UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2376

September Term, 2015

CHARICK S. CALLAWAY

v.

STATE OF MARYLAND

Wright,
Berger,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: December 20, 2016

Appellant, Charick S. Callaway, was convicted by a jury in the Circuit Court for Baltimore City, Maryland, of first degree rape, first degree sexual offense, first degree burglary, armed robbery, and wearing and carrying a dangerous weapon openly with intent to injure. He was sentenced to life imprisonment for first degree rape, a consecutive three years for wearing and carrying a dangerous weapon, a consecutive fifteen years for first degree burglary, a concurrent fifteen years for armed robbery, and a further life sentence, all suspended, for first degree sexual offense. Appellant timely appealed and presents the following questions for our review:

1. Did the trial court err in admitting Detective Strand's testimony regarding what Appellant said at the police station?

2. Did the trial court abuse its discretion in permitting Detective Snead to narrate the events depicted in the CCTV video footage, as well as other still photos?

3. Did the trial court err in admitting the surveillance video footage from the Belvedere without proper authentication and/or as irrelevant?

For the following reasons, we shall affirm.

BACKGROUND

On May 27, 2013, at around 2:45 a.m., the victim left her job working at a bar and lounge near 930 North Charles Street in Baltimore, went to a convenience store/market, then walked home. While she was speaking with her ex-boyfriend on her cellphone, a

man came up behind her and held a knife to her neck. The victim identified appellant, in court, as that man.[1]

After she screamed, appellant took her cellphone and told her to continue to enter her basement apartment. According to the victim, appellant threatened to "slit my neck from ear to ear." The victim gave appellant close to $1,000 and asked him to leave. Instead, appellant forced his penis into her mouth, then forced her, still at knifepoint, into the kitchen.

Realizing that she was about to be raped, the victim convinced appellant to wear a condom, located in a nearby drawer. The appellant then "threw me up against the kitchen wall, pushed me up against the kitchen wall and he raped me."

Afterwards, appellant made the victim take a shower and clean any areas that he touched with bleach. He also had her clean the outside stairway leading into her apartment. Appellant then took the victim outside and started walking down the street. He eventually let her go, returning her phone, but keeping the stolen money. The victim then ran, called her ex-boyfriend, and told him that she had just been raped. The police were contacted and, after her ex-boyfriend and mother arrived at her residence, the victim was transported to Mercy Medical Center for a sexual assault forensic examination.

[1] We shall refer to the complainant herein as "the victim." *State v. Mayers*, 417 Md. 449, 451 (2010) (identifying an 18-year-old sexual assault victim by her initials); *see also Travis v. State*, 218 Md. App. 410, 416 (2014) (referring to adult sexual assault victim as "the victim"); *Cordovi v. State*, 63 Md. App. 455, 460 (1985) (same).

The presence of seminal fluid and sperm were detected on several swabs taken from the victim's vaginal/cervical areas and external genitalia. After comparison, an expert in DNA analysis opined that appellant was the source of the DNA found on the sperm fraction from the vaginal/cervical swab. His DNA was also present in several other swabs taken from the victim, including, but not limited to, the sperm fraction from the swab of the victim's external genitalia.

Several days later, Sergeant Kerry Snead, of the Sex Offense Unit for the Baltimore City Police, showed the victim a photographic array. The victim identified a photograph of appellant, signed the array, and wrote on the back of the array, "[t]he man on the front attacked me at my front door. He put a knife to my neck, forced me inside. He robbed me and raped me. He made me shower and bleach the surfaces he touched. He then made me help him escape."

The victim's landlord, Amy Cieto, gave Sergeant Snead video recordings from four surveillance cameras associated with the residence. As the video played for the jury, the victim narrated the events depicted therein. The victim identified appellant in the video, testifying that the video showed him holding the back of her shirt and walking her into her apartment. She also testified that the video showed appellant carrying a knife in his right hand.

The jury was also shown closed circuit television ("CCTV") surveillance taken from the Baltimore City Watch cameras from the same evening. The victim identified herself on that video as well.

Nicolas Antivero, the victim's ex-boyfriend, confirmed that he was on the phone with the victim at around the time of this incident. He heard her say "oh my God, oh my God" right before they were disconnected. Antivero woke up the victim's mother, who also testified at trial, and the two of them drove over to the victim's house, all the while trying to contact the victim on her cellphone. As they got closer, the victim called Antivero, crying and telling him that she had just been robbed and raped. The victim also told her mother the same thing after they arrived, and the victim's mother then contacted the police.

Sergeant Snead, the primary investigator in this case, testified that he first went to the victim's residence and obtained a surveillance video from the landlord. That video depicted the victim and a suspect near the property. Snead used a still image from this video to create a wanted flyer to distribute around the neighborhood and nearby police departments.

