UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2305

September Term, 2013

BRANDON ANTWON LEACH

v.

STATE OF MARYLAND

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: May 1, 2015

Shortly before Christmas in December 2012, a robbery occurred at a Cricket Wireless Store in Waldorf, Maryland. Following a trial in the Circuit Court for Charles County, a jury found Appellant Brandon Antwon Leach guilty of the robbery, and convicted him of robbery with a dangerous weapon, robbery, second-degree assault, and theft. The trial court sentenced Appellant to 20 years in prison, suspending all but 13 years, after which he timely noted this appeal.

Appellant challenges the trial court's decision that prevented him from cross-examining the lead detective, Detective Anthony Celia, regarding descriptions of the robber's outfit given by a witness. Specifically, Appellant sought to inquire whether the safety glasses found in Appellant's automobile after he was arrested matched the description given to police of the glasses worn by the robber.

We hold that the trial court erred in precluding Appellant from cross-examining Detective Celia regarding the glasses because a party is permitted to question a police witness about the descriptions he or she received during the course of the investigation. We further hold that this error was not harmless; the prosecutor emphasized, repeatedly, that the detective found Appellant in possession of the entire robbery outfit and highlighted that the safety glasses were a part of that outfit. We reverse the judgments of the circuit court.

Background

Though Appellant does not challenge the sufficiency of the evidence, we nevertheless review the facts presented at trial to provide context for our examination of Appellant's contentions of error. *See Goldstein v. State*, 220 Md. 39, 42 (1959) (noting

that "[t]o understand the contentions made, it is necessary to relate some of the background of the case"); *Washington v. State*, 180 Md. App. 458, 462 n.2 (2008).

At approximately 7:30 p.m. on December 17, 2012, a man wearing glasses, a baseball cap, a dark jacket, and dark pants robbed a Cricket Wireless Store in Waldorf, Charles County, while carrying a gun. Cricket employee Andrew Jun testified that when the robber demanded, "Where are the phones?," his co-worker Christopher Santos handed the robber three new Samsung Galaxy S3 cell phones, each of which had an approximate retail value of $550.[1] The robber also took approximately $3,500 in cash, which he placed, along with the phones, in a black plastic bag.

A store surveillance camera video of the robbery was played for the jury. The video showed the robber placing his bare hands on the glass counter top and propelling himself over the counter, after which he produced a gun and committed the robbery. Cricket employee Andrew Jun testified that, after the robber left the store, he called the police and ran out the store to see the license plate of the black getaway car. He was unable to obtain a plate number.

Charles County Sheriff's Office Detective Anthony Celia testified that he responded to the scene of the robbery after patrol officers had secured the store. He viewed the store's surveillance video and interviewed the witnesses. Officer Kristian Syvertsen attested that he dusted the glass counter tops and store doors for fingerprints and palm prints. Fingerprint specialist Darrell Linville testified that he received the latent

[1] Mr. Oh, the owner of the Cricket franchise, testified that the cellular phones were being sold for $499.99 each on that day because the store received rebates.

prints taken by Officer Syvertsen and inputted them into the fingerprint computer, which returned Appellant as a preliminary match. Mr. Linville then confirmed the match by comparing a known sample of Appellant's prints to the fingerprints and palm prints Officer Syvertsen obtained from the Cricket Store.[2]

Mr. Linville testified that the prints matched Appellant's known sample "without a doubt." He conceded that fingerprints can remain on a surface for three to six months, so he could not know how long before Officer Syvertsen's investigation Appellant had left the prints on the store's counter top. He acknowledged that the use of a rag and Windex likely would have removed any prints.[3] However, Mr. Linville also compared latent prints found on the recovered cell phones to Appellant's fingerprints, and concluded the prints found on the cell phones did not match Appellant's prints.

Kyu Oh, the owner of the Cricket Wireless Store, explained that each cell phone has a unique serial number, and cell phones sold in his store can only be activated in his store. Shortly after the robbery, Mr. Oh notified Cricket corporate headquarters that three

[2] Mr. Linville testified that the computer search program only returns preliminary matches; it does not make the actual identification. Mr. Linville compared the latent prints with Appellant's exemplar prints using the ACE-V method. Ernie Jones, another fingerprint specialist employed by the Charles County Sheriff's Office, verified the match.

