UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2197

September Term, 2014

JAMES T. WELLS

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: August 8, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Prince George's County convicted James Wells, appellant, of one count of possession of a regulated firearm and one count of possession of a firearm by a convicted felon. After merging the convictions for purposes of sentencing, appellant was sentenced to 15 years' incarceration.

Appellant was convicted of possessing a handgun found in a bag on the closet floor of a bedroom in the home of Ingrid Carroll and her daughters. The State presented the testimony of Dominique Harris, one of Ms. Carroll's daughters, and the contents of several telephone conversations in which appellant was a participant (hereinafter the "Recordings"), linking appellant to the gun. The calls were intercepted and the Recordings obtained pursuant to an order issued by the circuit court (hereinafter the "Order").

On appeal, appellant first contends that the court erred in denying his motion to suppress the contents of the recorded calls because the calls, which concerned a handgun, were not within the scope of the court's Order, which concerned drug conspiracies, and that, after hearing the conversations, the police failed to obtain court authorization to use the information. The State responds that (1) appellant's argument was waived; (2) the calls were within the scope of the Order; and (3) the plain view doctrine applies.

Appellant also contends that the court abused its discretion by permitting Ms. Harris, a lay witness, and Lieutenant David Blazer with the Prince George's County Police Department, an expert witness, to testify that the term "joint" used in the Recordings was a reference to a gun. Appellant argues that the court erroneously permitted (1) Ms. Harris to express a lay opinion because the matter required expert testimony, and (2) Lieutenant

Blazer to express an expert opinion because he lacked sufficient basis for it. The State responds that the court did not abuse its discretion.

On appeal, appellant presents the following questions for our review:

1. Did the trial court err in admitting into evidence recordings of calls placed and received by Appellant?
2. Did the trial court err in admitting testimony indicating that the term "joint" is a reference to a gun?

Perceiving no error, we affirm.

BACKGROUND

On March 27, 2013, the Honorable Melanie Shaw-Geter authorized the wiretap in question and issued the Order. According to Lieutenant Blazer, the scope of the Order covered communications related to a drug-conspiracy investigation, as well as "any other crimes that were intercepted during that time." The Order referenced various drug-related statutes, including Section 5-621 of the Criminal Law Article of the Maryland Code, which proscribes possession of a firearm during and in relation to a drug trafficking crime.[1] *See* Md. Code, Criminal Law ("Crim. Law"), § 5-621(b) (1).

On April 21, 2013, appellant was staying at the home of his godmother, Ingrid Carroll, when he got into an altercation with one of Ms. Carroll's neighbors. Following the altercation, appellant left the home, only to return later that night. Upon appellant's return, Dominique Harris, Ms. Carroll's daughter, noticed that appellant had a gun inside

[1] Appellant was indicted and convicted under Maryland Code, Public Safety, §§ 5-133(b) and (c), which proscribe possession of a firearm by a person convicted of a disqualifying crime and possession of a firearm by a convicted felon, respectively. *Id.*

of his coat. Appellant left the home again. The next day Ms. Harris looked inside her sister's closet and discovered the same gun inside of a bag. The record is unclear as to how or when the gun was transmitted from appellant's person to the inside of the closet, but Ms. Harris identified the gun in the closet as the same one she saw in appellant's possession.

On April 22, 2013, Lieutenant Blazer was monitoring the target phone when he intercepted a call during which appellant indicated that "an altercation…took place the night before" and "there was a gun at this location."[2] Appellant also made "reference to coming out to this location to get the gun and retaliate against the individuals that assaulted him." Lieutenant Blazer intercepted several more calls, during which appellant again referenced a firearm. In one of the calls, appellant indicated that he was contacting "associates of his to attempt to get a firearm big enough to drive by the individual sitting in the car that he had a confrontation with the night before and to be able to shoot and kill all the individuals in the car." In another call, Ms. Harris told appellant "that the individuals that he was involved in the confrontation the night before were sitting outside of her house in a car," and appellant "explained to her that she would have to get the joint…outside to him." Towards the end of the conversation, appellant "made the decision to not come out there right away," but told Ms. Harris "not to let anybody know about the gun in the house."

