Circuit Court for Baltimore City
Case No. 122206030

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2399

September Term, 2023

DWAYNE CEDRIC RAYSOR

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: June 10, 2026

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited as persuasive authority only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

The State charged appellant Dwayne C. Raysor with attempted murder, assault, and related weapons and contraband offenses following a stabbing incident at the Baltimore City Correctional Center. A jury acquitted Raysor of attempted murder but convicted him of first-degree assault and the remaining weapons and contraband offenses. The circuit court sentenced Raysor to 26 years' incarceration.

On appeal, Raysor contends that the court erred in admitting a surveillance video without proper authentication, in admitting impermissible opinion testimony from a correctional officer, and in denying his motions for judgment of acquittal based on the alleged insufficiency of the evidence. In addition, he argues that his conviction for possession of a weapon in a place of confinement should merge into his conviction for possession of contraband.

We conclude that the circuit court abused its discretion in admitting the surveillance video without proper authentication, but that the error was harmless beyond a reasonable doubt. We also conclude that the officer's testimony was admissible lay opinion, that the evidence was legally sufficient to sustain Raysor's convictions, and that Raysor's convictions for possession of a weapon in a place of confinement and possession of contraband do not merge under the required evidence test. Accordingly, we affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Early in the morning of May 3, 2022, Bernard Hopkins, a detainee at the Baltimore Central Booking and Intake Center, was admitted to John Hopkins Hospital,

after sustaining multiple stab wounds. At trial, Hopkins testified that he had been "stabbed in [his] neck and [his] back." Hopkins was told that he had been stabbed at least nine and perhaps as many as 13 times. The medical records report that Hopkins was "cut with a piece of metal."

Hopkins claimed that it "was pitch black" when he was assaulted and that he could not see the person who stabbed him or the weapon that was used. Nevertheless, after listening to an audio-recording of a statement that he had given to the police, Hopkins agreed that he had described the assailant as "big" and said that he was more than six feet tall, that he had "dark brown skin[,]" an "Afro" hairstyle, and a "little bit of facial hair," and that he was wearing a coronavirus mask. Hopkins said that only one person attacked him.

Hopkins testified that he knew Raysor's younger brother, Hykeem, because Hopkins had "stabbed him in high school." Hopkins claimed that he had been bullied and that he stabbed Raysor's brother out of fear. He claimed that he and Raysor's brother had since "squashed the beef like men and left it alone."

The State showed Hopkins still images from a surveillance video from inside the facility on the night of the assault. Hopkins identified himself in the images and affirmed that they fairly and accurately represented how he appeared on that date. When the State moved for admission of the video, however, Raysor objected, asserting that the State had not laid the proper foundation because, his counsel said, "Somebody has to say how the videos work." Although the court recognized that the video would be admissible if it

were simply "a fair and accurate representation of what occurred on that date and time," the court expressed uncertainty about whether Hopkins could so testify. The State withdrew its motion and said that it would introduce the video through its next witness, Sergeant Raymond Hunter of the Department of Public Safety and Correctional Services, Investigative Unit.

Sergeant Hunter testified that he had been employed at Central Booking for four years and had conducted several investigations each year during that time. His duties primarily involve "investigat[ing] [] assaults that occurred inside institutions ran by the Department of Public Safety and Corrections[,]" including "inmate on inmate assaults."

Sergeant Hunter testified regarding his investigation of the stabbing. He said that staff members at Central Booking had searched for the weapon used in the assault on Hopkins but had not found one. When asked whether it was "common" not to find a weapon after an assault in a jail or prison, he said that it was, because "[s]ome of the weapons are discarded by other inmates, or passed on to other inmates."

Sergeant Hunter testified that he can "personally and directly" access the facility's video surveillance system and that he has retrieved footage from the system "well over" 25 or 30 times during his employment. He testified that he is familiar with how the video surveillance system operates. To the best of his knowledge, the cameras at Central Booking continuously record activity throughout the facility, capturing what is occurring in different areas at the same time.

Sergeant Hunter testified that, as a part of his investigation, he reviewed the video surveillance footage of the assault on Hopkins "multiple times." He also testified that the footage he reviewed did not "appear to have been edited or [altered] in any way." Over Raysor's objection, the circuit court admitted the surveillance footage. After the court had admitted the footage, Sergeant Hunter explained that the system consists of "six different camera angles [] inside [the facility]" and that each camera covers a specific area, including the "lobby area[,]" the "actual vestibule area[,]" and the "dormitory area." It appears that the assault occurred in or near the dormitory.

While viewing the footage in the courtroom, Sergeant Hunter identified Hopkins on one of the six screens just before the assault occurred. Sergeant Hunter also identified another detainee, Corey Dixon, who covered the camera to obstruct the view of the assault. The video footage does not show the assault itself. On cross-examination, Sergeant Hunter agreed that he did not see Raysor in the surveillance footage.

Sergeant Hunter testified that he obtained and reviewed two recorded jail telephone calls associated with Raysor's State Identification Number. The first call occurred on May 2, 2022, at 9:51 p.m., a few hours before the assault; the second occurred on May 3, 2022, at 5:53 p.m., in the late afternoon after the assault.