[3] Mr. Oh testified that the phone display cases are cleaned with Windex every time a customer leaves the store, multiple times a day.

phones had been stolen and requested that activation for the phones be temporarily disabled.[4]

Matthew Eberwein, the owner of the Merlin Auto Club, testified that, on December 18, 2012, the day after the robbery, Appellant visited his car dealership and left three boxed Samsung Galaxy S3 phones in an attempt to effectuate a deal on a car. Appellant arrived at the dealership in a black Dodge vehicle. Mr. Eberwein stated that Appellant was a "good customer" who he had met on multiple occasions when Appellant came to the dealership to make payments on his car.

Mr. Eberwein gave one of the Samsung phones to his secretary, Brittany Medlin. Ms. Medlin testified that two or three days after she received the phone, she tried to activate it at a Cricket Wireless Store several miles away from location of the robbery. After attempting to activate the phone, the Cricket staff told Ms. Medlin that the phone was stolen. The police were notified, and Detective Celia arrived at the Cricket Wireless Store. Detective Celia testified that Ms. Medlin provided him with Appellant's name as the person who had left the phones at the auto dealership. Detective Celia then proceeded to the Merlin Auto Club to question Mr. Eberwein and retrieve the other two phones.

The District Court of Maryland for Charles County issued a statement of charges against Appellant and an arrest warrant on December 21, 2012. The police arrested Appellant at his residence on December 26, 2012. Detective Celia testified that, after

[4] Each cellular phone has a unique identifier that is used to provide service to the phone. Carriers can use this identifier to prevent the activation and use of a stolen phone.

waiving his *Miranda*[5] rights, Appellant stated he had been in the Cricket Wireless Store one to two months prior to his arrest. According to Detective Celia, Appellant said that he had sold one Samsung Galaxy cell phone in approximately that same time frame, advising that he sold electronics on eBay and Craigslist. Appellant told Detective Celia that he had recently purchased three or four Samsung Galaxy S3 phones from an unknown male at the Iverson Mall. Appellant further volunteered—without having been told that $3,500 was stolen during the robbery—that he had recently received a $3,000 grant from his school. He stated that he owned a BB gun. He denied being involved with the robbery.

Detective Celia stated that, following Appellant's arrest, the police executed a search warrant for Appellant's home and vehicle.[6] The search of Appellant's room revealed a black jacket containing Appellant's identification and an air pistol, also known as a BB gun, that looked like a firearm, a black Washington Nationals baseball cap, a pair of black cargo pants with "a distinct lining," and a pair of black boots with red diagonal stripes on them. In Detective Celia's opinion, every piece of the clothing was consistent with the outfit worn by the robber, as shown in the surveillance video.

The search warrant extended to Appellant's vehicle, a black Dodge Avenger, which was consistent with surveillance camera footage of the robber's getaway car. From the car, Detective Celia recovered a pair of clear safety glasses and a ski mask.

[5] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[6] The record does not reflect the duration of the interval between Appellant's arrest and the subsequent execution of the search warrant.

After securing the clothing, cap, BB gun, boots, and glasses, Detective Celia assembled the items into an approximation of a person, and photographed them as the "robbery outfit." At trial, the State introduced the safety glasses as physical evidence and introduced the photograph of robbery outfit, which included the safety glasses.

Hearsay Objection

The Circuit Court for Charles County held a two-day trial on August 19th and 20th, 2013. The Cricket Wireless surveillance video of the robbery was played for the jury. It appeared to show a flash of light reflected from a pair of glasses on the robber's face. During the cross-examination of Detective Celia, defense counsel asked about the description of the robber's glasses Detective Celia had received from one of the victims, Christopher Santos. As noted in the statement of charges, the description of the robber's glasses was not consistent with characteristics of the clear safety glasses recovered from Appellant's automobile.[7] The prosecutor objected to the questioning:

> [DEFENSE COUNSEL]: Okay. Now, going back to the clothing that you recovered. You recovered that, you received a description of the glasses from one of the victims in this case, correct?
>
> [DETECTIVE CELIA]: Yes.
>
> [DEFENSE COUNSEL]: And that description indicated that they were black rims, correct?

