Circuit Court for Harford County
Case No. 12-K-16-000118

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2548

September Term, 2016

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BRENDA B. HENDERSON

v.

STATE OF MARYLAND

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Woodward, C.J.,
Meredith,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Woodward, C.J.

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Filed: May 31, 2018

Appellant, Brenda B. Henderson, was convicted by a jury in the Circuit Court for Harford County of one count of making a false statement to a police officer and one count of providing false or misleading information to an insurer. She was sentenced to six months for making a false statement to a police officer and a concurrent five years, with all but nine months suspended, for providing false or misleading information to an insurer, to be followed by two years of supervised probation. Appellant timely appealed and presents the following questions for our review:

1. Did the trial court err in allowing a lay witness to give expert testimony?

2. Did the trial court err in permitting the State to impeach [a]ppellant with her prior conviction for unauthorized use of a motor vehicle?

3. Did the trial court err in denying [a]ppellant's motion for a new trial?

For the following reasons, we shall affirm.

## BACKGROUND

On April 2, 2015, at around 2:45 p.m., Harford County Sheriff's Deputy Donald Licato met appellant in the parking lot at a Redner's grocery store in Joppa, Maryland, to take a report that her vehicle was stolen. Appellant told Deputy Licato that, at around 11:30 p.m. the night before, she drove her 2005 Jeep Grand Cherokee there to meet a friend, Allen Holmes, for a late dinner. After Holmes arrived, the two of them left in Holmes's vehicle and went to a friend's house, where they spent the night. When appellant returned the next day with another friend at around 1:30 p.m. to retrieve her car, her car was gone.

Deputy Licato testified that he asked appellant if she had a set of keys to the Jeep Grand Cherokee, and appellant replied that she did not have the keys with her. Instead, appellant stated that she only had one set of keys to the Jeep and that she left them on the dash inside Holmes's vehicle.

Following this testimony, the jury heard from Bel Air Police Officer Keith Smithson. Officer Smithson testified that, at approximately 6:48 a.m. on the same day, appellant reported her vehicle as stolen, he found appellant's abandoned 2005 Jeep Grand Cherokee, crashed into a tree near a sharp turn on Moore Road in nearby Cecil County. The damaged, unoccupied Jeep was "still running, still in the drive gear" with a key in the ignition.[1] Officer Smithson arranged for the Jeep to be towed by Ragan Motors, located in Rising Sun, Maryland.

Eric Ragan, of Ragan Motors, testified that, after he was contacted by police to come to Moore Road to retrieve the Jeep, he found that it was still running and "hanging off the side of the bank getting ready to go in the creek." Ragan reached into the vehicle, turned the ignition off, and removed the key. He then took the damaged Jeep on a flatbed to his storage lot on Rising Sun Road.

When asked what he did with the key to the Jeep, Ragan testified that he "put it inside[,]" meaning inside his company building. He eventually gave the key to Detective Norman Turner, of the Harford County Sheriff's Office. Ragan agreed that, at some point,

[1] A photograph of the key was admitted into evidence at trial. The photo shows a single key, comprised of two parts: a bottom metal blade, and a top plastic piece with three buttons.

appellant came to his storage lot to retrieve some personal items from the Jeep. However, Ragan could not recall if appellant actually went into the Jeep while it was stored at his lot.

Douglas Rill, a special investigator for Erie Insurance, testified that appellant's claim, filed on April 2, 2015, was originally assigned to a claims adjuster. That adjuster took at statement from appellant on April 7, 2015, over the telephone. In that recorded statement, appellant indicated that she had one key for the vehicle, that she had not lost her key, and that she had possession of the key when the Jeep was stolen. She also stated that, after parking and locking the Jeep in the Redner's parking lot, she still had the key with her.

After the insurance statement was played, Rill explained that appellant had comprehensive and collision coverage, both with $500 deductibles. Comprehensive coverage would cover theft and vandalism, and collision coverage covered accidents. Rill testified that, an "at-fault" claim filed under collision coverage could affect an insured's rates, while a claim under comprehensive coverage was unlikely to affect the rates. Appellant's claim was filed as a stolen vehicle under her comprehensive coverage.

Based on his investigation, Rill recommended that a sworn statement be taken from appellant. In that additional statement, a transcript of which was admitted at trial without objection, appellant did not recall if she locked the vehicle after parking it in the Redner's parking lot. She also stated that she did not see any broken glass the next morning near where she had parked her car. She then provided the following account of the whereabouts of her key:

Q. Now, when you purchased the vehicle, how many keys did you get?

A. One.

Q. And did you have that key with you the entire time on the night of the 1st into the morning of the 2nd?

A. I don't know, I can't recall.

Q. So you park your car at Redner's - -

A. Uh-huh.

Q. - -you get out of the car?

A. Uh-huh, yes.

Q. Did you take your key with you?

A. I thought I did, yes.

Q. You don't remember leaving it in the car, do you?

A. No.

Q. And then when you - - when the police officer met you, did he ask you to see the key?

A. No.

Q. At no point in time, the officer investigating the loss didn't ask you to see the key to your car?

A. I don't recall.

Q. You don't remember going back to the precinct and asking if he asked to see it?

A. No, I don't.

Q. At any point in time, did you provide the key to the police officer or anybody else?

A. No.

Q. Do you still have the key now?

A. No.

Q. Where is it - -

A. I gave it to the place where it was towed to.

The statement continued:

Q. But you don't have any recollection of the officer asking you to show the key?

A. No.

Q. And you're not sure if you had the key with you when you discovered the vehicle missing?

A. No.

Q. Where would the key have been if you didn't have it?

A. In Allen's car.

Q. Can you explain, if you had the key or the key was in Allen's car at the time the vehicle was stolen, how the vehicle would have been moved without the key?