After speaking with the victim and walking her route of travel before and after the incident, Sergeant Snead obtained additional surveillance videos. This included, but was not limited to, video from William Snyder, the general manager from the nearby Belvedere Condominiums, formerly the Belvedere Hotel. Sergeant Snead testified, without objection, that this video showed an "individual matching the physical and clothing description as the same description that was put out from the flyer, from that footage from the house[,]" meaning the surveillance video from the victim's landlord. And, according to Snyder, that video depicted appellant walking in an adjacent alley, up to the front door of the Belvedere, through the lobby, and then taking an elevator to

appellant's 11th floor rented office. After obtaining the video from the Belvedere, and learning appellant's name and address, Sergeant Snead prepared a photograph array. Snead confirmed that the victim identified appellant in that array as the man who robbed and raped her.

Sergeant Snead further testified that he obtained surveillance video of the scene at the time in question from the City Watch CCTV system. As will be discussed further, although appellant objected at various times to Snead's narration as those videos were played for the jury, certified copies of the recordings were admitted without any contemporaneous objection.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends that the circuit court erred in admitting testimony from Detective Amy Strand recounting comments appellant made while in a police station holding cell after he had been arrested in this case. Appellant suggests that the statements "were devoid of the context to make them relevant" and that any probative value of the statements was "far outweighed by the potential prejudice and/or confusion they could generate[.]" The State responds that the court properly exercised its discretion. We agree.

At a pretrial motions hearing, Detective Amy Strand testified that, on June 7, 2013, while she was working in the Sex Offense Unit of the Baltimore City Police

Department, she heard a "commotion" coming from a nearby holding cell. After hearing her supervisor call for a paramedic, Detective Strand overheard appellant saying "just let me die, why don't you just let me die." Detective Strand entered the holding cell and saw appellant, handcuffed to a bench for his safety, crying "I shouldn't have done it to that girl, she didn't deserve that," and that "she was a nice girl and she probably wants me dead." Detective Strand testified that, after this, she consoled appellant and tried to calm him down. Paramedics soon arrived and transported appellant away. Detective Strand maintained that she did not go into the holding cell with the intent to interrogate appellant, and she only did so in order to check on his welfare.

Thereafter, the parties discussed whether this statement was either voluntary or the result of custodial interrogation. The circuit court denied the motion to suppress, ruling that, under the totality of the circumstances, there was no interrogation, that Detective Strand responded in an effort to try to calm appellant, and that appellant's statement amounted to a "blurt." The court stated that "I cannot find anything in what Detective Strand said or did to be any type of equivalent of questioning." Also in denying the motion, the court stated:

> The defendant at this time may regret the choice of his words or can even argue that his words were not well chosen, but he was upset and this is what he had to say. It's really a question of whether it's admissible hearsay since it's a statement by a party opponent, adverse party. It's up to the State as to whether it's admissible and able to argue what it means, but I don't see any theory upon which the Court could keep this out . . . .

At trial, Detective Strand testified that she was working a midnight shift on June 7, 2013, seated at her desk near two holding cells in the police station, when she heard a

"commotion" coming from one of the nearby cells. Strand heard Sergeant Snead on the radio requesting a paramedic, followed closely by another man's voice saying "why didn't you just let me do it? Just let me die. Just let me die."

Detective Strand then rushed to the holding cell to see if Sergeant Snead needed assistance. Appellant was inside, crying and upset, and, according to Strand, "speaking about wanting to end his life." As Sergeant Snead momentarily left the holding cell, Detective Strand went inside to console appellant and just to make sure "he did not harm himself any further or at all[.]" As she did so, appellant spoke to Detective Strand about this case. Over a general objection, Detective Strand testified that appellant stated "I shouldn't have done that to that girl. She didn't deserve that." Appellant also stated "she probably wants me dead."

Appellant objects to these statements as being irrelevant and inadmissible. This Court recently explained the standard of review of a trial court's decision regarding the admission of evidence as follows:

> "Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. *Hajireen v. State*, 203 Md. App. 537, 552, *cert. denied*, 429 Md. 306 (2012). This Court reviews a trial court's evidentiary rulings for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011). A trial court abuses its discretion only when 'no reasonable person would take the view adopted by the [trial] court,' or 'when the court acts "without reference to any guiding rules or principles." *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13 (1994))."

Baker v. State, 223 Md. App. 750, 759-60 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 708-09, *cert. denied*, 438 Md. 143 (2014)).