Lieutenant Blazer testified that he contacted Assistant State's Attorney Joseph Ruddy and informed him of the nature of the above calls. Mr. Ruddy testified that, based on his discussion with Lieutenant Blazer, he contacted Judge Shaw-Geter and

[2] Lieutenant Blazer testified that appellant did not use the word "gun," but instead used various slang words that Lieutenant Blazer interpreted to mean "gun."

"communicated to her what had taken place." Mr. Ruddy asked Judge Shaw-Geter for permission to continue monitoring the phone calls, which was granted. Mr. Ruddy did not make a formal application to expand the scope of the wiretap, nor did Judge Shaw-Geter issue a formal order authorizing the police to expand the scope of the Order. Mr Ruddy testified that, although the Order did not cover murder, it covered "drug trafficking, handgun possession, and related crimes."

Lieutenant Blazer testified that, following his review of the Recordings, he submitted an application for a search warrant to Judge Shaw-Geter. The goal of the search warrant was "to recover the handgun believed to be inside [Ms. Carroll's] residence." In his application, Lieutenant Blazer specifically referenced the Recordings. Judge Shaw-Geter authorized the search warrant. On April 23, 2013, the police executed the search warrant at Ms. Carroll's home and seized several items, including the gun. The gun was recovered from inside a bag located on the floor of one of the bedroom closets. Appellant was subsequently arrested and charged.

Prior to trial, Appellant filed a motion to suppress the Recordings. At the suppression hearing, Lieutenant Blazer testified that, in March of 2013, the police were investigating "multiple drug violent crime violations." As part of the investigation, Lieutenant Blazer submitted an affidavit and application for judicial authorization to place a wiretap on the telephone of an individual suspected to be involved in a "drug conspiracy."[3]

[3] Appellant failed to include in the record a copy of the affidavit in support of the application to authorize the wiretap or a copy of the Order.

Although appellant was not the primary user of the wiretapped phone, he was "part of the conspiracy that [the police] were investigating" and "a target of the wiretap." Appellant was also referenced in Lieutenant Blazer's affidavit, which included the contents of a recorded phone conversation between appellant and another individual, Pierre Jackson, which previously had been intercepted by the Prince George's County Department of Corrections. In the recording, appellant and Mr. Jackson, who was also a target of the wiretap, talked about "drugs" and "firearms related information." The two also discussed the events surrounding Mr. Jackson's prior arrest on drug-related charges, during which Mr. Jackson led the police on a short vehicle and foot chase near Ms. Carroll's residence. During the conversation, appellant told Mr. Jackson "that he went back out in the area where Mr. Jackson was apprehended attempting to go to try to find that joint, but was unable to do so."

At the conclusion of the suppression hearing, the court denied appellant's motion to suppress the Recordings. In doing so, the court found that the police had properly exhausted all reasonable means of investigation prior to seeking a wiretap, that the police sought the wiretap for a legitimate purpose (to uncover a drug conspiracy), and that Judge Shaw-Geter had a "substantial basis" for issuing the Order. As to the argument that the intercepted communications exceeded the scope of the Order, the court found as follows:

> This court finds that argument as well to be wanting, in that there were…calls prior to April 22nd concerning…an abandonment of a weapon, and drugs and/or weapons in combination, and…someone going to the scene of where these things may or may not have been abandoned to look for a gun and/or drugs that had not been recovered by the police at that time.

> The wording of the order including drugs…and drug trafficking nexus with regard to firearms is inclusive of those efforts with the agencies, and is in the scope of the order itself.
>
> Even if it were possibly to be considered by [Judge Shaw-Geter] not to be within the scope of the authorization of the wire order, in the instances of the April 22nd monitored calls…insofar as the conversations of [Appellant] about what may have happened to him the night before in some form of dispute, and the fact that it was obvious to the court by the testimony looking for a weapon either his own, which he couldn't get in the household of his Godmother because he would have been noticed coming in or out, and his calls to others for assistance in acquiring…a joint…so that he could use same for these people who are in the car outside his Godmother's house, and the officer's cautionary call to [Mr. Ruddy]…and [Mr. Ruddy's] subsequent call to Judge Shaw-Geter because of the potential for the emergency nature of the interceptions that may have brought out the direct possibility of a shooting, and her permission to continue to intercept those phone calls as they may have related to that setting, I believe is in conformity with the order.