A. No.

Appellant then told the investigator that, on some prior occasion, she was able to start the Jeep without the key. The pertinent colloquy was as follows:

Q. Had you ever tried to start the vehicle without a - - without the key?

A. Yes.

Q. How did you do that?

A. With a screwdriver.

Q. Why would you try to start it with the screwdriver?

A. Because I wouldn't even stick the key in the ignition, and it would just, like, go a tad bit in and start instantly.

Q. You mean when you put the key into the ignition, it would just turn on?

A. Yeah.

Q. But you said you would use the screwdriver. Why would you try to use a screwdriver to start your car?

A. I wanted to see if anything else could start it up as easily as it did.

Appellant's sworn statement continued:

Q. Did you ever think to have the vehicle taken to another mechanic to see why the ignition was acting the way it was?

A. No - - I - - no, no, uh-uh.

Q. The time you tried to start the vehicle with the screwdriver, did you physically have the key with you when you were sitting in the vehicle?

A. Yes.

Q. Now, when you say you were able to start it with the screwdriver, you stuck the screwdriver in and turned it, and everything turned and started?

A. All I did was tap it, like - - tap it very, very lightly, and it started right up.

Q. All you did was take the screwdriver and touch it to the metal part, and it started right up?

A. Exactly.

The sworn insurance statement continued as follows:

Q. Did this vehicle have an automatic start system, like a remote starting system?

A. I don't know.

Q. You were never told that it was?

A. No.

Q. So - - are you aware that this vehicle has an antitheft system, what's called a transponder? Do you know that?

A. Yes.

Q. And how do you know that?

A. The police officer told me.

Q. Do you understand what a transponder does?

A. He explained it to me as you can't start it without the key.

Q. Right.

A. Yes, but that's not true.

Q. Have you ever tried to start it with a screwdriver without having the key close to the vehicle?

A. No.

Q. Because really, what the transponder is, it's an electronic device.

A. Uh-huh.

Q. There's a chip in the key, in the black plastic part of the key, and then the vehicle reads that that chip is close, and it allows the vehicle to start.

A. Oh.

Q. So if the key is not in the car, it doesn't matter what you do, it won't start. And when you bought the car, you said you only had one key?

A. Yes.

Q. And you never had any other keys made?

A. No.

In addition to testifying about appellant's sworn statement, Investigator Rill testified that he met Detective Turner at Ragan Motors and watched as Detective Turner started appellant's Jeep with the key that had been retrieved from the vehicle at the crash site by the towing company. In light of the information gleaned from appellant's sworn statement, Rill also watched Detective Turner touch the ignition with a screwdriver, in an unsuccessful attempt to start the car without the key. Rill testified that, after the detective touched the ignition with the screwdriver, "[t]he ignition didn't turn or work." Rill further testified that the Jeep was valued at $7,446.58 and that Erie Insurance denied appellant's claim following their investigation.

Detective Turner then testified at trial, indicating first that he had been with the Harford County Sheriff's Office for sixteen years, and had been assigned to the Auto Theft Unit since 2011. He received training in "transponder ignitions, how vehicles operate, forms of anti-theft devices[,]" as well as "title fraud . . . [and] many different avenues of insurance fraud and other different aspects of auto theft."

As to appellant's specific case, Detective Turner began his investigation on April 3, 2015, by reviewing Deputy Licato's report concerning appellant's explanation of the whereabouts of her key. When the detective then began to explain that this helped him "determine whether it's a false report or an actual theft," and referred to a "transponder-based ignition[,]" defense counsel objected on the grounds that the detective's testimony

was based on his special "training and expertise as far as auto theft." Counsel also argued that the detective was not disclosed as an expert and that any testimony along these lines violated *Ragland v. State*, 385 Md. 706 (2005). After the State responded that the detective's testimony about how he trained Deputy Licato was not opinion evidence, the court overruled the objection, as follows:

> I am going to overrule your objection. Detective Turner isn't testifying, providing testimony as an expert, he is providing testimony with respect to how he conducts an investigation. Given that he was not the officer on the scene, he wants the jury to understand why there are certain things that he looks for once he is assigned a case as to how to conduct the investigation. That just falls within the realm of police work.

Detective Turner then continued by explaining that it was important to determine "key accountability" in auto theft cases. Pertinent to the first issue presented on appeal, his testimony proceeded as follows:

> The reason why it's so important is auto theft in general, the way you steal a car, you can stick a screwdriver in it, turn it, it starts right up. So what the car manufacturers have done, they have come up with this way to prevent auto theft. It's called a transponder --
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained. If you will redirect.
>
> BY [PROSECUTOR]:
>
> Q. Based on what you saw in this report, what did you do regarding this?
>
> A. Based on what I saw in the report that that vehicle is equipped with a transponder-based ignition, with a transponder-based ignition, as I was explaining - -
>
> [DEFENSE COUNSEL]: Objection, Your Honor, again.

THE COURT: Overruled.

A. With a transponder-based ignition that this vehicle is equipped with, what that means is you actually have to have the key, put it into the ignition and turn it. That key must talk to the computer to allow it to start. If you were to take that key and have it made --

Defense counsel then objected and asked for a bench conference, which proceeded as follows:

[DEFENSE COUNSEL]: Again, Your Honor, now we are getting into more technical information about transponders and the way it starts, the way it runs. We're getting into something that does require expert testimony.

I imagine he hasn't been disclosed. There has been no expert disclosed. I object to his testimony in this manner as an expert.