During the first call, Raysor said that "[t]he little n**** that chopped Keem [is] up here," but that "he didn't even know who I am." During the second call, Raysor said that he was "back downstairs"—"in lockup"—because "a n**** "got stabbed" and "told on [him]." Minutes later he said: "The n**** I stabbed came for real . . . . Remember I told

you last night?" He added: "I chopped his dumb ass up," and "he told on me." Raysor began to laugh after he told his caller, "I hit him 17 times, baby." When the caller asked if he thought that that was funny, Raysor said, "No, but fuck, he stabbed my little brother" and "put my little man on Murder Inc."[1] After being chastised, Raysor seemed to express some remorse, but he went on to say that he could not "let it slide" and could not "just let him stay there." "I'm gonna stab him up," Raysor declared. Toward the end of the conversation, however, Raysor said that he was sorry and that he "did fuck up." Shortly before the call ended, Raysor told the caller to "tell Keem" what he had done.

While the jury was listening to excerpts of the second call, the State asked Sergeant Hunter whether he had identified a motive for the stabbing. Sergeant Hunter responded: "The motive was based on an associate of the Defendant's being stabbed before." In other words, Sergeant Hunter testified that the motive for the assault was retaliation—Raysor stabbed Hopkins because Hopkins had stabbed Raysor's brother.

At the close of the State's case, Raysor moved for judgment of acquittal. In support of his motion, Raysor contended that the State's evidence consisted solely of an uncorroborated confession, which will not suffice to support a conviction.[2] The court denied the motion. Raysor put on no evidence in his defense.

[1] According to Sergeant Hunter, Murder Inc. is a social media site that features violent incidents in Baltimore City.

[2] "'Maryland follows the general rule that, as a matter of substantive law, a criminal conviction cannot rest solely on an uncorroborated confession.'" *Grimm v. State*, 447 Md. 482, 495 (2016) (quoting *Miller v. State*, 380 Md. 1, 46 (2004)).

The jury found Raysor not guilty of attempted first-degree murder and attempted second-degree murder of Hopkins, but found him guilty of assault in the first degree, openly carrying a dangerous weapon with intent to injure, possession of contraband in a place of confinement, and possession of a weapon while in a place of confinement.

On February 12, 2024, the court sentenced Raysor to 20 years of incarceration for assault in the first degree; two, concurrent three-year terms of incarceration for openly carrying a dangerous weapon with intent to injure and possession of contraband in a place of confinement; and a consecutive six-year term of incarceration for possession of a weapon while in place of confinement. The total amount of executed time under the sentence is twenty-six years.

Raysor appealed.

QUESTIONS PRESENTED

Raysor presents the following four questions:

> 1. Did the trial court err in admitting the video without a proper foundation?
>
> 2. Did the trial court err in admitting impermissible opinion and/or speculation testimony from Sergeant Hunter?
>
> 3. Was the evidence legally insufficient to sustain the convictions?
>
> 4. Must the conviction for possession . . . of a weapon while confined be merged into the possession of contraband conviction?

For the reasons discussed below, we affirm.

DISCUSSION

I. Authentication

Raysor challenges the circuit court's decision to admit "a purported video recording of the incident into evidence," because, he says, the State did not properly authenticate it. "An appellate court reviews for abuse of discretion a trial court's determination as to whether an exhibit was properly authenticated." *Mooney v. State*, 487 Md. 701, 717 (2024) (citing *State v. Sample*, 468 Md. 560, 588 (2020)) (further citations omitted).

A. Authentication of Video, in General

Maryland Rule 5-901(a) establishes that authentication is "a condition precedent to admissibility[,]" which is "satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Authentication "'is not an[] artificial princip[le] of evidence, but an inherent logical necessity[.]'" *Sublet v. State*, 442 Md. 632, 656 (2015) (quoting 7 J. WIGMORE, EVIDENCE § 2129 (Chadbourn Rev. 1978)) (emphasis omitted).

The authentication of photographs, motion pictures, and video footage presents special challenges. "Photographic manipulation, alterations and fabrications are nothing new, nor are such changes unique to digital imaging, although it might be easier in this digital age." *Washington v. State*, 406 Md. 642, 651 (2008). "'[M]ovies and tapes are easily manipulated, through such means as editing and changes of speed, to produce a misleading effect.'" *Id.* (quoting 5 LYNN MCLAIN, MARYLAND EVIDENCE § 403.6, at

592 (2001)). "Courts therefore require authentication of photographs, movies, or videotapes as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine." *Id.* at 651-52. Video footage "is admissible in evidence and is subject to the same general rules of admissibility as a photograph." *Id.* at 651; *accord Jackson v. State*, 460 Md. 107, 116 (2018); *Reddick v. State*, 263 Md. App. 562, 579 (2024).

Maryland courts have identified several methods for authenticating photographs and video footage.

Video can be authenticated under the "'pictorial testimony'" method, whereby "a 'witness testifies from first-hand knowledge that the [video] fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.'" *Mooney v. State*, 487 Md. at 705-06 (quoting *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 20-21 (1996)).