At trial, the State played portions of the Recordings during the testimony of Ms. Harris. In doing so, the State attempted to elicit testimony from Ms. Harris that "joint" was another word for "gun." Defense counsel objected, arguing that such testimony "calls for an opinion." The court directed the State to "lay a foundation." After Ms. Harris established that she and appellant sometimes used slang words in conversation, the State asked if these slang words included "joint." Defense counsel objected again, at which time a bench conference ensued:

> [DEFENSE]: State is eliciting opinion testimony. Opinions can be either given by experts or skilled lay witnesses or lay witnesses. But before an opinion can be given the State needs to give [Appellant] proper notice. This is the first I've heard this witness giving this sort of an opinion. I think in the case of I think it's *Ragland v. State* in that case the State called officers and the officers were lay officers and I think they gave opinions about drug packaging or something like that. And I believe…the trial [c]ourt allowed those opinions to come in [and]

	defense counsel may have made a similar argument. I'm making now which that these are opinions and the State has not followed the requirements of discovery.
THE COURT:	You believe this witness and the subject matter about what she testified to is true expert testimony. I believe that she is entitled to relate what her understanding from her conversations with people on the street in her own life, so they are common place, meaning to her and others she has spoken to. And that foundation has been laid. And the question is directed to how do you refer to it and how do you refer to it in conversations with people. So, overruled.

Following the bench conference, the State resumed its examination of Ms. Harris:

[STATE]:	Ms. Harris, with respect to the slang term, "joint," what does it mean?
[WITNESS]:	It can be used for anything….For example, if you were talking about a dog or something, that joint big or something like that.

* * *

[STATE]:	Did you have – when [Appellant] used the word on the phone call we just listened to…did you have an understanding about what he was talking about?
[WITNESS]:	Yes.
[STATE]:	What was your understanding?
[WITNESS]:	That he wanted what he brought over.
[STATE]:	What was that?
[WITNESS]:	His gun.

Later, the State indicated that it intended to call Lieutenant Blazer as a witness "to put forward certain intercepted telephone conversations." Defense counsel objected, arguing that "Lieutenant Blazer is going to say that a joint equals a gun" and that "he is going to try to give an opinion, an expert opinion." The trial court agreed, ruling that Lieutenant Blazer would need to be qualified as an expert in order to give such testimony.

When Lieutenant Blazer was called to testify, the State moved to have him admitted as an expert "in the slang and language used by individuals in reference to firearms." On *voir dire*, Lieutenant Blazer testified that he was a 20-year member of the Prince George's County Police Department, that he had learned various slang words, including the word "joint," from numerous interviews with witnesses, crime victims, and defendants, and that some of these slang words could not be found in a standard or slang dictionary.

Following *voir dire*, Defense counsel objected, arguing that Lieutenant Blazer did not have a "sufficient factual basis to support the expert testimony." The court overruled the objection and found as follows:

> An individual's expertise…can come by way of unique and special circumstances, skills, field training, field experience and any other educational avenues as well. And in this particular setting Lieutenant Blazer's expertise comes from his many interviews with those individuals who come to our court systems as victims, witnesses or suspects of crime who he has conversed with about these terms as he testified to and his familiarity with the terms, guns over a period of 20 years, I believe that is sufficient circumstances for the [c]ourt to accept him as an expert and for the jury to give his testimony concerning these items whatever weight they wish to under these circumstances.

After the State played several of the Recordings in which appellant made reference to a "joint," Lieutenant Blazer testified as follows:

[STATE]: What, if any, significance did you attach to the use of the word joint at that time?

[WITNESS]: At this time in the context of the conversation, we believe that what he was referring to the word joint, he was referring to a firearm.

[STATE]: Why did you believe that?

[WITNESS]: With the context of this conversation and other conversations around the same time as this intercepted conversation.

[STATE]: Have you ever heard the term joint used to refer to a firearm?

[WITNESS]: Yes, I have.