THE COURT: Response?

[PROSECUTOR]: I think it's common knowledge to everybody that modern cars have anti-theft devices on the key and ignition. You can't just use a screwdriver. When he gets into talking about computers, things like that, I can bring that back, but I think that's common knowledge. That's not something you need an expert to testify to, that there are anti-theft devices on automobiles.

THE COURT: I am going to overrule your objection. I think, again, what Detective Turner is testifying to falls within the realm of his investigatory technique. There are certain things that as a detective assigned to investigate matters that fall within the realm of the Auto Theft Unit that he has to look for. I don't see that as being any different than an officer who arrives on the scene of a shooting and is told to look for a gun and who has some knowledge about looking to see if there is actually a gunshot and looking for a gun to substantiate the claims. Although this is more technical in nature, his testimony at this point doesn't fall within the realm of being an expert, it just falls within the realm of what is he looking for in terms of how best to direct his investigation.

[DEFENSE COUNSEL]: I would ask for a continuing objection so we don't have to keep coming back.

THE COURT: You have that.

[DEFENSE COUNSEL]: Thank you.

Detective Turner then explained anti-theft transponder devices as follows:

Q. So please continue about the transponder.

A. What I am looking for is to determine whether this vehicle is a transponder-based ignition vehicle or not because that tells me to determine how I am going to conduct my investigation.

With a transponder-based vehicle, which most vehicles are today, that means that the key has a chip in it. It must communicate with the computer inside. If I took your key, had it made without that chip in it, just taking it to the Home Depo, it would go inside and turn, and the ignition would go "rum, rum, rum" without that commuter chip, which is why we pay extra money to have a key made today. Without that computer chip speaking [sic] to the computer, it won't start. So that's very detrimental to how I conduct my investigation.

Q. How long have vehicles been made with transponder-based ignitions?

A. Most of the transponder-based ignitions happened way back; I would have to say somewhere in the eighties and nineties. That was your high dollar, your Mercedes, something of that nature. They have taken that type of technology and incorporated it into almost all your cars today, unless it's a rental vehicle. Sometimes they disable that so that they don't have to replace it. Or if it's a very low end car, it may not have it. Like the Chrysler Caravan, the 90 model, didn't have it, and that's why we are seeing a lot of those stolen today.

Q. Regarding specifically Jeeps, did you know - - do you know how long Jeep has been using transponder-based ignitions?

A. I didn't bring that paper with me. I am provided a paper from the National Insurance Crime Bureau. They provide me with a paper of all transponder-based ignition vehicles, and I reference that when I am looking into theft. I knew that when I looked at the sheet that this vehicle was on it.

Q. This vehicle was a transponder vehicle?

A. Yes. This vehicle has a transponder-based ignition, yes.

After learning that appellant only had one key to the Jeep, and that that key had a transponder, Detective Turner spoke to appellant on April 13, 2015, and arranged for her to come to the police station for an interview. A recording and transcript was made of the interview, and that recording was played for the jury in court.[2] As the recording was playing, defense counsel asked to approach the bench based on a portion of the interview that was about to be played in open court:

> [DEFENSE COUNSEL]: Thank you, Your Honor. In light of my earlier objection concerning the testimony of the officer concerning transponder keys, that it requires specific information testified about, that type of information has to be from an expert.
>
> In reviewing the transcript, I believe the next part of his -- of his examination involves transponder keys where he talks about -- he explains my client says she didn't know what it was but tells him what it is.
>
> Again, I already argued that requires expert testimony. I would ask that be struck from here, and I object to the testimony going in since it involves what would be expert testimony.
>
> [PROSECUTOR]: Your Honor, we have already covered this. He has explained the transponder. This is no different than what he has already explained to the jury in the last objection.
>
> THE COURT: Overruled.

The interview was then played and provided the following colloquy:

> [DETECTIVE TURNER]: And there's evid - - there's evidence that proves that you're not telling me the whole story.

[2] Although these exhibits are included with the record, it appears that the recording was admitted into evidence, but the transcript was only identified and not admitted into evidence.

[APPELLANT]: I

[DETECTIVE TURNER]: And, and I can indicate to you how this, why I know this. See in a 2005 Jeep Cherokee

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: alright,

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: there's a lot of things that people don't know about how they work, and how the mechanisms work in the vehicle.

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: So the keys that you, that you found were in your purse the whole time

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: but you found them later.

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: Well the key that you use for your Jeep

[APPELLANT]: Mm hm.

[DETECTIVE TURNER]: is called a transponder based ignition. Are you familiar with that?

[APPELLANT]: No.

[DETECTIVE TURNER]: Okay and most people aren't. It's an anti-theft device.

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: It allows your vehicle, basically when you take your key, you stick it into the ignition and you turn it.

[APPELLANT]: Mm hm

[DETECTIVE TURNER]: The grooves in that key allows you to turn the tumbler.

[APPELLANT]: Well I don't know about no anti-theft device or anything, but I do know that you can start my, could start that Jeep with a screwdriver.

[DETECTIVE TURNER]: How do you know that?

[APPELLANT]: Because I've done it before.

[DETECTIVE TURNER]: When your keys are in the vehicle?

[APPELLANT]: Not when the key's in the vehicle. I started my, when I left the vehicle open and I started it with the Jeep [sic], because I couldn't find the key.

[DETECTIVE TURNER]: So you started it with a screwdriver.

[APPELLANT]: I started it with a screwdriver. And all you had to do is just tap it and turn it and it will start right up. (inaudible)

[DETECTIVE TURNER]: Do you have a, do you have any type of remote start or anything on the vehicle?