Video can also be authenticated under "the silent witness method[,]" which "allows for authentication by the presentation of evidence describing a process or system that produces an accurate result." *Washington v. State*, 406 Md. at 652; *accord Reddick v. State*, 263 Md. App. at 579-80.

Some video recordings may be authenticated "as part of an official record made and kept in the ordinary course of" a business activity. *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. at 27-28. Consistent with that principle, Maryland Rule 5-902(12) permits the self-authentication of certified records of regularly conducted

activity, "provided that, before the trial or hearing[,] . . . the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection[,]" giving the adverse party "a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness." Thus, for example, in *Campbell v. State*, 267 Md. App. 248, 301 (2025), this Court upheld the admission of a surveillance video because the State had produced a satisfactory certificate from Nest, the custodian of the footage.

Most recently, the Supreme Court of Maryland has held that video can be authenticated through a combination of the testimony of a witness with first-hand knowledge of some of the events depicted therein and circumstantial evidence suggesting that the video is what it is claimed to be. *Mooney v. State*, 487 Md. at 730.

The methods of authentication described in this opinion are not necessarily the only ways to authenticate video evidence in Maryland. "Video footage can be authenticated in different ways[,]" as long as "the proponent of the video . . . demonstrate[s] that the evidence is sufficient for a reasonable juror to find by a preponderance of the evidence that the video is what it is claimed to be." *Mooney v. State*, 487 Md. at 730.

"'[T]he bar for authentication of evidence is not particularly high.'" *Id.* at 717 (quoting *Sublet v. State*, 442 Md. at 666). Still, for video to be admissible, "there must be sufficient evidence for a reasonable juror to find by a preponderance of the evidence that

the video is authentic." *Id.* at 728; *accord Reddick v. State*, 263 Md. App. at 579. A "'[c]ourt need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the *jury* ultimately might do so.'" *Jackson v. State*, 460 Md. at 116 (quoting *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006)) (emphasis in original).

B. Authentication through the Silent Witness Method

In this case, the State could have used the pictorial witness method to authenticate parts of the video—specifically, the parts that depicted Hopkins and what Hopkins himself saw and heard. In fact, the State attempted to introduce at least some of the video through Hopkins, but abandoned the effort when Raysor objected.

The State could also have authenticated the video by establishing that it was "an official record made and kept in the ordinary course of" a business activity, like the video in *Department of Public Safety & Correctional Services v. Cole*, 342 Md. at 27-28. Similarly, the State could have introduced the video as a self-authenticating document had the State presented a certificate establishing that it was a record of a regularly conducted activity, in accordance with Rule 5-902(12). The State, however, took neither of these routes. Instead, the State appears to have attempted to establish the video under the silent witness method.

As stated above, the silent witness method "allows for authentication by the presentation of evidence describing a process or system that produces an accurate result." *Washington v. State*, 406 Md. at 652. The silent witness method "rests on the notion that

photographic and video evidence is often more reliable than [the testimony of] a human witness and can 'be probative in itself.'" *Reddick v. State*, 263 Md. App. at 580 (quoting *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. at 22). "The 'silent witness' theory of admissibility authenticates a photograph as a 'mute' or 'silent' independent photographic witness because the photograph speaks with its own probative effect." *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. at 21. "'Given an adequate foundation assuring the accuracy of the process producing it,'" a photograph may "'be received as a so-called silent witness or as a witness which speaks for itself.'" *Id.* at 21-22 (quoting 3 WIGMORE ON EVIDENCE § 790, at 219-20 (Chadbourn rev. 1970)) (further quotation marks omitted).

Under the silent witness method, a photograph—and, by analogy, a video recording—may be admissible as probative evidence in itself "rather than merely as illustrative evidence to support a witness's testimony, so long as sufficient foundational evidence is presented to show the circumstances under which it was taken and the reliability of the reproduction process." *Washington v. State*, 406 Md. at 652; *accord Mooney v. State*, 487 Md. at 706; *Jackson v. State*, 460 Md. at 116-17; *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. at 21. The requisite "foundation can be laid where, for instance, a witness testifies about 'the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system.'" *Mooney v. State*, 487 Md. at 706 (quoting *Jackson v. State*, 460 Md. at 117); *accord Washington v. State*, 406 Md. at 653.

"[T]he silent witness theory does not require personal knowledge of the content of video evidence or direct participation in its creation, but rather knowledge of the process by which it was created sufficient to establish its reliability." *Reddick v. State*, 263 Md. App. at 582. As this Court recently explained:

> [C]ourts have relied on the accuracy of the witness's knowledge of the system of collecting, storing, and downloading the videos, the reliability of that system, and whether the video is likely to have been altered. When a witness provides testimony addressing these concerns, our courts have found video evidence properly authenticated.

Id.

There are no "rigid prerequisites" for authentication under the silent witness theory. *Mooney v. State*, 487 Md. at 721. Instead, "'[t]he facts and circumstances surrounding the making of the photographic evidence and its intended use at trial will vary greatly from case to case, and the trial judge must be given some discretion in determining what is an adequate foundation.'" *Id.* (quoting *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. at 26).