We are guided by the following principles governing the relevance of evidence, specifically, evidence suggesting consciousness of guilt:

> Maryland Rule 5-401 defines "relevant evidence" as evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401 (2011). Irrelevant evidence is inadmissible. *See* Md. Rule 5-402; *see e.g., Simmons v. State*, 392 Md. 279, 300, 896 A.2d 1023, 1035 (2006) (holding that a trial judge's prevention of an irrelevant line of questioning regarding the intention of a potential witness to invoke her Fifth Amendment privilege was correct). In [*Thomas v. State*, 372 Md. 342 (2002) ("*Thomas I*")], we stated:
>
> > A person's post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind. The reason why a person's post-crime state of mind may be relevant is because, as Professor Wigmore suggested, the commission of a crime can be expected to leave some mental traces on the criminal.
>
> 372 Md. at 352, 812 A.2d at 1056 (citing 1 J. Wigmore, *Evidence* § 173, at 632 (3d ed. 1940)), *accord* [*Decker v. State*, 408 Md. 631, 641 (2009)]. Speaking specifically to the issue of relevancy, we have also stated that "[a]pplying our accepted test of relevancy, 'guilty behavior should be admissible to prove guilt if we can say that the fact that the accused behaved in a particular way renders more probable the fact of [his or her] guilt.'" *Thomas I*, 372 Md. at 352, 812 A.2d at 1056) (quoting Andrew Palmer, *Guilt and the Consciousness of Guilt: The Use of Lies, Flight and Other 'Guilty Behavior' in the Investigation and Prosecution of Crimes*, 21 Melb. U. L. Rev. 95, 98 (1997)); *accord Decker*, 408 Md. at 641, 971 A.2d at 274 (citation omitted).

State v. Simms, 420 Md. 705, 725-26 (2011).

Moreover:

> It is true that relevance is generally a low bar, but it is a legal requirement nonetheless. We have described relevance by stating:
>
> > To be relevant, it is not necessary that evidence of this nature conclusively establish guilt. The proper inquiry is whether - the evidence *could* support an inference that the defendant's conduct demonstrates a consciousness of guilt. If so, the evidence is relevant and generally admissible.
>
> *Thomas v. State*, 397 Md. 557, 577, 919 A.2d 41, 61 (2007) (*Thomas II*) (quoting *Thomas v. State*, 168 Md. App. 682, 712, 899 A.2d 170, 188 (2006)) (emphasis in original) (internal citations omitted).

Simms, 420 Md. at 727.

In asserting that appellant's statements to Detective Strand were admissible, the State directs our attention to prior opinions in similar cases. For instance, in *Wagner v. State*, 213 Md. App. 419, 463 (2013), when Ms. Merritt, a witness, started to give a statement to police in an interview room adjoining that of Wagner, she stopped speaking to police when she overheard Wagner yelling her name. Wagner argued that it was error for the trial court to admit evidence that he shouted the witness's name because it was too ambiguous to be relevant and unfairly prejudicial. *Id.* at 463-64. This Court disagreed, stating:

> Here, a reasonable fact finder could infer that, when appellant saw Ms. Merritt return to the interview room for the second time, he yelled Ms. Merritt's name in an effort to stop her from making further statements to the police regarding Mr. Pitcairn's robbery and murder. This desire to conceal evidence is consistent with consciousness of guilt regarding his actions, as well as actual guilt. Although, as appellant asserts, there may have been another explanation for appellant shouting Ms. Merritt's name,

> appellant offered no such explanation, and the issue was one for the jury to determine. It did not render the evidence irrelevant.

Wagner, 213 Md. App. at 465-66 (footnote omitted).

Similarly, in *Fenner v. State*, 381 Md. 1, 26 (2004), the Court of Appeals held that the trial court did not abuse its discretion when it admitted as relevant the defendant's statement at a bail hearing: "I'm not denying what happened." The Court further noted that to the extent there was any ambiguity about that statement, it went to the weight the jury should afford the statement, not its admissibility. *Id.*

Here, Detective Strand's testimony was presented after the jury had already heard the victim identify appellant as the person who raped her. As such, Strand's testimony was not totally without context and was, therefore, relevant. Moreover, the probative value of the evidence was high and did not unfairly prejudice the appellant. *See Odum v. State*, 412 Md. 593, 615 (2010) ("The more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial"). Based on our review of the record, we conclude that the circuit court properly exercised its discretion in admitting Detective Strand's testimony.

II.

Appellant next asserts that the circuit court erred in allowing Sergeant Snead to narrate the CCTV video footage because it was inadmissible lay opinion evidence. The State responds that Sergeant Snead did not render any opinion as to what was depicted in the footage and only "pointed out what in the footage was significant to his investigation, which was helpful to the jury in its understanding of the evidence." We concur.

Prior to trial, appellant's counsel brought up this issue, as follows:

[DEFENSE COUNSEL]: . . . There is a video which I believe, or actually maybe a series of videos, which I believe the State intends to try to admit in this case and that it is the State's intention to have Detective Snead provide a commentary during the course of those videos. It is the Defense's position that the videos speak for themselves and that there is no legal purpose, and it's certainly inappropriate, for Detective Snead to provide any sort of running commentary. So I just wanted some clarification on that issue from the State.

THE COURT: What's the State think?

[PROSECUTOR]: Your Honor, what counsel is addressing are the CCTV footage, or is the CCTV footage that was obtained of the defendant following the victim and then the defendant running away from the scene of the crime. They were obtained during Detective Snead's investigation. They are part of his investigation, which is why I was going to get him to explain what he was seeing on the screen – this is the victim; this is our suspect. Because it's part of the way that they used to find out who he was.