[APPELLANT]: Mm no.

[DETECTIVE TURNER]: Okay. So you don't have no remote start.

[APPELLANT]: But you touch that, that I don't know, I think something's wrong with the ignition. But if you just take a screwdriver and you just tap it, turn it just a little bit, it'll start right up. So you don't need a key to start that vehicle. You can take ah, any piece of metal and just tap it and it'll start right up, which was strange to me, but

[DETECTIVE TURNER]: And has that been like that since you bought it?

[APPELLANT]: Since I bought it. Mm hm. So nobody ah what I'm telling you is the truth. Wasn't no hanky panky or nothin' goin' on . . . .

Detective Turner resumed testifying on direct examination and indicated that, when he went to Ragan Motors, Ragan had the key to the Jeep in his possession at his storage lot. Detective Turner then examined the ignition to the Jeep and found it to be "completely intact; had no damage to the ignition." Based on appellant's recorded statement to him, Detective Turner then attempted to start the Jeep with a screwdriver. Over another renewed objection, Detective Turner testified as follows:

> A. Knowing it was a transponder-based ignition, I knew it would not start, but I did try to see if the thing would turn just to disprove [appellant's] theory that you could start it with a screwdriver, and it did not start, did not move. Everything operated correctly. I placed the key[ ] in it, and it moved and turned correctly.
>
> Q. Have you dealt with vehicles in your training, knowledge and experience that you would have been able to turn on with that screwdriver?
>
> A. That's correct. Some of our training we go to as an auto theft detective is to learn how a thief -- how a criminal would defeat a vehicle and be able to defeat a transponder-based ignition or to start a vehicle that did have one.
>
> Basically if it doesn't have a transponder-based ignition, one of the things we will find criminals are doing is they will take a brick from their yard, stick a screwdriver into the ignition, smash it into the ignition. Once it goes in, that allows them to defeat the mechanism that locks your steering, and with that, it allows you to turn the screwdriver, which goes across a couple magnets and starts the vehicle. And that's a vehicle without a transponder-based ignition.
>
> Q. Without a transponder, would you say it's harder or easier?
>
> A. Without a transponder, it's definitely very easy to, you know, get into a vehicle.
>
> Q. And with a transponder, how would you get into a vehicle?

A. The equipment that you would have to purchase to defeat that, or the strength you would have to have --

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

A. That system is very expensive. That's why you'll see that any time the type of vehicle that is defeated where it does have a transponder-based ignition, it's going to be your real high dollar car.

When Detective Turner concluded, the State rested its case-in-chief. After a discussion about whether appellant could be impeached with a prior conviction, to be discussed *infra*, appellant testified on her own behalf. She admitted that she owned the 2005 Jeep in question and that she had both liability and collision insurance coverage for the vehicle. Appellant stated that, on April 1, 2015, at around 1:30 a.m., she was driving the Jeep when she met a friend, Holmes, at the Redner's parking lot. Appellant parked her Jeep and then got out of her car, but she was unsure if she locked it. She explained that it was her habit never to lock her vehicle. Appellant then got into Holmes's vehicle, and the two of them went to a friend's house. Appellant stayed there for a while, then went with Holmes to another friend's house, where she stayed the night.

The next day, one of these friends drove appellant back to the Redner's parking lot to retrieve her Jeep; however, when they arrived, they discovered that the Jeep was gone. Appellant then called the police and her insurance company to report that the car was stolen.

Appellant also testified that, when she left the car the previous night, she had her key ring with her, and she thought the key to the Jeep was on the ring. She explained that,

when Deputy Licato spoke to her on the day that she reported the vehicle as stolen, she did not feel the key ring inside her pocketbook. But, she later found the key ring and assumed that the Jeep key was still on the ring. When asked by defense counsel if she thought the Jeep key could have fallen off the key ring, appellant replied that "the little ring that the metal goes through on the key had been broken off, and I had took a cigarette lighter and burned it back on. So I assume that it didn't hold." At trial, however, appellant maintained that the Jeep key must have fallen off her key ring. She could not account for when that might have happened, specifically testifying that she did not know if the key fell off in Holmes's car. Upon further prodding by defense counsel, appellant clarified that "I thought it might have been in Allen's car."

Appellant further testified that, on April 3, 2015, she received a letter from the Cecil County Sheriff's Office, informing her that the Jeep was recovered in Cecil County and was stored at Ragan's Motors. Appellant called the motor company and arranged to go to pick up her personal belongings from the vehicle. When she arrived at Ragan Motors, Ragan gave her the Jeep key, so she could retrieve her belongings. Afterwards, she returned the key to Ragan.

Appellant then confirmed that she was first contacted by Detective Turner the day after she went to Ragan Motors. She initially told Detective Turner that she had the key, believing it to be on her key ring. She further testified that she told the insurance company the same thing, *i.e.*, that when she parked her car in the Redner's parking lot, her key was on her key ring. However, appellant also testified that she "never checked" her key ring.

Appellant also testified that she did not tell the insurance company when she next saw her key, apparently referring to Ragan Motors, because "[t]hey didn't ask me that."

On cross-examination, appellant testified that she learned that her Jeep was recovered and stored at Ragan Motors on April 4, 2015. But, she did not learn that they had the key until she actually went to Ragan's and looked at her key ring. At that time, she was informed that "the key was in the ignition" when the Jeep was found "on top of some rocks." Appellant testified that she "never once looked at my key ring, no. There was no reason to. I don't lock the car. I had no reason to look at the key chain." Appellant also explained that, to the extent that she implied that she gave the Jeep key to Ragan Motors, she meant that she "gave it back" to them, after she retrieved her personal belongings from the Jeep. She maintained that the reason she never told the police or the insurance company that she lost her key was because "[t]hey never asked me." Finally, appellant insisted that her Jeep could be started with a screwdriver, despite Detective Turner's testimony to the contrary.