[STATE]: When?

[WITNESS]: During interviews, again, with prior victims, subjects being investigated for firearms and related crimes and witnesses.

[STATE]: Have you ever heard the term joint used to refer to something other than a firearm?

[WITNESS]: Yes.

[STATE]: What have you heard it used to refer to?

[WITNESS]: It can be used pretty much for anything. I have heard it used in reference to marijuana in rolling a joint. I have heard it used in conversation when somebody is referring to an object. It really depends on the context of the conversation. As I stated, not just this conversation but other recorded conversations surrounding this one, it became our belief that he was referencing a firearm.

DISCUSSION

I.

Appellant first argues that the trial court erred in admitting the Recordings into evidence. Appellant maintains that his reference to the "joint" or gun at Ms. Carroll's home "did not fall within the scope of the wiretap's authorization, which was by its terms limited to calls concerning a drug conspiracy." Consequently, according to appellant, in order for the State to use the Recordings in court, it was required to obtain "judicial authorization of the interception of these calls 'as soon as practicable' as required under Maryland [Courts and Judicial Proceedings Article ("Cts. & Jud. Proc.")] § 10-407." Appellant concludes that, because no such authorization was obtained, the trial court erred in admitting the recordings.

We first address the question of waiver. The State argues that "the content of the calls themselves are not in a usable format for this Court." The State admits, however, that "the trial court discerned enough of the recordings and enough of the circumstances and the relevant law to rule upon the motion [to suppress.]" We agree, and further find that the transcript of the suppression hearing provides an adequate basis on which we may determine whether the trial court's decision was erroneous. Accordingly, we reject the State's waiver argument, despite appellant's failure to provide transcripts of the recorded calls at issue.

The State also argues that appellant "did not argue below that otherwise-admissible calls should not be played for the jury." Again, we disagree. The circuit court understood that appellant objected to the playing of the Recordings.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State,* 172 Md. App. 75, 87 (2006). In so doing, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Id.* Moreover, "[a]s the State was the prevailing party on the motion, we consider the facts as found by the trial court, and the reasonable inferences from those facts, in the light most favorable to the State." *Cartnail v. State,* 359 Md. 272, 282 (2000). The court's legal conclusions, on the other hand, are reviewed *de novo*. *See Daniels,* 172 Md. App. at 87.

Generally, when a court issues a wiretap order, any subsequent monitoring of communications by law enforcement officers is limited to those communications that are germane to the grounds on which the wiretap was authorized. *See Ezenwa v. State,* 82 Md. App. 489, 508 (1990). If the subject matter of a communication exceeds the scope of the wiretap order, law enforcement officers are required to curtail, or "minimize," their surveillance so as to prevent unnecessary intrusion into an individual's privacy. *Id.* The plain view doctrine is applicable, however, when an officer overhears conversations related to "other offenses," even when such offenses were not included in the original wiretap order. *See White v. State,* 140 Md. App. 520, 530 (2001). In both instances, a law enforcement officer may disclose the contents of the communication to other law enforcement officers. *See* Md. Code, Cts. & Jud. Proc. §§ 10-407(a) and 10-407(b).

Although the law draws no distinction between communications within the scope of the order and communications of "other offenses" in terms of how the contents may be disclosed to other law enforcement officers, the law does draw a distinction in terms of when the contents may be used during a court proceeding. If a law enforcement officer obtains a communication that is within the scope of the wiretap order, "any person…may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of any state[.]" Md. Code, Cts. & Jud. Proc., § 10-407(c)(1). On the other hand, if a law enforcement officer intercepts a communication related to other offenses, the contents of the communication may be disclosed during a court proceeding only "when authorized or approved by a judge of competent jurisdiction where the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this subtitle." Md. Code, Cts. & Jud. Proc., § 10-407(e). In addition, the statute requires that such application "be made as soon as practicable." *Id.*

As is evident from the above, we must determine whether the Recordings were within the scope of the Order. If so, then the suppression court did not err in denying appellant's motion to suppress, as § 10-407(c) permits the disclosure of these communications during the testimony of "[a]ny person." *Id.* If, on the other hand, we were to find that the Recordings were beyond the Order's purview, our next inquiry would be whether the playing of the Recordings was permissible under § 10-407(e) – that is, whether disclosure was authorized by a judge who, upon subsequent application made as soon as

practicable, found that the communications were intercepted in accordance with Subtitle 4 of the Maryland Courts and Judicial Proceedings Article.