Maryland courts have identified several situations where the State laid an adequate foundation to allow video to "speak[] with its own probative effect." *Washington v. State*, 406 Md. at 652 (internal quotation marks omitted).

In *Jackson v. State*, 460 Md. at 114-15, the State sought to admit surveillance footage of a Bank of America ATM. The State called the bank's protective services manager to authenticate the footage. *Id.* at 117. The manager testified that, once a detective requested the footage from the bank, the manager "located the date, time[,] and

cameras for the [bank's] branch relative to the incident[.]" *Id.* At that point, the manager was not even permitted to copy the file to a thumb drive or a DVD. Instead, Bank of America required him "to submit a specific request" for the video to a different Bank of America team in North Carolina. *Id.* That team downloaded the video and sent it directly to the detective. *Id.* The Court ruled that the State, through the protective services manager, established "the process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what the witness had viewed when he submitted a request for the video footage to the . . . team in North Carolina." *Id.* at 119.

In *Reddick v. State*, 263 Md. App. at 582, this Court held that the State had properly authenticated video footage from a Walmart store through the testimony of the store's asset protection manager, who had "extensive knowledge of the video surveillance system, how it operated, and how video footage was collected, stored, and downloaded." The asset protection manager "was able to describe the process by which the downloaded copy was created and verify that only a person within his asset protection group had [the ability] to do so." *Id.* at 582-83. In addition, the manager "testified that the videos could not be manipulated or altered when downloaded and assured the court that the system of time[-] and date[-]stamping was reliable." *Id*. at 583. We found it immaterial that the manager "did not personally download the footage or view the video in its original [form][.]" *Id.* at 582.

Of course, not every piece of surveillance footage offered into evidence is delivered to the police from the secure hands of a national bank or a chain store. In *Reyes v. State*, 257 Md. App. 596 (2023), the State offered into evidence footage of a shooting captured on a private homeowner's security camera. The State called the homeowner to testify as to the general reliability of the camera. *Id.* at 631. The homeowner explained that he captured the footage on a "Wi-Fi-enabled home security camera" that he installed himself. *Id.* He testified that he would invariably receive an alert on his phone when the camera began recording and that he did receive such an alert on the night of the shooting. *Id.* This Court held that the homeowner's testimony "provided an 'adequate foundation assuring the accuracy of the process producing [the footage]'" and ruled that the trial court was correct to admit it. *Id.* (quoting *Washington v. State*, 406 Md. at 653).

Similarly, in *Prince v. State*, 255 Md. App. 640 (2022), the trial court admitted surveillance footage of a shooting that occurred at a place of business. At trial, the State called the owner of the business, who testified, at first, only that he gave the police the surveillance footage. At that point, the State offered the footage into evidence, and the trial court "instructed the State to lay more foundation for the footage before it could be admitted into evidence." *Id.* at 649. The store owner then testified that he was one of the "'caretaker[s]'" of the surveillance system and that he used the cameras "on a daily basis." *Id.* The trial court was once again unconvinced that the State laid a sufficient foundation for admission of the surveillance footage. *Id.* The store owner added that the surveillance cameras were connected to a DVR and were "constantly running[,]" that he

needed to go into his office or turn on his cell phone to access the footage, that he watched the surveillance footage in question before giving it to the police, and that the exhibit the State showed him was the exact same video that he watched before the police downloaded it. *Id.* at 650-51. This time, the court admitted the evidence. *Id.* at 651.

On appeal, this Court held that the trial court did not abuse its discretion in admitting the video footage into evidence. *Id.* at 654. We reasoned that the store owner's testimony provided a sufficient foundation to admit the video footage at issue because the owner was one of the "'caretaker[s]'" of the surveillance system (*id.* at 653)—someone who "knew the process by which the police could obtain the video[]" and "was knowledgeable about the process of obtaining the surveillance footage[.]" *Id.* at 653-54. The store owner's testimony was sufficient to establish that the footage "did not undergo any editing before being viewed by the police and used during trial[.]" *Id.* at 654.[3]

In *Washington v. State*, 406 Md. at 655, by contrast, the Court held that the State had not laid a proper foundation for the admission of surveillance footage of an assault at a bar. In that case, the State offered footage from eight cameras that had been compiled

[3] In *Covel v. State*, 258 Md. App. 308, 323-24 (2023), this Court affirmed the admission of a police surveillance video from a Citiwatch camera in Baltimore City. Although we relied on the silent witness method, the decision could be read to anticipate the circumstantial evidence method of authentication. The witness who authenticated the video was a Citiwatch employee who "addressed the general reliability of system." *Id.* at 323. In addition, the witness, who was able to watch live footage of events as they occurred, testified that "he viewed the events directly after the shooting" and that "the recording accurately displayed what he had viewed." *Id.* at 323-24.

onto one disc. *Id.* The State planned to use the footage to show that the defendant was in the bar on the night he was alleged to have assaulted someone. *Id.*

The State called the bar's owner to testify as to the reliability of the camera footage, but the Court found his testimony deficient. *Id.* The owner "testified that he did not know how to transfer the data from the surveillance system to portable discs." *Id.* Instead, "[h]e hired a technician to transfer the footage from the eight cameras onto one disc in a single viewable format." *Id.* The owner provided no testimony "as to the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures." *Id.* All the State was able to elicit from the owner, the Court found, was that a recording "was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD, and then to a videotape." *Id.*

The State tried to authenticate the video through the detective who recovered the footage, as well. *Id.* The Court found that the detective also "failed to authenticate the video" because "he saw the footage only after it had been edited by the technician." *Id.* Because neither the bar owner nor the detective could provide "an adequate foundation to support a finding that the matter in question [was] what the State claimed it to be[,]" the trial court erred in admitting the compilation. *Id.* at 655-56.