We shall include additional relevant facts in the following discussion.

## DISCUSSION

### I.

Appellant first contends that the trial court erred by permitting Detective Turner to offer expert opinion without having been either identified or qualified as an expert witness in this case. The State responds that the detective's testimony was not expert opinion, and that, even if it was, any error was harmless beyond a reasonable doubt.

This issue concerns the interplay between Maryland Rules 5-701 and 5-702. 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.

And, Maryland Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

The Court of Appeals has explained that "[t]estimony elicited from an expert provides useful, relevant information when the trier of fact would not otherwise be able to reach a rational conclusion; such information is not likely to be part of the background knowledge of the judge or jurors themselves." *State v. Payne*, 440 Md. 680, 699 (2014) (internal quotation marks and citation omitted). Further "[t]he trial judge, thus, determines whether to admit expert testimony dependent upon whether the witness could provide assistance to the finder of fact on the subject matter where a juror, lacking knowledge in a particular field, would resort to mere speculation and conjecture." *Id.* "In contrast to expert testimony, lay opinion testimony requires no specialized knowledge or experience but instead is derived from first-hand knowledge and is rationally based." *Norwood v. State*,

222 Md. App. 620, 646 (internal quotation marks and citation omitted), *cert. denied*, 444 Md. 640 (2015).

The parties in this case do not cite, and our research has not revealed, a case directly addressing whether testimony explaining how a car may be started, with or without a key, constitutes expert or lay opinion. The parties instead rely heavily on *Ragland v. State*, 385 Md. 706 (2005). In that case, two police officers were permitted to testify as lay witnesses, over defense objection, that they believed they observed a drug transaction involving Ragland and another individual. *Ragland*, 385 Md. at 711-14. The Court of Appeals accepted Ragland's argument that this amounted to expert testimony and that the trial court erred in admitting the evidence as lay opinion. *Id.* at 716. Based on the Federal Rules of Evidence, as well as concerns based on the Maryland Rules of discovery, *i.e.*, Maryland Rule 4-263, *see id.* at 716-17, 720, 725, the Court stated that the law concerning admissibility of lay opinion needed to be clarified:

> We think the better view in interpreting the rule regarding opinion testimony is the more narrow one, and the view as expressed in the amended Fed. R. Evid. 701. We also agree with the Court of Appeals for the Fourth Circuit and those courts that have found that by permitting testimony based on specialized knowledge, education, or skill under rules similar to Md. Rule 5-701, parties may avoid the notice and discovery requirements of our rules and blur the distinction between the two rules. Accordingly, we will follow the approach as reflected in the 2000 amendment to Fed. R. Evid. 701 and hold that Md. Rules 5-701 and 5-702 prohibit the admission as "lay opinion" of testimony based upon specialized knowledge, skill, experience, training or education.

*Id.* at 725.[3]

[3] In *Ragland*, the State had not notified the defense that the officer would testify as an expert. 385 Md. at 716. Among other arguments, Ragland contended that the two officers had not been properly identified as experts pursuant to former Rule 4-263(b)(4)

Therefore, the two officers' opinions in *Ragland* were not lay opinion because (1) the "witnesses had devoted considerable time to the study of the drug trade[;]" (2) "[t]hey offered their opinions that, among the numerous possible explanations for the events on Northwest Drive, the correct one was that a drug transaction had taken place[;]" and (3) "[t]he connection between the officers' training and experience on one hand, and their opinions on the other, was made explicit by the prosecutor's questioning." *Id.* at 726.

There have been numerous cases in the years since *Ragland* discussing whether witnesses could offer opinion testimony as lay witnesses, or whether the witness needed to be qualified as an expert. Some cases hold that expert qualification is required. *See, e.g.*, *State v. Payne*, 440 Md. 680, 701-02 (2014) (concluding that expert testimony was required to analyze "the technical language of the entries in a Call Detail Record" and to identify "the location of the cell towers through which [the defendant's] cell phone[s] connected on the night of the murder and their location relative to the crime scene"); *State v. Blackwell*, 408 Md. 677, 691 (2009) (holding that testimony about defendant's performance on the horizontal gaze nystagmus test, a roadside sobriety test, by a State Trooper constituted expert testimony under Maryland Rule 5-702). There are also several cases concluding that certain challenged testimony was admissible as lay opinion. *See, e.g.*, *Perry v. State*, 229 Md. App. 687, 710 n.5 (2016) (noting that expert testimony was not required to describe a "muzzle flash" in a case where defendant allegedly fired upon police officers at night), *cert. dismissed*, 453 Md. 25 (2017); *In re: Ondrel M.*, 173 Md. App. 223, 243-44

(present Rule 4-263(d)(8)). *Id.* The Court agreed, noting that the discovery rule's purpose "is to assist the defendant in preparing his or her defense, and to protect the defendant from surprise[,]" *id.* at 717, and that permitting such testimony without qualifying the witness as an expert would allow the parties to avoid the notice and discovery requirements of the Maryland Rules. *Id.* at 725.

(2007) (holding that testimony of a police officer, who is capable of identifying marijuana by smell through past experience, that he/she smelled marijuana, is lay opinion testimony under Maryland Rule 5-701).