We cannot review the Order itself because appellant has failed to provide a copy of the Order. *See State v. Mayes,* 284 Md. 625, 633 (1979) ("[A]n unambiguous wiretap order does not require interpretation and any expansion or contraction of its scope at the expense of its plain meaning will not be permitted."). Consequently, our review of the Order and our interpretation of its terms is based on the transcript of the suppression hearing. *Id.* (construction of a wiretap order is permissible when an "ambiguity exists as to its reach."). Moreover, when judicial construction of an order is necessary to resolve an ambiguity, "the trial judge's interpretation is entitled on appeal to great weight[.]" *Id.* at 634.

We hold that the suppression court's finding that the Recordings were within the scope of the Order was not clearly erroneous. *See Fuge v. Fuge,* 146 Md. App. 142, 180 (2002) ("If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous."). Lieutenant Blazer testified that the scope of the Order included "any other crimes" intercepted as part of the wiretap, and the charges on which appellant was convicted certainly qualify as "any other crimes." This conclusion was supported by Mr. Ruddy, who testified that the scope of the Order included "handgun possession." Moreover, the Order expressly authorized the police to seek evidence of violations of Md. Code, Crim. Law, § 5-621, which specifically forbids the use of a firearm with a nexus to the sale of illegal narcotics. Lieutenant Blazer's application for the wiretap expressly mentioned the possibility that a firearm with a nexus to the drug conspiracy was

secreted near Ms. Carroll's home. Accordingly, the suppression court did not err in admitting the contents of the Recordings at trial, which was permissible under § 10-407(e).

Alternatively, we conclude that, even if the Recordings were beyond the scope of the Order, the court approved the continued monitoring of the calls. Because there is a dearth of Maryland case law discussing §10-407(e), we look to the federal courts for guidance because the Maryland Wiretap Statute was derived directly from the Federal Wiretap Statute. *See Davis v. State,* 426 Md. 211, 219 (2012).

The Federal Wiretap Statute, codified in Sections 2510 through 2522 of Title 18 of the United States Annotated Code, was enacted to provide "minimum standards for the interception of oral, wire, and electronic communications during criminal investigations and prosecution." *Davis,* 426 Md. at 219. In enacting these statutes, Congress intended to protect individual privacy rights and to limit the use of unauthorized wiretaps. *See Mayes,* 284 Md. at 628, 634. Congress recognized, however, "that in the course of an authorized wiretap, evidence of 'other offenses' not named in the original order might surface." *Id.* at 628. To strike a balance, Congress included 18 U.S.C. § 2517(5), which contains substantially the same language as § 10-407(e) of the Maryland Courts and Judicial Proceedings Article.[4] Like its Maryland counterpart, 18 U.S.C. § 2517 (5) statutorily

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[4] 18 U.S.C. § 2517(5) states:

> When an investigative or law enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, (cont.)

mandated that evidence of other offenses not named in the wiretap order "could be used as testimony in any state 'proceeding' only if the government 'as soon as practicable' sought and obtained judicial authorization for such further use." *Mayes,* 284 Md. at 628-29. In short, "Congress adopted section 2517(5) because it 'wished to assure that the Government does not secure a wiretap authorization order to investigate one offense as a subterfuge to acquire evidence of a different offense for which the prerequisites to an authorization order are lacking.'" *U.S. v. Van Horn,* 789 F.2d 1492, 1503 (11th Cir. 1986) (citation omitted).