[7] Mr. Santos did not testify at trial, and the record does not reflect why. He was, however, listed on a request for witness subpoenas as a State's witness (filed on May 29, 2013 and entered on June 7, 2013). The description of the glasses he gave to Detective Celia was contained in the police report detailing the robbery. The police report itself is not in the record; however, in Detective Celia's application for the statement of charges, the detective relayed Mr. Santos's description of the robber, to include "**eye glasses w/a square black frame**." (Emphasis added).

[PROSECUTOR]: Which -- excuse me. Which one?

[DEFENSE COUNSEL]: Santos.

[PROSECUTOR]: (inaudible)

[DEFENSE COUNSEL]: I'm asking him.

[DEFENSE COUNSEL]: Did you receive a description? You received a description about the glasses from one of the witnesses, correct?

[PROSECUTOR]: Your Honor, I'm gonna object.

[DEFENSE COUNSEL]: Mr. Santos, correct?

THE COURT: Okay. Let's approach.

(Whereupon, counsel approached the bench)

[PROSECUTOR]: Okay.

THE COURT: Which glasses are we talking about?

[PROSECUTOR]: Well --

[DEFENSE COUNSEL]: The ones that they, they seized.

THE COURT: The ones in that bag? Okay.

[PROSECUTOR]: There's two issues. One is the answer he is eliciting is hearsay. It could come in if Santos had testified that they were clear glasses or there was any testimony of what type of glasses they were. But there weren't. So it's definitely hearsay. It doesn't come in as impeachment. So I'm gonna object to it. He can't testify as to what other witnesses told him on the stand -- I mean, told him at the scene because it's hearsay, unless it's impeaching a witness. But there's nothing that was ever elicited regarding whether they were dark glasses or light glasses. So I object to --

THE COURT: Are they seen in the video?

[DEFENSE COUNSEL]: Pardon?

THE COURT: Are the glasses in the case seen on the video?

[PROSECUTOR]: You can see a flash of the glasses, yes, when he walks in. Like he puts his head --

[DEFENSE COUNSEL]: I'll try it another way.

THE COURT: What are you trying, what are you trying to --

[DEFENSE COUNSEL]: Well, Santos who, unbeknownst to me, is not gonna be called, gave a description that the glasses had black rims. These glasses don't.

[PROSECUTOR]: But that's pure hearsay. Like if he testified they were a different color then he can --

[DEFENSE COUNSEL]: I won't ask him. I'm gonna ask him if they fit, if they match the description given by --

THE COURT: That's okay.

[PROSECUTOR]: I don't think that's, I think that's hearsay.

THE COURT: Well, you can ask if they match the description that he was given. I'll allow that.

[PROSECUTOR]: Well, hold on. Can I just be heard a little more?

THE COURT: Mmm hmm.

[PROSECUTOR]: That is definitely hearsay because he's backdooring that a different style of glasses were described to him. That is hearsay all day long. If Santos was here and he said something different that's one thing. But he's not and he never testified. That's hearsay.

THE COURT: What about in the course of his investigation was he looking for.

[DEFENSE COUNSEL]: That's what I'm gonna do.

THE COURT: A certain, certain type of glasses.

[DEFENSE COUNSEL]: In the course of your investigation did you receive a description? Not saying what it is.

[PROSECUTOR]: Again, that's hearsay though. Because it's, just because you might not say he said --

[DEFENSE COUNSEL]: But I'm not telling him what the description was.

[PROSECUTOR]: That's definitely hearsay, Your Honor. That's textbook hearsay.

THE COURT: So Santos told him that they had black rims on them?

[PROSECUTOR]: Yeah. I believe. I'm pretty sure he put that in the police report.

[DEFENSE COUNSEL]: Yes.

[PROSECUTOR]: He cannot. This is hearsay. I mean, it's an out of court --

THE COURT: It is, but.

[DEFENSE COUNSEL]: And the fact that they had black rims isn't coming in.