Relatively recent cases from this Court have concluded that certain testimony from police officers did not require expert qualification. For instance, in *Prince v. State*, 216 Md. App. 178, 189-91, *cert. denied*, 438 Md. 741 (2014), a police officer provided trial testimony concerning his placement of trajectory rods through bullet holes in a vehicle. Distinguishing *Ragland*, we held that "the process of sliding trajectory rods through existing bullet holes, taking photos of the result, and reporting [the officer's] actions does not require expertise or analysis grounded on an officer's particular training or experience." *Id*. at 200. In concluding that the officer's lay testimony was properly admitted, we stated:

> A police officer who does nothing more than *observe* the path of the bullet and place trajectory rods (in the same manner as any layman could) need not qualify as an expert to describe that process. Officer Costello relied on his own observations and placed the rods into the holes made by the bullet fired by Mr. Prince. He conducted no experiments, made no attempts at reconstruction, and was not conveying information that required a specialized or scientific knowledge to understand.

*Id*. at 202 (emphasis in original) (internal quotation marks and citation omitted).

More recently our Court addressed the issue of whether expert testimony was required for global positioning system ("GPS") records in *Gross v. State*, 229 Md. App. 24 (2016), *cert. denied*, 451 Md. 259 (2017). In that case, Gross and his accomplices allegedly stole copper materials, sometimes using trucks owned by the employer of one of the accomplices. *Id*. at 27-29. The employer, unbeknownst to its drivers, had installed GPS units on its vehicles to test the accuracy of the drivers' logs. *Id*. at 29. Over objection, the court admitted a printed version of the GPS records under the business records exception

to the hearsay rule and also permitted a supervisor for the employer to read certain entries for the jury and to highlight those entries on the printed version. *Id.* at 29, 31.

On appeal, Gross argued that the GPS records and testimony based on those records were inadmissible without expert testimony about the operation and accuracy of GPS devices. *Id.* at 31. Gross attempted to liken GPS data to testimony regarding cell-phone geolocation, for which expert testimony is required. *Id.* at 33 (citing *State v. Payne*, 440 Md. 680, 699 (2014), *Wilder v. State*, 191 Md. App. 319, *cert. denied*, 415 Md. 43 (2010), and *Coleman-Fuller v. State*, 192 Md. App. 577 (2010)). This Court rejected that comparison, explaining:

> Unlike the cell phone geolocation data cases, [the company supervisor] was not relying on special knowledge, skill, or training to interpret the GPS records for the box truck, nor did he "engage[] in a process to derive his conclusion . . . that was beyond the ken of an average person." *See Payne*, 440 Md. at 700, 104 A.3d 142. Rather, [the supervisor] simply read the GPS data as it appeared in the GPS records. Furthermore, we conclude that the average juror could understand the GPS records without expert help. The records indicate simply and clearly the date and time of the reading and the address at which the truck was then located.

*Id.* at 34.

Although the Court of Appeals denied *certiorari* in *Gross*, the Court did address the issue of whether expert testimony was required to admit a GPS report containing the time and location for a Maryland Transit Administration "Pocket Cop device" in its recent case of *Johnson v. State*, 457 Md. 513, 517, 522, 530-31 (2018). In that case, the Court cited *Gross* with approval, *id.* at 535-36, and held that an expert was not required to admit the GPS report, because a lay person has a general understanding of GPS devices and does not require an expert to understand the time and location data in a GPS report. *See id.* at 531-32. The Court further explained:

> In our view, the times and locations reflected in GPS data in a business record do not necessarily require expert testimony to be admissible. Courts regularly admit business records through witnesses who are not experts in the technology that produced those records. In many instances, such records indicate, like the GPS report here, a person's (or device's) location at a given time, are produced or processed by computers, and are admitted without expert testimony—*e.g.*, computer generated reports from electronic ankle monitoring devices, electronic records of employee card access, computer reports generated from electronic hotel key cards, and computer reports from electronic toll transponders. Expert testimony about how a clock works is not necessary every time an employee's timesheet is offered into evidence. The same is true for GPS entries.

*Id.* at 532 (footnotes omitted).

Here, the State relies on the prosecutor's argument that Detective Turner's testimony about the transponder-based ignition was not expert opinion, because it is "common knowledge to everyone that modern cars have anti-theft devices on the key and ignition. You can't just use a screwdriver." And yet, Detective Turner expressly told appellant during their interview that "most people aren't" familiar with a transponder-based ignition.

In addition, the State asserts that Detective Turner's testimony that the Jeep had a transponder-based ignition and would not start with a screwdriver merely informed the jury "of facts helpful to their understanding of the case." We recognize that "[t]he distinction between fact and opinion is not always clear." *Thomas v. State*, 183 Md. App. 152, 178 (2008), *aff'd*, 413 Md. 247 (2010). And, testimony that, on first glance appears to be an opinion, may instead be a statement of fact. *See Norwood v. State*, 222 Md. App. 620, 646-48 (concluding that officer's testimony about knife injuries he had seen in the past, as well

as description of an injury to defendant's hand, was not an opinion, and that any error in admitting the testimony was harmless), *cert. denied*, 444 Md. 640 (2015).

But, in this case, Detective Turner's testimony was not merely limited to the fact that appellant's Jeep had a transponder-based ignition and that, without such a key, the vehicle would not start. Instead, Detective Turner testified, over continuing objection, that, based on his specialized training as a member of the auto-theft unit, he knew that a transponder based key must be in a location that allowed it to "talk to the computer to allow it to start." He also testified that these types of keys could not easily be duplicated, that although they were originally equipped in more expensive vehicles, they were now available in most modern vehicles, and that, based on information provided to him from the National Insurance Crime Bureau, appellant's Jeep was so equipped.