Courts, therefore, have determined that '[t]he substantive requirements of a post-interception application under § 2517(5) call for: 'a showing that the original order was lawfully obtained, that it was sought in good faith and not as a subterfuge search, and that the communication was in fact incidentally intercepted during the course of a lawfully executed order.'" *U.S. v. Arnold,* 773 F.2d 823, 829 (7th Cir. 1985) (citation omitted). This requirement does not, however, "ensure that a defendant is charged only with the crimes set forth in the application [for a wiretap]." *Van Horn,* 789 U.S. at 1503. "Courts thus have considered the section 2517(5) approval requirement flexibly, and have held that the court need not have approved of the new charges as long as it has approved of the collection of the evidence supporting those charges." *Id.* In fact, such "approval" need not

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(cont.) may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

be formally requested or expressly given, but may be implied based on the circumstances of the particular case. *See, e.g., U.S. v. London,* 66 F.3d 1227, 1234 (1st Cir. 1995) (Court found no error under § 2517(5) where the "district judge who issued the initial interception orders impliedly and permissibly authorized the disclosure of the conversations at issue."); *Van Horn,* 789 F.2d at 1504 (§ 2157(5) was satisfied where authorizing judge "reviewed the conversations which the government had been intercepting, and determined that they were properly intercepted."); *U.S. v. Masciarelli,* 558 F.2d 1064, 1068 (2nd Cir. 1977) ("[N]othing in the statute requires that the supplemental court authorization be express rather than implied.").

Applying these principles to the present case, we conclude that the State obtained the requisite judicial authorization to disclose the Recordings at trial. Lieutenant Blazer (via Mr. Ruddy) informed Judge Shaw-Geter of the nature of the intercepted conversations, and Judge Shaw-Geter expressly approved the continued monitoring of appellant's conversations related to the gun. It is reasonable to assume that Judge Shaw-Geter, who had intimate knowledge of the Order, would not have approved of the additional interception had the Order not been lawfully obtained or sought in good faith. Moreover, Judge Shaw-Geter provided further judicial authorization to disclose the Recordings when she approved of Lieutenant Blazer's application for a search warrant, which "echo[ed] the April 22nd phone calls reviewed by Lieutenant Blazer…concerning the weapon at the house[.]" *See Masciarelli,* 558 F.2d at 1068 ("We have adhered to the view that the disclosure in subsequent affidavits to the issuing judge of material facts constituting or clearly relating to other offenses satisfies the requirements of § 2517(5)[.]").

Accordingly, the court did not err in allowing the Recordings to be played at appellant's trial.

As a result of our conclusion, we need not address the State's contention that, even if the intercepted communications were outside the scope of the Order and without subsequent court approval, the communications could still be introduced into evidence and played for the jury under the "plain view doctrine."[5]

II.

Appellant next argues that the trial court erred in allowing two witnesses, Ms. Harris and Lieutenant Blazer, to give opinion testimony that the term "joint" was a reference to a gun. Appellant avers that "'joint' is not accepted in general parlance as a term for a weapon" and that the trial court "abused its discretion in permitting a lay individual [Ms. Harris] to testify in this manner." As for Lieutenant Blazer, Appellant insists that the officer had an "insufficient factual basis to support a finding that he was an expert in street jargon and lingo" and that his testimony "was not supported by any demonstrated expertise and was not helpful to the jury." We disagree.

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[5] The State's argument is derived primarily from *White v. State,* 140 Md. App. 520 (2001), wherein we noted that "the plain view doctrine is applicable when an officer executing a court authorized wiretap for drug related conversations overhears conversations related to other offenses." *Id.* at 530. We note that *White* did not expressly address the issue before us.

The decision to admit opinion testimony rests within the discretion of the trial court. *See, e.g., Raithel v. State,* 280 Md. 291, 301 (1977) ("[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court[.]"); *Warren v. State,* 164 Md. App. 153, 166 (2005) ("The decision to admit lay opinion testimony is vested within the sound discretion of the trial judge."). Accordingly, we review the trial judge's decision to admit the testimony at issue for abuse of discretion.

Under Maryland Rule 5-701, testimony by a lay witness "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." *Id.* Expert testimony, on the other hand, can be "based on specialized knowledge, skill, experience, training, or education…[and] need not be confined to matters actually perceived by the witness." *Ragland v. State,* 385 Md. 706, 717 (2005). But before a witness can be admitted as an expert, the trial court must first 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." Md. Rule 5-702. In short, the language of Maryland Rules 5-701 and 5-702 "divides the universe of opinion testimony into two categories, each bearing restrictions that the other does not." *Ragland,* 385 Md. at 717.