It's a necessary part of the investigation, which is the only reason I would have him try to explain what he was saying on the television. Of course at the end of the day the jury's free to decide what they saw on the television. Detective, or Sergeant Snead's testimony is evidence that they can consider.

[DEFENSE COUNSEL]: Well, Your Honor, I think it speaks for itself. The video is the video and to have Detective Snead add this layer to encroach upon the purview of the jury. The jury has to assess this piece of evidence like it would anything else.

And so, you know, for this detective to say, oh, this is so-and-so, that's just his view. That's his opinion as to who it is. I've seen the videos. They are by no means clear where you can say that is this, that – you know. So I would object to any commentary by the detective.

The court then inquired and ruled as follows:

THE COURT: Well, I don't know whether we'll be talking about commentary. And I can understand that and certainly the detective would not be in a position to identify anyone if, in fact, he doesn't have any

independent knowledge or ability to identify a person. On the other hand, the victim's ability to identify herself may be quite relevant and admissible.

[DEFENSE COUNSEL]: And that I understand, Your Honor. But my problem is really with the detective saying, you know, who this is and what's going on.

[PROSECUTOR]: Well - -

THE COURT: But to have the victim say this is me and this is the person who attacked me, do you object to that?

[DEFENSE COUNSEL]: I don't know how I can, but I do object to the detective.

THE COURT: I will allow the detective to say we've got these tapes, we use these for investigative purposes, these tapes correspond to the time in which things are alleged to have happened and we have these two forms on the video. To the extent that it's going to get beyond that I think the victim probably has to identify herself.

[PROSECUTOR]: Of course, Your Honor. And I certainly wasn't suggesting that the detective again take that function away from the jury, I just think it's important for him to explain why the video was important to his investigation, why it was part of it.

THE COURT: Well, I will allow that.

[PROSECUTOR]: Yes.

THE COURT: But that this is in this day and age part of the absolutely basic police investigation and there's no reason for us to present the case to the jury and give the impression that even the basics of an investigation weren't done, so that will be allowed. He can say I went and got the tapes, I found out the times, I wanted to look and see if something was happening and, lo and behold, I have these forms on the tape; they're here, right here. And if anyone's going to identify anyone on the tape it has to be somebody who knows what was going on then.

During trial, the victim narrated the video surveillance provided by her landlord, identifying herself and appellant as appellant forced her, at knifepoint, to accompany

him. The victim also identified herself on portions of the same CCTV video surveillance. She testified to the route she took before the incident, and the recorded egress out of her residence afterwards.

Pertinent to the issue raised, Sergeant Snead joined the prosecutor in the well of the courtroom and described the CCTV surveillance video as follows:

> Q. Okay. Let me ask, where is this camera located?
>
> A. This camera is on the corner -- it's on Charles Street but at the corner of Chase, looking right at the Belvedere Hotel.
>
> Q. Okay. And what is this building here?
>
> A. This is the Belvedere and to the left on the screen – to the left right there where you see the sign (indiscernible), this is the 1000 block of Lovegrove.
>
> Q. Stand back for a minute. And tell us what, if anything, directed your investigation from there.
>
> A. All right, as the camera goes up and looks toward the Belvedere. capturing the 1000 block of Lovegrove, I see the subject emerge almost --

At this point, defense counsel objected, and the circuit court told the witness "[y]ou can't do a commentary," and "[y]ou can point out that you were watching the video and you saw this and go from there." Testimony then continued:

> [THE WITNESS]: Okay. I was watching the video and I saw a person running past the building.
>
> BY [PROSECUTOR]:
>
> Q. So once you observed this video, what did you do next?
>
> A. I continued to watch that footage to try to determine which way – the individual that was running, which way he had gone after that.

Q. Why were you interested in that individual?

A. Because he was in the area where the suspect was last seen. He was wearing clothing that was similar to what was –

The circuit court then overruled defense counsel's objection at this point, informing the witness "[t]his you can comment on." Sergeant Snead continued that the individual depicted in the video "was wearing clothing that was similar to the clothing that was worn by the individual on the footage that Ms. Cieto [the victim's landlord] had given me. And somewhere around the same physical description."

At this point during the chronology, Sergeant Snead testified that he could not find further footage of the suspect. Therefore, he contacted Snyder, the general manager of the Belvedere and obtained further footage.[2] Snead then testified, without objection:

Q. And what did you see?

A. I saw the individual that I thought ran past the Belvedere. I saw him run to the door of the Belvedere, start banging on the door. He was let in by the concierge, ran across the lobby onto the elevator and got off on the 11th floor. Got to a door on the 11th floor, a glass door, went through that door and turned.

Q. What, if any, information about that individual did you gain while you were at the Belvedere?

A. Name and address.

Q. Okay. And what name and address did you obtain while you were at the Belvedere?

[2] Appellant does not challenge any of Sergeant Snead's testimony with respect to the surveillance video recovered from the Belvedere.