C. Authentication of the Video in this Case

Under the silent witness method, the State was required to present evidence regarding the recording system's reliability, such as the type of equipment used, its

operation, and the accuracy of the process. *See Mooney v. State*, 487 Md. at 706 (quoting *Jackson v. State*, 460 Md. at 117). The State did not do so.

Before the video was admitted, the only foundation was Sergeant Hunter's testimony that he is familiar with how the system works; that the cameras record continuously; that he can access the system; that he has accessed it on multiple occasions; that he did not download the video; and that the video presented in court was the same as what he first saw.

Sergeant Hunter did not discuss the factors to which Maryland courts have looked in evaluating whether a party had satisfactorily authenticated video footage. For example, he did not discuss "the type of equipment or camera used, [the system's] general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system." *Washington v. State*, 406 Md. at 653 (internal quotations omitted). On the basis of his testimony, he appears to have little "knowledge of the process by which [the video] was created" (*Reddick v. State*, 263 Md. App. at 582) and thus little knowledge "sufficient to establish its reliability." *Id.* He did not testify that he alone or that he and only a limited set of others could access the video-recording system, and he said nothing about the reliability of the time- or date-stamps on the video. His testimony was inadequate to authenticate the video footage.

The State argues that, after the court admitted the video, Sergeant Hunter "further demonstrated his familiarity with the system" by discussing, for example, the number of camera angles and a viewer's ability to toggle between the video from a single camera

and the video from all six cameras. This testimony demonstrates that Sergeant Hunter knows how to view the video footage generated by the video-cameras at the facility. It does not, however, demonstrate, that the recording system itself is reliable. In other words, the testimony does not demonstrate why this particular system was likely to make an accurate record of events, nor does it demonstrate that the video is unlikely to have been altered before it came into Sergeant Hunter's hands.

The requirements for video authentication, while slight, exist, in part, "to prevent the admission of tampered evidence." *Mooney v. State*, 487 Md. at 740 (Gould, J., dissenting). Sergeant Henson's testimony establishes that the footage at issue was unaltered from the time when he first viewed it to the time the State offered it into evidence. The silent witness method, however, demands more than just that showing. For the footage to be admissible via the silent witness method, the State, through Sergeant Henson, was required to put on some evidence that the process by which the video was captured was reliable. With the possible exception of his testimony that the cameras recorded continuously, Sergeant Henson offered no testimony on that subject. He said nothing about how the data is stored and gave no assurances that the data is immune from alteration once it has been collected.

Because the court erred in admitting the video without an adequate foundation, we must reverse the convictions unless we can say that the error was harmless beyond a reasonable doubt. *See, e.g.*, *Dorsey v. State*, 276 Md. 638, 659 (1976); *see also Perez v. State*, 420 Md. 57, 66 (2011). The State does not argue that the error was harmless. We,

however, are not bound by the State's tacit concession. *See*, *e.g.*, *Coley v. State*, 215 Md. App. 570, 572 n.2 (2013).

In this case, another detainee covered the surveillance camera before the assault began. Consequently, the video did not capture the actual assault. And because the video did not capture the assault, it does not show Raysor, or anyone resembling him, committing the assault. In fact, as Raynor's counsel repeatedly stressed during the cross-examination of Sergeant Hunter, the video does not show Raysor at all. Similarly, in closing argument, Raynor's counsel stressed that the video does not show Raynor "anywhere." Finally, in arguing that the evidence was insufficient to support his conviction, Raynor argues, in this appeal, that "[n]one of the six views contained in the video footage . . . showed [him] as the assailant."

In short, the defense itself did not regard the video as inculpatory in any way. Instead, in its assessment of the evidence, the defense spent most of its time attempting to explain away Raysor's damning admissions in the recorded telephone calls. In a criminal trial for assault, it is difficult to imagine how a video that shows neither the assault nor the assailant could contribute to a guilty verdict.

In its closing argument, the State referred to the video only insofar as it showed another detainee covering the camera. According to the State, the detainee's conduct proved premeditation, an element in the charge of attempted first-degree murder. Had the jury convicted Raysor of attempted first-degree murder, we could not say that the admission of the video was harmless beyond a reasonable doubt. The jury, however,

acquitted Raysor of attempted first-degree murder (and of attempted second-degree murder) and convicted him only of assault and related weapons and contraband charges. The video images of someone besides Raysor covering the video camera could not have had any bearing on the jury's conclusion that Raysor was the person who committed an assault that the video does not depict.