Unfortunately, this distinction is not always clear, particularly when "at least one class of opinions potentially falls within both categories." *Id.* at 718. As the Court of Appeals explained:

> A witness who has personally observed a given event may nonetheless have developed opinions about it that are based on that witness's specialized knowledge, skill, experience, training, or education. The question then becomes whether the fact of the personal observation will permit admission of the opinion by a lay witness under Rule 5-701, or whether the "expert" basis of the opinion will require compliance with Rule 5-702 and admission as expert testimony.

Id.

The Court of Appeals discussed this issue at length in *Ragland, supra.* In that case, members of the Montgomery County Police Special Assignment Team ("SAT") observed an individual, Paul Herring, make a call from a pay telephone at a gas station, drive to another gas station, and make another call from a different pay telephone. *Id.* at 709. The officers then observed Mr. Herring return to a prior location on Northwest Drive, "where a hand-to-hand transaction took place between [Mr.] Herring and the passenger of a yellow Cadillac[.]" *Id.* Both Mr. Herring and the driver of the Cadillac left the area, at which time the officers stopped Mr. Herring's van, forced him to the ground, and recovered "a small object which they suspected to be crack cocaine." *Id.* at 710. Other officers stopped the yellow Cadillac and arrested its three occupants, including Jeffrey Ragland, who had been seated in the Cadillac's front passenger seat. *Id.*

Mr. Ragland was indicted and charged with distribution of a controlled dangerous substance. *Id.* At trial, two members of the SAT team, Officer Michael Bledsoe and Detective Kenneth Halter, testified regarding the events leading up to Mr. Ragland's arrest. *Id.* at 711, 713. Neither was called as an expert by the State nor qualified as an expert by the court under Maryland Rule 5-702. *Id.* Nevertheless, Officer Bledsoe testified that, based on his training and experience in the investigation of drug crimes, "what occurred

[on Northwest Drive] was [a] drug transaction." *Id.* at 712. Although Detective Halter did not personally observe the transaction between Messrs. Herring and Ragland, he also concluded that, based on his training and experience, "a drug transaction had occurred." *Id.* at 714. Mr. Ragland was ultimately convicted, and he appealed. *Id.* at 715. Before this Court could consider the case, the Court of Appeals granted certiorari. *Id.*

On appeal, Mr. Ragland argued that the officers' testimony constituted expert testimony and should have been excluded by the trial court. *Id.* at 716. The Court of Appeals agreed, holding that "Md. 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. The Court noted that both officers "devoted considerable time to the study of the drug trade [and] offered their opinions that, among the numerous possible explanations for the events on Northwest Drive, the correct one was that a drug transaction had taken place." *Id.* at 726. The Court further noted that "[t]he connection between the officers' training and experience on the one hand, and their opinions on the other, was made explicit by the prosecutor's questioning." *Id.* The Court concluded that "[s]uch testimony should have been admitted only upon a finding that the requirements of Md. Rule 5-702 were satisfied." *Id.*

Although *Ragland* makes clear that a witness's specialized training and experience is key in delineating expert from lay testimony, not every opinion predicated upon prior experience is necessarily an expert opinion. This Court expounded on this distinction in *In re Ondrel M.,* 173 Md. App. 223 (2007). In that case, Ondrel M., a minor, was a passenger in a vehicle that had been stopped by the police. *Id.* at 227-28. Upon

approaching the vehicle, Officer Brett Tawes "smelled an odor of marijuana emanating from inside." *Id.* at 228. A search of the vehicle revealed marijuana, and Ondrel M. was arrested. *Id.* At trial, Officer Tawes testified as a non-expert that "in his training at the police academy and in his work in the field as a police officer, he had been exposed previously to the smell of burning marijuana and therefore could recognize its smell." *Id.* (footnote omitted). Ondrel M. was subsequently found involved. *Id.* at 229.