A. I was given the name of Charick Callaway. Unit 22 Number 1120. Unit Number or Apartment Number 1120.

Sergeant Snead also provided testimony about the execution of a search warrant for that unit, as follows:

Q. For the record, showing what has been marked as State's 14a on the screen, can you tell me what we're looking at?

A. This is inside Unit Number 1120 at the Belvedere Hotel.

Q. Is there anything of significance in this picture?

A. Yes.

Q. What?

A. At the bottom of the photograph -- the bottom of the photograph there's a pair of. I believe, they're Jordan sneakers, black on the bottom, white on the top.

The prosecutor then turned back to images from the surveillance video provided by the victim's landlord, asking Sergeant Snead to view an image from that video:

Q. And is there anything of significance that you would like to note about that photograph at this point?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled. You may point anything out on the photograph you wish to point out, don't draw any conclusions about it for the jury.

[THE WITNESS]: The individual in this picture is wearing a pair of black and white –

[DEFENSE COUNSEL]: Objection. It speaks for itself.

THE COURT: Okay. You're pointing to the shoes the person is wearing in the still photograph from the Cieto video correct?

[PROSECUTOR]: Yes.

THE COURT: Very well, they are pointed out.

Sergeant Snead provided further testimony concerning different footage from the CCTV system:

Q. Now what building is coming into the screen right now?

A. This is the Belvedere, then the 1000 block of Lovegrove and the Belvedere.

Q. And what are we looking at here?

A. We're looking at an individual next to a car. And individual wearing clothing - -

[DEFENSE COUNSEL]: Objection.

THE COURT: Now, you may comment on an individual next to a car and you may comment on what you can observe the person is wearing.

[THE WITNESS]: Yes, sir. An individual wearing a dark-colored top and dark jeans and it appears he may be wearing shades.

BY [PROSECUTOR]:

Q. And what are we looking at here? Well, first of all, which direction? What street are we looking at and which direction?

A. This is Charles Street, from Charles and Chase we're looking northbound. And here you're looking at what would be the west side of the street, an individual wearing dark top, dark jeans –

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[THE WITNESS]: And appears to be black and white sneakers. And in the distance you see [the victim] walking northbound.

[DEFENSE COUNSEL]: Objection.

THE COURT: Well, in the distance you can see a female walking.

[THE WITNESS]: Yes, sir. In the distance you can see a female wearing dark clothing and appears to be dark footwear. She's walking northbound on Charles Street.

Sergeant Snead continued:

Q. Let's go back just a sec. [sic] Can you tell us what we're seeing?

A. This is an individual on the sidewalk wearing a dark-colored top, dark-colored jeans and from here you can tell black and white footwear. The vehicle streaks on down, seems to be interaction between the driver and - -

[DEFENSE COUNSEL]: Objection.

[PROSECUTOR]: I'll move on, Your Honor.

THE COURT: No, I'll allow that. I will allow that, an interaction between a car and a person. I will allow that.

BY [THE PROSECUTOR]:

Q. Okay. And what are we seeing here?

A. A female wearing the all black clothing. And it appears she's wearing a purse and dark-colored footwear.

Q. Who's on the screen now?

A. A female wearing the dark clothing with the dark-colored footwear and a purse.

At around 2:52 a.m. on the day in question, CCTV captured images of this female leaving a nearby convenience store/market. Also depicted at around the same time in the video, according to Sergeant Snead, was "the individual wearing the dark top, dark jeans,

black and white sneakers," who "appears to be sitting on the ground against the wall outside of the University Market." Sergeant Snead continued:

> A. There's an individual sitting on the sidewalk, he's leaning up against the wall outside the University Market. I don't know if this -- the next address, but here in this doorway, this individual –
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled, you can tell us what you can see in the photograph without commenting on anything about who it is or anything else. But you may tell us what you see.
>
> [THE WITNESS]: -- wearing a dark top, dark pants, black and white sneakers.

Sergeant Snead provided further narration about this portion of the video, noting the aforementioned female and the other individual in the video. After this, the prosecutor queried:

> Q. Okay. Thank you. Now, Sergeant, in the footage that we watched did anybody approach the woman on the screen? The young woman in the black.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Did you, in your review of the camera footage, see anyone come near the woman that you were paying attention to walking?
>
> [THE WITNESS]: No. Nothing that I saw.
>
> BY [PROSECUTOR]:
>
> Q. In the footage that you watched, Sergeant, did you see the man in the dark blue sweatshirt approach the female wearing black?
>
> [DEFENSE COUNSEL]: Objection. May we approach, Your Honor?

> THE COURT: No. So that everyone understands, these cameras are in a moving position and there are gaps in the camera, gaps in what the camera collects. But the question is, the male that you were watching, did you see the male in any of the shots come near the person, the female, that you were watching?
>
> [THE WITNESS]: No, sir.