Significantly, Detective Turner also stated, on direct examination, that "*[k]nowing it was a transponder-based ignition, I knew it would not start*, but I did try to see if the thing would turn just to disprove [appellant's] theory[.]" (Emphasis added). He continued, after again referring to his specialized training in the auto-theft unit, to testify how a potential thief could start a car without a key, by using a screwdriver. He also explained that the ease with which this could be done specifically depended upon whether the vehicle had a transponder based ignition system.

Although this is a close case, we are persuaded that Detective Turner's testimony was not limited to mere fact evidence and, in fact, strayed into the realm of inadmissible expert opinion. *See, e.g.*, *State v. Payne*, 440 Md. 680, 701-02 (2014) (holding that the detective's testimony was expert testimony requiring qualification, because the ability to

map the movement of cell phone by using cell towers it connected to on the night of a murder required that the detective to rely on his "knowledge, skill, experience, training or education" (internal quotation marks and citation omitted)). Accordingly, under the circumstances of this case, we conclude that the trial court erred in admitting the detective's testimony without the State properly identifying Detective Turner as an expert witness and without first qualifying him as an expert.

Nevertheless, we hold that the error in this case was harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013) (explaining that an error is harmless when a reviewing court is "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" (citation omitted)).

Here, appellant provided a statement to the insurance investigator, Rill, that was admitted without objection. In that statement, appellant admitted that she was aware that her Jeep had an anti-theft transponder system. Although appellant indicated that she learned this through the investigating police officer, presumably Detective Turner, nevertheless, the jury heard, through appellant herself, that her Jeep could not be started without the transponder device. In addition, the jury learned from statements made by Investigator Rill (contained in appellant's statement), that the transponder was an "electronic device[,]" and that "[t]here's a chip in the key, in the black plastic part of the key, and then the vehicle reads that that chip is close, and it allows the vehicle to start." Rill also indicated that, "if the key is not in the car, it doesn't matter what you do, it won't start." Moreover, at trial, Rill testified, without objection, that he watched as Detective

Turner unsuccessfully attempted to start the Jeep with a screwdriver, absent a key. Thus, appellant's own unobjected-to statement to the insurance company and Rill's testimony at trial put the same information before the jury that is the focus of appellant's complaint on appeal. *See, e.g., Yates v. State*, 429 Md. 112, 120-21 (2012) ("Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received." (internal quotation marks and citation omitted)).

Finally, as the State points out in its brief, the primary fact in issue in this case was whether appellant provided false statements to the police and committed insurance fraud. Her shifting stories about the whereabouts of the key, and not the functionality of that key, were central to the jury's assessment of appellant's credibility and, ultimately, her criminal culpability. Under the circumstances of this case, we are persuaded that any error in admitting Detective Turner's expert testimony was harmless beyond a reasonable doubt.

II.

Appellant next asserts that the court erred in permitting the State to impeach her with a prior conviction for unauthorized use of a motor vehicle. The State responds that the court properly exercised its discretion. We conclude that the issue was not properly preserved and is without merit in any event.

After the State rested its case-in-chief, appellant was questioned outside the presence of the jury to determine if she would testify. During that examination, appellant was informed that the prosecutor and the court could ask her questions about a prior offense from 2008, where appellant pleaded guilty to unauthorized use of a motor vehicle. Defense counsel objected to admission of that prior conviction, as follows:

> Thank you, Your Honor. Your Honor, I would argue that while this does fall under the Maryland Rule, unfortunately, here it is, Maryland Rule 5-609(a), that unauthorized use could be perhaps used as an impeachable. It's not a theft, or anything like that. It could be used; however, I would argue for two reasons that the [c]ourt could decide the probative value of this outweighs the unfair prejudice to my client for two reasons. One is the conviction itself is over eight years old. So there is some time on it. We're almost halfway back to the 15 years the [c]ourt may look at.
>
> The second reason is because an unauthorized use involves a car, and this involves a car. So it may be that the jury could, in fact, make the decision that there could be some propensity as evidence by that, that if you did something like that, that in the event where you are making a false report or reporting to an insurance company, propensity may be used towards the client, rather than looking at that and balancing that with the evidence to decide whether or not to believe her. The fact itself may outweigh any probative value and be more prejudicial to my client. For those reasons I am asking the Court to deny the State's use of that one impeachable against my client.

The court ruled that the prior offense was admissible:

> I do find this falls squarely in the ambit of the rule. Certainly it is relevant to [appellant's] credibility given some of the similarities of it involving a motor vehicle and impropriety regarding that.
>
> Also, I do think there was some probative value with respect to admitting it that outweighs the danger of any unfair prejudice in this case.
>
> What I would also do in allowing it to be used by the State is to further instruct the jury that the admission of this testimony is not proof that [appellant] has committed the crimes for which she is charged for the jury's consideration, but only for the purpose of evaluating her credibility in accordance with the instructions to the jury under the Maryland Criminal Jury Pattern Instructions.

Thereafter, following appellant's direct examination, and towards the end of the State's cross-examination of appellant, the jury heard the following:

Q. And you have heard [Defense Counsel] prior to the jury coming out mention I could ask about certain crimes you have been convicted of?