Finally, the State could have admitted all, or virtually all, of the video through the pictorial witness method: Hopkins could have authenticated the video to the extent that it fairly and accurately depicted what he perceived on the night of the assault. The State actually attempted to introduce the video through Hopkins's testimony but demurred after Raysor objected. Because the circuit court could have admitted the video via the pictorial witness method, and because the video does not implicate Raysor in the assault, we are convinced that the error in admitting the video via the silent witness method was harmless beyond a reasonable doubt.

II. Lay Opinion Testimony

Raysor characterizes two statements by Sergeant Hunter as impermissible opinion testimony or speculation. The first is Sergeant Hunter's statement that it is "common" not to find weapons because some of them "are discarded by other inmates, or passed on to other inmates." The second is Sergeant Hunter's statement that the motive for the assault "was based on an associate of the Defendant's being stabbed"—i.e. that Raysor had stabbed Hopkins because Hopkins had stabbed Raysor's brother. Raysor contends that Sergeant Hunter's statements amounted to impermissible lay opinion testimony.

Maryland Rule 5-701 permits lay witnesses to offer "testimony in the form of opinions or inferences" only when the opinions or inferences "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." "By contrast, 'when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average lay[person],' it may be introduced only through the testimony of an expert witness properly qualified under Maryland Rule 5-702." *State v. Galicia*, 479 Md. 341, 389 (2022) (quoting *Johnson v. State*, 457 Md. 513, 530 (2018)).

We review the decision to admit lay opinion testimony for abuse of discretion. *See, e.g.*, *Ragland v. State*, 385 Md. 706, 726 (2005); *Randall v. State*, 223 Md. App. 519, 577 (2015). In this context, an abuse of discretion occurs "where the decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Freeman v. State*, 487 Md. 420, 429 (2024) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)) (further citation omitted). "If a court admits evidence through a lay witness in circumstances where the foundation for such evidence must satisfy the requirements for expert testimony under Maryland Rule 5-702, the court commits legal error and abuses its discretion." *State v. Galicia*, 479 Md. at 389 (further citation omitted).

Raysor argues that Sergeant Hunter's first statement—that it is "common" not to find weapons because they "are discarded by other inmates, or passed on to other inmates"—"fell within the ambit of his professional training and experience in law

enforcement." Relying on *Ragland v. State*, 385 Md. at 725, Raysor contends that, whenever law enforcement officers testify on the basis of specialized training and experience, they offer "testimony that amounts to expert testimony." Thus, Raysor contends, the officers "must be properly qualified" as experts.

In *Ragland* the court permitted two police officers to testify that they had witnessed a hand-to-hand drug transaction. *Id.* at 711-14. The officers based their testimony on their training and experience in the investigation of drug offenses. *Id.* at 725-26. One of the officers expressly stated that he was offering an "opinion" that a drug transaction had occurred (*id.* at 712); the other stated that a "drug transaction had occurred" in response question asking for his opinion. *Id.* at 714. Nonetheless, the State had not designated either officer as an expert witness (*id*. at 710; *id*. at 713), as it would have been required to do were they giving expert testimony. *See* Md. Rule 4-263(d)(8). Nor did the court determine that the officers' testimony was an appropriate subject of expert opinion testimony (*Ragland v. State*, 385 Md. at 710-11; *id*. at 713), as it would have been required to do were they testifying as experts. *See* Md. Rule 5-702.[4]

[4] Before a court may admit expert testimony, it must "determine[] that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." Md. Rule 5-702. "In making that determination," the court must 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

(… footnote continued)

On appeal, the Court held that the circuit court abused its discretion in admitting the officers' testimony. *Ragland v. State*, 385 Md. at 725. In reaching its decision, the Court found it "clear that the State sought and received opinions . . . that were based on those witnesses' specialized knowledge, experience and training." *Id.* In the Court's view, the officers' testimony could not "be described as lay opinion." *Id.* at 726. They had "devoted considerable time to the study of the drug trade." *Id.* They offered their opinions that, "among the numerous possible explanations for the events [that they observed][,] . . . the correct one was that a drug transaction had taken place." *Id.* And "[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.*), when the prosecutor had them detail their extensive training and experience and expressly requested their opinions.

Ragland is a much cited, but frequently distinguished, case. As the State observes, subsequent cases have established that "[l]ay witness testimony is not transformed into expert testimony simply because it was derived from on-the-job experiences." including the on-job-experiences of law enforcement officers.

Most notably, in *Freeman v. State*, 487 Md. 420, 423, 439 (2024), the Court held that the circuit court did not abuse its discretion in permitting a police detective to testify, as a lay witness, that a "lick" meant a robbery and that a "sweet lick" meant an easy

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

Id.

robbery. Although the detective might have learned the meaning of these terms through his training and experience as a law enforcement officer, he had merely offered "a nontechnical definition for a colloquial slang term." *Id.* at 437. His "knowledge was derived from his everyday experience in hearing and using language, not from any specialized training, education, or experience." *Id.* at 438. And although an average person might not know what "lick" and "sweet lick" mean, the meaning of those terms was not beyond the ken of ordinary laypersons, such that only expert testimony could elucidate them. *See id.* & n.13. An average person could learn the meaning of those terms, just as the detective learned them—through the "'everyday process[es] of language acquisition . . . accessible to an average person.'" *Id.* (quoting *King v. United States*, 74 A.3d 678, 683 (D.C. 2013)).