[PROSECUTOR]: But what, okay, what is the question you want to ask him?

[DEFENSE COUNSEL]: Whether the glasses recovered matched the description of the glasses we see?

[PROSECUTOR]: And that's backdooring a hearsay statement.

THE COURT: That is hearsay, but.

[PROSECUTOR]: It's backdooring a hearsay statement. You can ask him if it matches the description of the glasses, or matches the glasses that he saw in the video. I mean, the video speaks for itself. I don't even think you want to ask him that, but you could. But that is definitely hearsay.

THE COURT: Well, it is. Alright.

[PROSECUTOR]: So I'm gonna object.

THE COURT: I'll sustain.

(Whereupon, counsel returned to trial tables)

After the close of the prosecution's case, Appellant moved for a judgment of acquittal, which the court denied. Appellant did not testify. The defense then rested without calling any witnesses.

Closing Arguments

The prosecutor's closing arguments to the jury included pointed references to the robbery outfit and glasses.

> There's only one person who wore the entire, entire robbery outfit that was recovered by the detective . . . 9 days after the robbery. And it's that man.
>
> Ladies and gentlemen, there's no question, there's no reasonable doubt in this case whatsoever, that on December 17, 2013 the defendant . . . walked into the Cricket Wireless store at about 7:45 at night. **He had on some glasses. I'm gonna show you the video in a minute. He had on some safety glasses. These ones right here. You can see them flash, the glasses flash when he walks into the store**.
>
> * * *
>
> Now a couple things I want to point out before I show the video . . . Here is the entire robbery outfit he had that was recovered 9 days later from his house. He admits it's his house. It's absolutely remarkable that Det. Celia was able to put all of this evidence together. **Everything. Down to the glasses**, the hat, the ripped pants. . . .
>
> Now what I want to do next is show you the video. And before I show the video there's a couple of things that I'd ask that you keep in mind. Let me get the pointer here. Watch carefully as the defendant come into Cricket Wireless. When he comes in he looks up and **you can see the flash of those glasses** at first. . . .
>
> (Whereupon, the video was played)

* * *

> Here's the defendant. He looks up right there. **You could see the flash right there when he looked up because the glasses.** You saw it again.
>
> * * *
>
> . . . If the State had the following evidence that, which we do, that 9 days after the armed robbery this robbery outfit is found at his house you can find him guilty just based on that and looking at the video.
>
> * * *
>
> . . . That's him in the video. He has the exact, the exact robbery outfit is found at his house.
>
> * * *
>
> . . . The detective, I still am shocked and impressed by the fact that he recovered every single thing he was wearing that night and put it all together in this photograph. All of that's there.

(Emphasis added). The defense then presented its closing argument. Following the parties' arguments, the jury issued a verdict finding Appellant guilty on all counts. He was sentenced on December 4, 2013, to 20 years in prison, with all but 13 years suspended.[8] Following his sentencing, Mr. Leach noted his timely appeal on December 11, 2013.

[8] The court imposed the 20 year sentence on the armed robbery charge and merged the remaining charges therein for sentencing purposes.

Discussion

A.

Hearsay

Appellant presents the following question for our consideration:

> Did the trial court err in refusing to allow defense counsel, during cross-examination of Detective Celia, to elicit the fact that the glasses recovered by the police do not match the description of the glasses worn by the perpetrator that was given to him by an eyewitness?

Appellant asserts that the questioning of Detective Celia would not have been hearsay because it was not offered for its truth, but instead was offered to show that the description of the glasses provided by the witness was inconsistent with the glasses recovered from Appellant's vehicle and alleged by the prosecutor to be part of the "robbery outfit." The State counters that the trial court properly sustained its objection to Appellant's attempt to introduce inadmissible hearsay into evidence through the detective's testimony.

"[O]rdinarily, a trial court's rulings on the admissibility of evidence are reviewed for abuse of discretion." *Gordon v. State*, 431 Md. 527, 533 (2013) (citing *Hopkins v. State*, 352 Md. 146, 158 (1998)). When the issue raised by an appellant relates to the admissibility of evidence that may be characterized as hearsay, however, the standard is different:

> Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*.