Relying on *Ragland*, Ondrel M. argued on appeal that the trial court erred in admitting the officer's lay opinion because said opinion was based on the officer's training and experience as a police officer. *Id.* at 238. This Court disagreed, and held that Officer Tawes' testimony was properly admitted as lay opinion and did not require prior qualification. *Id.* We noted that certain testimony, even if given by a police officer, is not expert testimony if it falls within the penumbra of opinions that a layperson could draw:

> No specialized knowledge or experience is required in order to be familiar with the smell of marijuana. A witness need only to have encountered the smoking of marijuana in daily life to be able to recognize the odor. The testimony of such witness thus would be "rationally based on the perception of the witness." *Ragland,* 385 Md. at 717.

In re Ondrel M., 173 Md. App. at 243.

Applying the above principles to Ms. Harris's testimony, we hold that the trial court did not err in allowing her to testify that she believed appellant was referring to a gun when he said "joint." Unlike the officers in *Ragland,* Ms. Harris did not rely on any specialized training or experience when proffering her testimony. Instead, Ms. Harris merely established, as foundation for her testimony, that she and appellant used slang words in conversation and that the term "joint" sometimes meant "gun." *See In re Ondrel M.,* 173

Md. App. at 244 (explaining that the officer's testimony regarding previous exposure to marijuana served as "sufficient foundation for [him] to testify regarding the odor of marijuana[.]"); *See also Paige v. State,* 226 Md. App. 93, 125 (2015) (to testify on a matter, a witness must have personal knowledge, which requires that the witness have "the experience necessary to comprehend his perceptions.") (internal citations and quotations omitted).

Furthermore, Ms. Harris's opinion was not "within the scope of common knowledge and experience of the jury or…peculiarly within the specialized knowledge of experts." *King v. State,* 36 Md. App. 124, 135 (1977) (discussing the circumstances under which a lay witness may not express an opinion). Rather, Ms. Harris's testimony was rationally based on events she perceived first-hand and was helpful to the jury's understanding of the nature of her conversation with appellant and the events surrounding appellant's possession of the gun. *See Bruce v. State,* 328 Md. 594, 629 (1992) ("[L]ay opinions which are derived from first-hand knowledge, are rationally based, and are helpful to the trier of fact are admissible.") ("Opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury.") (internal citations omitted).

We likewise find no error in the trial court's admission of Lieutenant Blazer's testimony. "An adequate factual basis for expert testimony is required under Md. Rule 5-702(3) so that the testimony 'constitutes more than mere speculation[.]'" *Roy v. Dackman,* 445 Md. 23, 42 (2015) (citations omitted). Whether such a factual basis exists involves a two-pronged test: 1) the expert must have an adequate supply of data from which to form

an opinion; and 2) the expert must employ a reliable methodology in analyzing the data. *Id.* at 42-43.

In the present case, Lieutenant Blazer testified that he became familiar with certain slang, including the term "joint," over his 20-year career as a police officer in Prince George's County. Lieutenant Blazer further established that the term "joint" could be used in many different contexts, but that he believed appellant used the term to mean gun. Lieutenant Blazer came to this conclusion based on his experience as a police officer and on the context in which appellant used the term over the course of multiple phone calls. In short, Lieutenant Blazer provided a "rational explanation of how the factual data led to [his] conclusion." *CSX Transp., Inc. v. Miller*, 159 Md. App. 123, 202 (2004) (discussing how the requirements of Md. Rule 5-702(3) may be established).

Appellant argues that an insufficient factual basis existed because Lieutenant Blazer was "not credentialed as a linguist" and "could not point to any objective treatise handbook or internet site that established 'joint' as a word used by anyone to refer to a weapon." Whether true or not, these factors, by themselves, are of little consequence. *See, e.g.*, *Roy,* 445 Md. at 43 ("[A]n expert witness…must base his or her opinion on reliable knowledge, skill, and experience, but is not required necessarily to be a specialist."); *Sippio v. State,* 350 Md. 633, 653 (1998) ("A factual basis for expert testimony may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions."). For the reasons stated herein, we hold that Lieutenant Blazer had a sufficient factual basis to render an expert opinion, and the trial court did not err in admitting his

testimony. *See Raithel,* 280 Md. at 301 (A trial court's decision to admit expert testimony "will seldom constitute a ground for reversal.").

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