Turning to this case, it is common knowledge, enshrined in American popular culture, that criminals frequently dispose of their weapons in order to evade detection. In *The Irishman* a hitman jokes that divers could arm a small country with all the guns that he and others had dumped into the Schuylkill River in Philadelphia. THE IRISHMAN (Netflix 2019). In *The Wire* the members of a crime organization toss a gun into the Patapsco River from the Hanover Street Bridge in Baltimore. THE WIRE: *Stray Rounds* (HBO television broadcast, aired July 27, 2003). In *The Godfather Part II* young Vito Corleone disposes of a murder weapon by disassembling it and tossing it into a chimney. THE GODFATHER PART II (Paramount Pictures 1974). In *The Sopranos*, mobster Tony Soprano flings a gun into a snowbank as he runs away from federal agents. THE

SOPRANOS: *Soprano Home Movies* (HBO television broadcast, aired April 8, 2007).

Sergeant Hunter did not rely on his specialized training and experience as a correctional officer to testify that, after using a weapon to commit a crime, an inmate will sometimes discard the weapon or give it to someone else. This is a matter of common knowledge, which is not beyond the ken of ordinary laypersons and, thus, is not a subject reserved for expert testimony. The circuit court did not abuse its discretion in permitting Sergeant Hunter to testify that inmates frequently discard their weapons or attempt to conceal them by giving them to other inmates.

We turn to Sergeant Hunter's testimony concerning the motive for the stabbing. That testimony was admissible for the purpose of explaining why Sergeant Hunter decided to charge Raysor. *See, e.g., Grandison v. State*, 341 Md. 175, 250 (1995); *Colvin-El v. State*, 332 Md. 144, 161 (1993). And contrary to Raysor's contention, Sergeant Hunter's testimony was not based on "speculation," but on Raysor's statements in the second recorded call, including his statement that Hopkins "stabbed [his] little brother," his statement that he could not "let it slide" and could not "just let him stay there," and his request that the caller "tell Keem"—obviously, the little brother—what he (Raysor) had done.

III. Sufficiency of the Evidence

Raysor argues that the evidence was insufficient to support his convictions for assault and the related weapons and contraband charges. He argues that the video footage did not depict him as the assailant; that the investigators did not find the weapon

that was used to assault Hopkins (and thus that the State cannot prove that it was a "weapon" or "contraband"); and that his convictions cannot rest solely on his own uncorroborated confession.

In assessing the sufficiency of the evidence supporting a criminal conviction, we ask "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original); *accord Stanley v. State*, 248 Md. App. 539, 564 (2020). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *McClurkin v. State*, 222 Md. App. at 486 (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)); *accord Stanley v. State*, 248 Md. App. at 564.

On appellate review, a court will not "retry the case" or "re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010); *accord Stanley v. State*, 248 Md. App. at 564. The relevant question is "not whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Fraidin v. State*, 85 Md. App. 231, 241 (1991) (emphasis in original); *accord Stanley v. State*, 248 Md. App. at 564-65.

Viewed in the light most favorable to the State, the evidence was more than sufficient to prove that Raysor assaulted Hopkins. Although Hopkins could not (or would not) identify Raysor as the assailant and although the video did not capture the assault, Hopkins gave a physical description of the assailant—he was over six feet tall, slim, and muscular, with dark brown skin, a little bit of facial hair, and an Afro. The jury could decide for itself whether Hopkins's description of the assailant matched Raysor. In addition, the jury could consider Hopkins's testimony that he had stabbed Raysor's brother and Raysor's multiple admissions, in the recorded telephone calls, that he stabbed the man who had stabbed his brother. Thus the jury could reasonably conclude that Raysor stabbed Hopkins to retaliate against Hopkins for stabbing his brother.

The evidence was also more than sufficient to prove that Raysor stabbed Hopkins with a "weapon," as required to support the convictions for openly wearing or carrying a dangerous weapon with the purpose of unlawfully injuring a person under section 4-101(c)(2) of the Criminal Law Article of the Maryland Code (2002, 2021 Repl. Vol.) and that Raysor knowingly possessed a weapon while detained or confined in a place of confinement under section 9-414(a)(4) of the Criminal Law Article.

Section 4-101(a)(5) states that the term "weapon" "includes a dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku[,]" but that it does not include "a penknife without a switchblade." In addition, a "weapon" may include an item not specifically enumerated in the statutory definition if the defendant carried it with the intent to use it as a weapon against another person. *See Vanison v.*

State, 256 Md. App. 1, 15-17 (2022). Section 9-410(h) of the Criminal Law Article defines a "weapon" as "gun, knife, club, explosive, or other article that can be used to kill or inflict bodily injury." The State's proof satisfied these definitions.