Bernadyn v. State, 390 Md. 1, 7-8 (2005) (emphasis in original). Indeed, Maryland Rule 5-802 provides that "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Maryland Rule 5-801 outlines the definitions applicable to the hearsay rule:

> **Rule 5-801. Definitions**.
>
> The following definitions apply under this Chapter:
>
> **(a) Statement**. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
>
> **(b) Declarant**. A "declarant" is a person who makes a statement.
>
> **(c) Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Not all out-of-court statements are hearsay, however, and, therefore, certain out-of-court statements may be admissible. For example, "when a statement is offered for some purpose other than to prove the truth of the matter asserted therein, it is not hearsay." *Ali v. State*, 314 Md. 295, 304 (1988), *abrogated in part on other grounds by Nance v. State*, 331 Md. 549 (1993); *accord Conyers v. State*, 354 Md. 132, 158 (1999) (citing Md. Rules 5-802.1, 5-803, & 5-804), *cert. denied*, 528 U.S. 910 (1999). Thus, "[i]n ruling on the admissibility of hearsay evidence, the trial judge must examine the nature of the out-of-court statements, as well as what they are offered to prove." *Richardson v. State*, 324 Md. 611, 621 (1991). Statements offered "as circumstantial evidence that the declarant had knowledge of or believed certain facts or had a particular

state of mind, when that knowledge, belief, or state of mind is relevant" are not offered "to prove the truth of the matters asserted therein," and, accordingly, are not hearsay. *Conyers*, 354 Md. at 159 (quoting 6 Lynn McLain, *Maryland Evidence, State & Federal* § 801.10, at 282-83). Professor Lynn McLain explains that "[a]n out-of-court statement offered in evidence will be *nonhearsay if its probative value does not depend on either the declarant's sincere meaning or her having been factually correct.*"[9] 6A Lynn McLain, *Maryland Evidence, State & Federal* § 801:1, at 173 (3d ed.) (emphasis in original). Professor McLain continues: "Many statements falling under this category of nonhearsay are offered to show . . . why [a] person took actions in view of her learning of the statement[] or the reasonableness . . . of those actions." 6A *Maryland Evidence* § 801:10, at 244-45 (footnotes omitted).

"Statements made to an investigating officer are not hearsay unless and until they are offered into evidence for their truth." *Hudson v. State*, 152 Md. App. 488, 508 (2003) (citing *Daniel v. State,* 132 Md. App. 576, 589 *cert. denied,* 361 Md. 232 (2000)), *abrogated in part on other grounds by Price v. State*, 405 Md. 10 (2008). "Indeed, such reports [to investigating officers] are routinely used for a variety of reasons other than as substantive evidence." *Id.* at 508 n.10 (citing *Ashford v. State,* 147 Md. App. 1, 75-76 (2002)). In *McCray v. State*, we held that testimony by an investigating officer

[9] Stated differently and for further clarity: "*An out-of-court statement will be considered to be offered to prove that 'truth,' only if it would have* ***no*** *probative value (as to the relevant fact it is offered to prove) unless the declarant was* ***both*** *sincere and factually correct when she made the statement*." 6A *Maryland Evidence* § 801:1, at 171 (emphasis in original).

describing information that the officer received from a source was not hearsay when offered to explain the course of the investigation. 84 Md. App. 513, 518 (1990) (citing E. W. Cleary, *McCormick on Evidence* § 249 (3d ed. 1984)). This premise is so well accepted in hearsay law that we have even referred to it as "elementary:"

> It is elementary that, as long as the officer is able to provide the basis for his testimony, and the testimony is not inadmissible for other evidentiary reasons, an investigating police officer may properly testify about the conclusions he draws in the context of an investigation. This is particularly evident when one considers that *even the statements that led him to arrest the individual would be admissible* to show that the officer relied on and acted upon those statements. *See, e.g., Graves v. State*, 334 Md. 30, 38, 637 A.2d 1197 (1994) ("It is well established that a relevant extrajudicial statement is admissible as nonhearsay when it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true.") (and cases cited therein).

