," and he acted in self-defense. We do not, however, "second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). In evaluating the sufficiency of the evidence, "exculpatory inferences do not exist. They are not a part of that version of the evidence most favorable to the State's case." *Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied*, 445 Md. 5 (2015). Appellant did not shoot Mr. Roberts suddenly during their heated dispute; rather, he waited until Mr. Roberts was walking away from the situation to fire at him. *Id.*; *Baker v. State*, 332 Md. 542, 567 (1993) (first degree murder requires showing of time "even if brief, for the [d]efendant to form the intent to kill"). Under these circumstances, the evidence was sufficient for a rational trier of fact to conclude that appellant willfully, deliberately, and with premeditation, attempted to kill the Mr. Roberts as he was walking away from the Taylor Mart.

III.

Jury Instruction

At the conclusion of the evidence, the State requested, and the court gave, the following instruction to the jury:

> [T]he question of punishment or penalty in the event of a conviction is of no concern to the jury and should not enter into or influence your deliberations in any way. You should not guess or speculate about the punishment. Your job will be done after finding that the Defendant is either not guilty or guilty.
>
> In the event that you do find the Defendant guilty, the responsibility of punishment will be solely upon the Court. You should weigh the evidence in the case and determine the guilt or innocence of the Defendant solely based upon the evidence and without consideration to the matter of punishment.

Appellant argues that the trial court erred in giving the jury this instruction. He argues that there was "no reason apparent in the transcript or proffered by the State to believe that the instruction" was necessary or applicable, that other instructions "fairly covered the juror's role," and giving the instruction at the end of the case "gave it undue focus."

The State contends that appellant's claim is not preserved because counsel did not object after the court gave the instruction to the jury. In any event, the State contends that the contention is without merit. It argues that the instruction is a correct statement of the law, and the court did not abuse its discretion in giving the instruction.

A.

Preservation

We begin with the issue of preservation. Md. Rule 4-325(f) provides: "No party may assign as error the giving or the failure to give an instruction unless the party objects

on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." The purpose of this rule to is to give the court an opportunity to correct an error in its instructions prior to jury deliberation. *Beckwitt v. State*, 477 Md. 398, 463, *cert. denied*, 143 S. Ct. 216 (2022). Substantial compliance with the rule, however, can suffice when an objection is clearly made and the court denies it and makes clear that renewal of the objection after instructing the jury would be futile. *Gore v. State*, 309 Md. 203, 209 (1987); *Bowman v. State*, 337 Md. 65, 69 (1994); *Horton v. State*, 226 Md. App. 382, 413-14 (2016).

Here, when the State initially requested the instruction, appellant objected, stating that the instruction was "not necessary or relevant in this case." The court acknowledged the objection, but it then proceeded to give the instruction to the jury. Appellant failed to object at that time. Because the instruction was given right after counsel objected, it appears that any objection would have been futile. *See Livingstone v. Greater Wash. Anesthesiology & Pain Consultants, P.C.*, 187 Md. App. 346, 362 (2009) (where court "duly noted" party's objection to causation instruction, "any further objection at the conclusion of the instructions regarding the failure to instruct on the substantial factor test would have been a futile or useless act"); *Watts v. State*, 457 Md. 419, 428 (2018) ("If the record reflects that the trial court understands the objection and, upon understanding the objection, rejects it, this Court will deem the issue preserved for appellate review."). Although it is better practice for defense counsel to object after an instruction is given, we

find substantial compliance with Rule 4-325(f) in this case, and therefore, we will address the issue on the merits.

B.

Analysis

Maryland Rule 4-325(c) provides:

> The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

A court must give a requested jury instruction when "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)). A circuit court's decision to give or not give a jury instruction is reviewed for an abuse of discretion, and we will reverse that decision only upon a finding of an abuse of discretion. *Lewis v. State*, 263 Md. App. 631, 646 (2024).

As a general rule, Maryland courts have held that "a jury should not be told about the consequences of a verdict — the jury should be focused on the issue before it, the guilt or innocence of the defendant, and not with what happens as a result of its decision on that issue." *Mitchell v. State*, 338 Md. 536, 540 (1995). "[P]roviding jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion."

Shannon v. United States, 512 U.S. 573, 579 (1994). Accordingly, "[i]t is well established that when a jury has no sentencing function, it should be admonished to 'reach its verdict without regard to what sentence might be imposed.'" *Id.* (quoting *Rogers v. United States*, 422 U.S. 35, 40 (1975)).[13]

Following this rationale, Maryland appellate courts have upheld circuit court decisions to instruct the jury not to consider punishment in response to juror questions. *See Mitchell*, 338 Md. at 539 (court did not abuse its discretion in telling jury that consequences of its decision were "none of [its] concern"); *Sidbury v. State*, 414 Md. 180, 195 (2010) (no abuse of discretion in instructing jury that consequence of hung jury was "not an issue for you to concern yourselves with").

Appellant acknowledges that the instruction here was a correct statement of the law. He cites no cases supporting his argument that this type of instruction was inappropriate. Indeed, other courts have stated that "juries *should* be instructed not to consider a defendant's possible sentence unless the jury has a specific role in sentencing." *United States v. Stotts*, 176 F.3d 880, 886 (6th Cir. 1999) (emphasis added). *Accord United States*

[13] Maryland courts have recognized two exceptions to this general rule. *See Mitchell v. State*, 338 Md. 536, 540 (1995). The first exception is when a defendant raises the defense of "not criminally responsible." *Erdman v. State*, 315 Md. 46, 58 (1989). In such cases, the defendant is entitled to an instruction informing jurors of the consequence of a "not criminally responsible" finding in case jurors improperly believe "that a defendant found to be not responsible for his criminal conduct will walk out of the courtroom, not only unpunished but free of any restraint." *Id.* The second exception involves sentencing for capital punishment, which is no longer imposed in Maryland. *Mitchell*, 338 Md. at 541. Neither of the exceptions apply here.

v. Lynch, 903 F.3d 1061, 1081 (9th Cir. 2018) (court did not abuse its discretion in giving jury instruction that "[t]he punishment provided by law for this crime is for the court to decide"). Contrary to appellant's contention that the instruction put "undue focus" on the issue of punishment, the instruction served as a helpful reminder that the jury's sole function is to "find the facts and to decide whether, on those facts, the defendant is guilty of the crime charged." *Shannon*, 512 U.S. at 579. The court did not abuse its discretion in giving the instruction.

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