Thereafter, at a bench conference primarily addressing a different evidentiary matter, defense counsel made the following record as to this issue:

> [DEFENSE COUNSEL]: And just so -- I know the Court did not let me come up on that, but my objection there is that the video speaks for itself. So if the jury looks at it and they see somebody come up to another person, they see it. If they don't, they don't.
>
> THE COURT: No –
>
> [DEFENSE COUNSEL]: That was my problem with that.
>
> THE COURT: And I believe that he can comment on that, but he was looking for that and didn't see that in his investigation. What that means, he cannot comment as to it. He cannot identify the Defendant nor can he identify the victim, I didn't allow him to. But I allowed him to go through this extensive amount of video rather than just dumping the video in the jury's lap and say why don't you look at this and see if there's something you see here folks. So we'll get kinda past that.

Maryland Rule 5-701 provides:

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

Admission of lay opinion evidence under this rule is subject to an abuse of discretion standard. *Paige v. State*, 226 Md. App. 93, 124 (2015). "The rationale for the standard set by [Md.] Rule 5-701 is two-fold: the evidence must be probative; in order to

be probative, the evidence must be rationally based and premised on the personal knowledge of the witness." *State v. Payne*, 440 Md. 680, 698 (2014) (citation omitted). As to whether an opinion is helpful to the trier of fact, this Court has stated:

> The requirement that the lay opinion testimony be helpful to the trier of fact precludes a lay witness from offering conclusions and inferences that the jury is capable of making on its own when analyzing the evidence. *See Baltimore & Y. Turnpike Road v. Leonhardt*, 66 Md. 70, 77, 5 A. 346 (1886) ("[W]here the question can be decided by such experience and knowledge as are ordinarily found in the common business of life, the jury [is] competent to draw the inferences from the facts without having the opinions of witnesses."); *Bey v. State*, 140 Md. App. 607, 781 A.2d 952 (2001) (reaffirming the century-old rule that a lay witness may not testify as to matters that the jury is capable of deciding itself). Thus, a lay witness is not qualified to express an opinion about matters "which are either within the scope of common knowledge and experience of the jury or which are peculiarly within the specialized knowledge of experts." *Bey*, 140 Md. App. at 623, 781 A.2d 952 (citing *Rosenberg v. State*, 129 Md. App. 221, 254, 741 A.2d 533 (1999), *cert. denied*, 358 Md. 382, 749 A.2d 173 (2000)).

Washington v. State, 179 Md. App. 32, 55-56, *rev'd on other grounds*, 406 Md. 642 (2008).

A similar argument was before us in *Paige, supra*. There, Paige argued that testimony from a loss prevention officer ("LPO") at the Columbia Mall Macy's, narrating a surveillance video depicting Paige's conduct in connection with an alleged shoplifting, amounted to improper lay opinion. *Paige*, 226 Md. App. at 116. After noting the LPO's familiarity and experience with the surveillance cameras, as well as the fact that this individual was operating the camera during Paige's attempted illicit shopping spree, we upheld the admission of the testimony. *Id.* at 126-30. We did so on the grounds that the testimony, narrating the store surveillance video, was based on the LPO's personal

knowledge, rationally based on her perception, and helpful to provide a clear understanding of the underlying events depicted on the video. *Id.* We explained in that case that the testimony was helpful because the LPO had "substantial familiarity" with Paige as a result of her eyewitness observations of Paige's conduct in the store. *Id.* at 127. We further cited favorably to a case from the Supreme Court of Kentucky, providing the following test:

> . . . "[T]he fulcrum of the matter upon which this issue turns, is whether the witness has testified from personal knowledge and rational observation of events perceived and whether such information is helpful to the jury. In short, does the testimony comply with the rules of evidence?" [*Cuzick v. Commonwealth*, 276 S.W.3d 260, 265 (Ky. 2009)] The Court held that "[w]hile 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." [*Cuzick*, 276 S.W.3d at 265-66].

Paige, 226 Md. App. at 129.

We discern no abuse of discretion in the circuit court's ruling permitting Sergeant Snead to narrate portions of the CCTV footage. Sergeant Snead testified that, after posting a flyer, he canvassed the surrounding neighborhood and walked in the neighborhood to try and "identify key places or the route of travel." Although this met with limited success, Sergeant Snead obtained other video footage, not at issue here, from the victim's place of work, from the University Market, the convenience store where the victim went after work and before the attack, and from the Belvedere. Additionally, Sergeant Snead met with the victim and had her show him around the neighborhood,

including the area where she last saw appellant running from the scene. Based on this, Sergeant Snead testified as follows:

> . . .Within a couple of days I sought to find where he would have gone from the side of the Belvedere so I contacted our unit, one is CityWatch, they work in conjunction with a unit of ours that's called the Watch Center. The[y] have control over the majority of what's called CCTV, closed circuit television cameras, that are throughout the city.
>
> So I asked them about the camera that would be in or around the area of Lovegrove and Chase or Chase and Charles or Chase and St. Paul. They directed me to the footage that would have been recovered from – well, they showed the camera from Chase and Charles.
>
> So I sat and I reviewed that footage and I was able to make another discovery due to that footage. I was able to collect some images that became useful in the investigation.