Daniel, 132 Md. App. at 590.

In the instant case, the prosecutor laid the foundation for inquiry into Detective Celia's investigative conclusions. During direct examination, the prosecutor asked Detective Celia to recount his actions during the investigation of the robbery. Detective Celia testified that after retrieving the safety glasses from Appellant's automobile, he concluded that the glasses were part of the robber's attire. Detective Celia photographed the safety glasses together with the clothing, and this photograph was shown to the jury. These actions provided a relevant basis for Appellant to question Detective Celia about the glasses.

At the bench conference concerning Appellant's cross-examination of Detective Celia, defense counsel agreed to limit his questioning to the course of Detective Celia's

investigation. If counsel had been allowed to question Detective Celia about the investigation, it would have been permissible—i.e. nonhearsay—to ask whether the glasses matched description given to Detective Celia and ask why Detective Celia considered the glasses to be part of the robbery outfit if they did not match the description given.

The State asserts, "defense counsel's questioning was entirely dependent on the factfinder accepting, as fact, that Santos had accurately described the glasses worn by the robber." We disagree. The State's assertion contradicts settled evidentiary law that allows the questioning of police officers about third-party statements to elucidate the officer's investigatory actions. *See Daniel*, 132 Md. App. at 590. A victim's statement does not have to be true for a police officer to rely on it (or disregard it) while investigating a crime, nor does it have to be true to influence the officer's actions. *See, e.g.*, *Graves v. State*, 334 Md. 30, 38 (1994) (citations omitted). Accordingly, Detective Celia's statements about the course of an investigation—specifically his confidence in, or lack thereof, Mr. Santos's statement—would have probative value that is independent of the accuracy and sincerity of Mr. Santos's description of the glasses.

The State attempts to analogize the instant case with that of *Bell v. State*, where we reversed the judgment of the trial court and remanded because the trial court allowed the prosecutor to cross-examine the defendant with a series of questions, the substance of which was comprised of another person's out-of-court statements.[10] 114 Md. App. 480,

[10] In *Bell*, the prosecutor questioned the defendant about statements the defendant (Continued…)

488-90 (1997). In *Bell*, however, the State asserted the following as reasons for the admissibility of the questioning, including, "1) the prosecutor did not convey substantive evidence to the jury; 2) the prosecutor merely sought to impeach appellant and was not successful in showing any material contradictions." *Id.* at 488. In holding that the questioning was hearsay, we observed that it was "intrinsically inconsistent for the State to suggest, on the one hand, that it was not presenting [declarant's] statement as an accurate account, while simultaneously suggesting that it merely sought to show that appellant's version of events was incorrect and, therefore, that appellant was not credible." *Id.* at 490. That is, we determined that the purpose of the questioning was to admit the out-of-court statements for the *truth of the matters asserted*. *See id.*

In the case *sub judice*, unlike in *Bell*, counsel did not assert impeachment as a reason to admit the questioning. After being prompted by the trial court, defense counsel declared that he would question Detective Celia about the glasses he was looking for in the course of his investigation. Counsel specifically stated that he would not mention the qualities of the glasses, noting that he would not tell Detective Celia "what the description was" and avowed that "the fact that they had black rims isn't coming in." Counsel was not testing Mr. Santos's statement for truth or admitting it whole cloth

(…continued)
allegedly said to a third party. The statements consisted of the following questions: "Would it surprise you that Joey Buckler said that you yelled out . . ."; "Does it surprise you that Joey Buckler never says anything about a robbery in his written statement?"; and "[W]ould it surprise you in his written statement Joey Buckler says you said, 'We all are the only ones who know about it. And if this gets out, you guys will get it?'" 114 Md. App. at 488-89.

through the proposed questioning of Detective Celia. Thus, we hold that the proposed questioning was not hearsay because Appellant did not propose to introduce it for the truth of the matter asserted.