Hopkins testified that he was stabbed multiple times. Raysor admitted that he had "chopped" and "stabbed" Hopkins. And the medical records report that Hopkins was cut with a piece of sharp metal. In these circumstances, a jury could reasonably find that Raysor had carried a dangerous weapon, such as homemade knife, and that he had possessed such a weapon in a place of confinement.[5]

It makes no difference that the investigators did not find the weapon that Raysor used to stab Hopkins. In accordance with Sergeant Hunter's testimony, the jury could reasonably have found that Raysor disposed of the weapon before the investigators identified him as a suspect. The jury might have chosen to discount the State's evidence because of the failure to find the weapon, but it was not required to do so. The evidence was sufficient to prove that Raysor openly carried a dangerous weapon with the purpose of unlawfully injuring another and that he possessed a weapon in a place of confinement.

Finally, the evidence was sufficient to establish that Raysor possessed contraband in a place of confinement, in violation of section 9-412(a)(3) of the Criminal Law Article. Section 9-410(c)(1) defines "[c]ontraband" as "any item, material, substance, or other

[5] Aside from arguing that the evidence was insufficient to prove that he carried a "weapon," Raysor does not challenge the sufficiency of the evidence of the other elements of openly carrying a dangerous weapon for the purpose of unlawfully injuring another person. Consequently, we do not consider other elements of this charge.

thing that . . . is not authorized for incarcerated individual possession by the managing official[.]" A makeshift knife, or similar sharp metal object capable of being used to stab another person, fits this definition. *See Vanison v. State*, 256 Md. App. at12. Raysor does not contest that he was in a place of confinement. Therefore, the jury could reasonably find that he possessed contraband in a place of confinement. And, again, the State's failure to find the contraband permitted, but did not require, the jury to reject the State's case.

IV. Merger

Raysor contends that his conviction for possession of a weapon in a place of confinement "must be merged into the possession of contraband conviction." Although he briefly mentions the so-called "rule of lenity"[6] and the principles of fundamental fairness, his substantive argument relies exclusively on the double jeopardy principles enunciated in *Blockburger v. United States*, 284 U.S. 299 (1932).

"The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, protects a defendant from multiple punishments for the same offense." *Morgan v. State*, 252 Md. App. 439, 459 (2021). "Although the Constitution of Maryland does not contain a counterpart to the Double Jeopardy Clause, the common law of Maryland provides for a prohibition on double jeopardy." *Scott v. State*, 454 Md. 146, 167 (2017).

[6] "The 'rule of lenity' is not a rule in the usual sense, but an aid for dealing with ambiguity in a criminal statute." *Oglesby v. State*, 441 Md. 673, 681 (2015).

"Merger is the common law principle that derives from the protections afforded by the Double Jeopardy Clause." *State v. Frazier*, 469 Md. 627, 641 (2020). In other words, merger "is the mechanism used to 'protect[] a convicted defendant from multiple punishments for the same offense.'" *Id.* (quoting *Brooks v. State*, 439 Md. 698, 737 (2014)). Maryland courts require merger "'when: (1) the convictions are based on the same act or acts, and (2) under the required evidence test, the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other.'" *Id.* (quoting *Brooks v. State*, 439 Md. at 737).

Under the required evidence test (which is also known as the "same evidence" or "*Blockburger*" test), "if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter." *State v. Jenkins*, 307 Md. 501, 517 (1986). On the other hand, if each offense contains an element that the other does not, the offenses do not merge. *See, e.g.*, *Lancaster v. State*, 332 Md. 385, 391 (1993). The classic example of offenses that merge under the required evidence test are greater and lesser-included offenses, such as felony murder and the underlying felony. *See Newton v. State*, 280 Md. 260, 269 (1977).

Although the crime of possession of a weapon in a place of confinement may overlap with the crime of possession of contraband in a place of confinement, they are not the "same offense" under the required evidence test. Section 9-412(a)(3) of the Criminal Law Article prohibits a person from "knowingly possess[ing] contraband in a

place of confinement." By contrast, section 9-414(a)(4) of the Criminal Law Article prohibits "[a] person detained or confined in a place of confinement" from "knowingly possess[ing] or receiv[ing] a weapon."

Each offense contains elements that the other does not. Section 9-412(a)(3) requires proof that a "person" possessed "contraband," which does not necessarily mean a weapon. Furthermore, section 9-412(a)(3) applies to anyone in a place of confinement, while section 9-414(a)(4) applies only to persons who are "detained or confined in a place of confinement." Therefore, the offenses do not merge.

In the final sentence of Raysor's 26-page brief, he asserts, without any elaboration, that "the intent of these statutes is at least ambiguous." On the basis of that unadorned premise, Raysor summarily concludes that his sentences merge under the rule of lenity or as a matter of fundamental fairness. We decline to consider those contentions, because they are unsupported by any substantial argument. *See* Md. Rule 8-504(a)(6) (requiring a brief to include "[a]rgument in support of the party's position on each issue[]"). "Arguments not presented in a brief . . . will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999); *accord Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (holding that the Court "shall not directly address" questions raised in a brief when the appellant does not "offer any substantial argument supporting his position on these specific questions[]"); *Monumental Life Ins. Co. v. U.S. Fidelity & Guar. Co.*, 94 Md. App. 505, 544 (1993) (holding that the Court will not consider the merits of an issue when the brief "does not contain the party's argument") (emphasis omitted).

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