Accordingly, even though Sergeant Snead did not observe the events depicting on the surveillance video as they were unfolding, as was the case in *Paige, supra*, we are persuaded that his familiarity with the areas and streets, gleaned from his experience talking to the victim and canvassing the neighborhood, were a solid foundation for him to narrate the footage in a manner that could be considered, by the circuit court, to be helpful for the jury. *See, e.g. People v. Hardy*, 981 N.Y.S.2d 722, 723 (N.Y. App. Div. 2014) ("Even when the witnesses described events depicted on the videotapes that they had not observed, they were still generally testifying about matters within their knowledge, and nothing in their testimony deprived defendant of a fair trial").

In arguing for reversal, appellant primarily relies on *Moreland v. State*, 207 Md. App. 563 (2012). In that case, we held that "'a lay witness may testify regarding the identity of a person depicted in a surveillance photograph if there is some basis for

concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury.'" *Id.* at 572 (quoting *Robinson v. Colorado*, 927 P.2d 381, 382 (Colo. 1996)); *see also Tobias v. State*, 37 Md. App. 605, 616-17 (1977) ("We find no abuse of discretion in allowing the authenticating witness to identify the people shown in the video tape . . . . The jury saw the tape, and could judge for itself what it showed and whether Detective Battle's identifications were accurate"). But, considering that the circuit court herein clearly limited Sergeant Snead's testimony such that he did not identify the persons on the video, we are not persuaded that *Moreland*, or *Tobias*, apply to the instant case.

Ultimately, we find no error. Further, had we been persuaded that the circuit court erred, we conclude that the witness's narration of the video was helpful and any error was harmless. The jury was free to view the video for themselves, as the parties reminded them during closing arguments. Indeed, defense counsel informed the jurors that they could look at the surveillance videos "for yourself on the screen because I'm sure it's a little difficult to see." Counsel continued, as to the CCTV footage, "my eyes are no longer as young as they used to be. I never did see the face of whoever this is that Sergeant Snead is talking about. It ain't that clear in the video." For these reasons, we affirm the circuit court's ruling.

III.

Finally, appellant argues that the circuit court erred in admitting the surveillance video from the Belvedere Condominiums, where the appellant leased office space, on the grounds that the video was not sufficiently authenticated. Appellant suggests that there

was no evidence from the video company regarding the status and functioning of the equipment, nor was there evidence as to when the police obtained the recordings, how the videos were obtained, and whether there was a proper chain of custody. Appellant also contends that the videos from the Belvedere were not relevant because there was no date or time stamp on the videos. The State responds that appellant's authentication argument is not preserved, and that, even so, the evidence was sufficient to authenticate the video from the Belvedere. The State also responds that the videos were relevant, even absent the date and time stamp, and that any error was harmless beyond a reasonable doubt.

Maryland Rule 8-131 (a) provides, in pertinent part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

The purposes of Md. Rule 8-131 are:

> "(a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation."

Fitzgerald v. State, 384 Md. 484, 505 (2004) (quoting *County Council v. Offen*, 334 Md. 499, 509 (1994)); *accord Maryland State Bd. of Elections v. Libertarian Party of Maryland*, 426 Md. 488, 517 (2012); *Robinson v. State*, 404 Md. 208, 216-17 (2008).

This Court has reaffirmed that "where an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal." *Perry v. State*, 229 Md. App. 687, 709 (2016) (citing *Klauenberg v. State*, 355

Md. 528, 541 (1999)); *see also Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) (limiting appellate review to "the ground assigned" in the objection during trial) (citation omitted). Here, while the appellant's argument as to the relevance of the video, including the missing date and time stamp, are preserved, we agree with the State that, in the circuit court, appellant did not offer the same grounds as to the video's authentication as being asserted on appeal. Thus, we are persuaded that the authentication aspect of appellant's argument is not properly before us.

Turning to appellant's relevancy argument, we first consider the facts relevant to the determination of that issue. In this case, William Snyder testified, outside the presence of the jury, that he was the general manager for the Belvedere Condominiums, and that he was responsible for all the operations of the building, including the surveillance and security cameras. According to Snyder, the Belvedere was equipped with sixteen motion-activated cameras, located throughout the building, all feeding into a central DVR.[1] Snyder confirmed that he knew how to operate the DVR and had done so over the course of the five and a half years in which he was general manager of the property. Snyder further testified that he was responsible for making sure the cameras were maintained, and that this included contacting Harford Alarm Company whenever there was a problem with the cameras. These cameras were in working order in May and June 2013, at around the time of the incident.