Here, the trial court precluded cross-examination concerning the glasses—reasoning that it would elicit hearsay testimony. A trial court abuses its discretion when its decision to admit or exclude testimony is founded on an error of law. *Franch v. Ankney*, 341 Md. 350, 364 (1996) (citing *Hartless v. State*, 327 Md. 558, 576 (1992)); *Waldt v. Univ. of Md. Med. Sys. Corp.*, 181 Md. App. 217, 251 (2008) ("[I]t would be an error of law, and therefore an abuse of discretion, for a trial court to permit an expert witness to give testimony that contradicts Maryland law."), *aff'd in part and rev'd in part on other grounds*, 411 Md. 207 (2009). We next consider whether that error was harmless in the context of the trial.

B.

Harmless Error

Appellant argues that, because the prosecutor relied heavily in his closing arguments on a theory that the police recovered "the entire robbery outfit" from Appellant's residence, the error is not harmless beyond a reasonable doubt. The State counters that any error is harmless beyond a reasonable doubt because the jurors could view the surveillance video to see the glasses themselves and because even without the glasses, there is overwhelming evidence of Appellant's guilt.

The Court of Appeals articulated the harmless error test in *Dorsey v. State*:

> [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 the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

276 Md. 638, 659 (1976) (footnote omitted). "Because a criminal conviction must be based upon proof beyond a reasonable doubt in order to satisfy the constitutional requirements of due process, 'an appellate court should not arrive at a conclusion about the impact of an error upon a jury verdict[] with any less degree of certainty[.]'" *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey*, 276 Md. at 658). Moreover, "once error is established, the burden falls upon the State, the beneficiary of the error, to exclude this possibility beyond a reasonable doubt." *Id.* (citing *Hunter v. State*, 397 Md. 580, 596 (2007)). The reviewing court weighs the strength of the State's case from the jury's perspective, not from the court's own perspective. *Id.* at 116 (citing *Bellamy v. State*, 403 Md. 308, 332 (2008)). Thus, the "proper inquiry upon applying the harmless error test is . . . whether the trial court's error was unimportant in relation to everything else the jury considered in reaching its verdict." *Id.* at 118 (footnote omitted) (citing *Bellamy*, 403 Md. at 332). Where the State highlights the error in its closing argument, the error may contribute to the jury's verdict. *See Washington v. State*, 406 Md. 642, 656-658 (2008) (erroneous introduction of evidence was not harmless where the State referred to the videotape in its opening, closing, and rebuttal statements to the jury, "highlighting the tape's importance").

We cannot say that the trial court's preclusion of cross-examination of Detective Celia about the description of the perpetrator's glasses had no influence on the decision of the jury. Here, the prosecutor's closing arguments to the jury, quoted *supra*, included numerous references to the glasses and the "entire robbery outfit." These references convince us that questioning about the glasses may have influenced the jurors' decision. *See Washington*, 406 Md. at 656-58.

We are not persuaded by the State's argument that any error is harmless because the jury could see the glasses in the surveillance video. Trial testimony notably indicates that the jury could not see glasses clearly—the video reveals a flash when light reflected off the glasses. We also reject the State's argument that there was overwhelming evidence of Appellant's guilt, particularly the other similar clothing found in Appellant's residence and the handprints at the scene of the crime, respectively. In essence, the State's argument amounts to saying that the other evidence was otherwise sufficient to convict Appellant. However, the Court of Appeals has rejected method of implementing the harmless error test. *See Dionas*, 436 Md. at 117 ("An 'otherwise sufficient' test . . . is a misapplication of the harmless error test."). Instead, we must find that the error did not contribute to the verdict—that is, we must find "'that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.'" *Bellamy*, 403 Md. at 332 (quoting *United States v. O'Keefe*, 128 F.3d 885, 894 (5th Cir. 1997)).

We cannot make that finding here. The court precluded defense counsel from pursuing a line of questioning that could have elucidated Detective Celia's reasoning for

taking the glasses and placing them with the alleged robbery outfit. The cross-examination of Detective Celia about the glasses could have introduced doubt in the minds of jurors with respect to whether Appellant possessed the "entire robbery outfit." Because the jury did not have an opportunity to hear this line of questioning, we cannot say, beyond a reasonable doubt, that the error did not influence the jury's decision.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED.

COSTS TO BE PAID BY CHARLES COUNTY.