[1] Digital Video Recorder

At around this time, Snyder was contacted by the Baltimore City Police in connection with this investigation. Snyder initially showed the police footage from the alleys near the Belvedere. As the investigation progressed, Snyder provided access to footage from inside the building. This included a video of appellant, a person known to Snyder because he rented an office on the 11th floor of the building, entering the lobby of the building and using the elevator. Snyder testified that the police copied the pertinent surveillance video, in his presence. He also confirmed that he had seen all the relevant footage from his property in this case.

Snyder then narrated portions of the video retrieved from the Belvedere, identifying the camera used to capture certain images of appellant walking up to the building, entering, and then walking to the elevator. Snyder agreed that the video was substantially in a similar condition as when it was recorded, and that, as far as he could tell, the videos had not been altered.

On cross-examination, Snyder testified that he was trained on the system in 2010, and that there were approximately 10-15 other times where he had provided recorded video surveillance from the Belvedere. Snyder was present when the police connected a laptop computer to the Belvedere's computer in order to download the pertinent video. Snyder confirmed that he watched as the video was downloaded. He agreed that it could be possible to tamper with the video, but that, to his knowledge, what he saw being copied to the police laptop was the same as that which was recorded by the Belvedere's cameras. He also testified that the DVR system typically keeps the motion-activated recordings for 20 to 30 days.

After this witness was excused, appellant argued against admission of the Belvedere surveillance, stating, "[h]ere's my problem with the video, I looked at all four of those as they were played for Mr. Snyder, there is no date and no time on any of that footage. So I don't know how the State can say that it is relevant." In response, the State asserted that the Belvedere video depicted appellant wearing the same clothing that he was wearing in other pertinent video surveillance. Appellant replied that he could have worn the same clothes any number of different days and that the video did not provide a fair and accurate depiction of appellant at the time of the crime.

After hearing further argument about the content of the video itself, including that the victim was not depicted in the video, as well as the video's relationship to the CCTV surveillance, the circuit court ruled that these were matters of relevance, not admissibility, and admitted the Belvedere videos, as follows: [3]

> I think these are matters that are going to the weight, not the admissibility of this. They're going to the argument to be made to the jury. But, to the extent that Mr. Snyder says that at the request of the police he reviewed these videos and reviewed back from the date and time he was looking to a part in time it was within 20 days.
>
> And, to the extent that it connects up with other videos, I think it is admissible. Its value or weight is I believe what we're really discussing here. And that value or weight decision is to be made by the jury, not by the Court on its admissibility. So I will rule that these matters are admissible if the State wishes to enter them at this time.

[3] Following this ruling, defense counsel asked the court to note its objection, and the court responded "Your objection is noted and it is preserved for appellate purposes and you need not object in the presence of the jury. I have already determined the admissibility."

Snyder testified consistently in front of the jury, confirming that he was the general manager of the Belvedere and that he was familiar with the video surveillance system. He also confirmed that he knew appellant as he was a tenant on the 11th floor of the building. In early June 2013, the Baltimore City Police contacted him to review the surveillance video. Ultimately, Snyder narrated the video as it was played for the jury, testifying that the scenes depicted appellant walking in an alley, up to the front door of the building, through the lobby, and then taking an elevator to his 11th floor office. Snyder agreed that the videos, themselves, were not date or time stamped. However, he clarified that the DVR recorder did provide date and time to assist "when we're looking for something."

We agree with the State that, even absent the date and time stamp on the Belvedere footage, there was evidence from Snyder himself that the date and time stamp were on the main footage on the Belvedere's DVR and that this particular video was acquired based on the request from the Baltimore City Police. This alone meets the low standard for relevancy, discussed *supra*. Considered with Sergeant Snead's testimony that he contacted Snyder to see if there was any video from the pertinent time frame, any issue with the relevance of the footage, absent the date and time stamp, really was one going to its weight, and not its admissibility. *See generally, Commonwealth v. Leneski*, 846 N.E.2d 1195, 1199 (Mass. App. Ct. 2006) ("Any concerns that the defendant had regarding the surveillance procedures, and the method of storing and reproducing the video material, 'were properly the subject of cross-examination and affected the weight, not the admissibility, of the' CD") (citation omitted); 3 Bergman & Hollander, *Wharton's*

Criminal Evidence § 14:1, at 706-07 (15th ed. 1999) (trial judge determines whether reasonable juror could conclude by preponderance of the evidence that item is authentic; once that standard is met, authenticity requirement is satisfied and remaining challenges to authenticity go to weight the fact-finder gives item rather than to admissibility).

Finally, we agree with the State that any error concerning the evidence from the Belvedere was harmless beyond a reasonable doubt. This evidence was cumulative to the victim's in-court testimony identifying appellant as the man who robbed and raped her, as well as the DNA evidence tending to establish appellant's criminal agency, and even the evidence of appellant's own statements showing a consciousness of guilt. Any issue as to the admission of the Belvedere's surveillance footage was not so prejudicial as to undermine the other overwhelming evidence of appellant's guilt.

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