A. Yes.

Q. And as a matter of fact, we actually discussed a crime you were convicted of in 2008?

A. Yes.

Q. The crime of unauthorized use of a motor vehicle, correct?

A. Yes.

Q. And you were found guilty of that in 2008, correct?

A. Not found guilty, pleaded guilty.

Q. You were found guilty?

A. Okay.

This issue was not preserved for our review.[4] As appellant concedes, defense counsel did not object when the evidence of the prior conviction was elicited during cross-examination. Ordinarily, that an objection was raised in a motion *in limine* prior to trial, as was done here, does not obviate the need for a contemporaneous, and timely, objection when the evidence is elicited at trial. *See Reed v. State*, 353 Md. 628, 643 (1999) (when evidence that has been contested in a motion *in limine* is admitted at trial, a contemporaneous objection must be made pursuant to Md. Rule 4-323(a) in order for that question of admissibility to be preserved for appellate review). Appellant relies on *Hall*

[4] Although the State does not challenge preservation, this Court may, *sua sponte*, conclude that an issue has not been properly preserved for appellate review. *See Haslup v. State*, 30 Md. App. 230, 239 (1976).

*v. State*, 233 Md. App. 118 (2017), to suggest that no objection was required. However, in *Hall*, the ruling on the motion *in limine* was, in contrast to this case, to *exclude* evidence. *See Hall*, 233 Md. App. at 196. Cases have held that, in such an instance, the contemporaneous objection rule does not apply. *See Reed*, 353 Md. at 637-38.

Appellant also relies on *Dyce v. State*, 85 Md. App. 193 (1990), but in that case, the State's cross-examination about Dyce's prior conviction occurred "immediately" after the trial court's ruling admitting the evidence. *Id*. at 195-96. Given the "temporal proximity" of the ruling and the question under those circumstances, we exercised our discretion under Maryland Rule 8-131 to review the admissibility of the prior conviction for purposes of impeachment despite "the lack of literal compliance with Rule 4-323(a)." *Dyce*, 85 Md. App. at 198.

*Dyce* is inapposite because, in this case, the State's cross-examination on the prior conviction came after appellant's direct examination, and towards the end of cross-examination. Thus, appellant should have objected when, on cross-examination, the prior conviction was elicited, and we do not observe a similar issue of proximity in this case. As the Court of Appeals has explained, "the [contemporaneous objection] rule generally promotes consistency and judicial efficiency . . . Much can happen in a trial prior to the offering of disputed evidence that can affect its admissibility." *Brown v. State*, 373 Md. 234, 242 (2003) (alteration in original) (quoting *Reed v. State*, 353 Md. 628, 641, 643 (1999)).

Even if preserved, we are persuaded that the trial court properly exercised its discretion in admitting the prior conviction. When reviewing the trial court's decision

concerning impeachment evidence of a prior conviction, we give considerable deference to that decision, affording the trial court wide discretion. *Cure v. State*, 421 Md. 300, 323 (2011). We disturb that discretion only when it is "'clearly abused.'" *Id.* (quoting *Jackson v. State*, 340 Md. 705, 719 (1995)). Maryland Rule 5-609 provides, in pertinent part:

> (a) Generally. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or objecting party.
>
> (b) Time limit. Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction.

The prior offense at issue was less than fifteen years old. It also is an impeachable offense, as the unauthorized use statute provides that, "[w]ithout the permission of the owner, a person may not take and carry away from the premises or out of the custody of another or use of the other, or the other's agent, or a governmental unit any property, including: (1) a vehicle; (2) a motor vehicle; (3) a vessel; or (4) livestock." Md. Code (2002, 2012 Repl. Vol.), § 7-203(a) of the Criminal Law ("CL") Article. The Court of Appeals has explained that the elements of the offense are: "(1) an unlawful taking; (2) an unlawful carrying away; (3) of certain designated personal property; (4) of another." *Allen v. State*, 402 Md. 59, 69-70 (2007) (internal quotation marks and citation omitted). These elements are relevant to credibility, because "the crime has in it an element of dishonesty, such as, . . . might indicate that 'the witness (was) devoid of moral perception,' being 'a person (who) would regard lightly the obligations of an oath to tell the truth.'" *State v.*

*Hutson*, 281 Md. 455, 461 (1977) (alterations in original) (quoting *Burgess v. State*, 161 Md. 162, 162 (1931)).

Without a significant challenge to the age of the prior conviction or to the fact that it is relevant to credibility, appellant's primary argument is that the prior offense was too similar to the charged offense in this case and, therefore, any probative value was outweighed by its prejudicial effect. But, prior convictions for the same or similar offenses are not automatically excluded under the rules. Similarity is one factor to be considered, and remains subject to the probative-prejudice weighing process of Rule 5-609(a)(2). For instance, in *Jackson v. State*, 340 Md. 705 (1995), the defendant was convicted of felony theft. 340 Md. at 708. The Court of Appeals considered whether prior convictions for offenses that are similar or identical to the charged crime are inadmissible *per se*, and whether the introduction of same-crime evidence for impeachment constituted an abuse of discretion. *Id.* at 707-08. A majority of the Court determined that the prosecution may use such evidence on cross-examination of the defendant. *Id.* at 711. The Court of Appeals suggested five factors courts might consider when balancing this type of evidence:

> These factors are (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility.

*Id.* at 717.

Appellant's prior conviction for unauthorized use of a motor vehicle, approximately seven years before the charged offense, was probative of the issue of whether appellant lied about her car being stolen, especially given that appellant testified and her credibility was relevant to the case. And, although similar, the essence of the charged offenses in this

case were appellant's statements, while the prior conviction was concerned more with a taking or carrying away of an item belonging to another. Finally, the court instructed the jury as follows:

> You have heard evidence that the defendant has been convicted of a crime. You may consider this evidence in deciding whether the defendant is telling the truth, but for no other purpose. You must not consider the conviction as evidence that the defendant committed the crimes charged in this case.

Accordingly, even if preserved, we discern no abuse of discretion in the court's ruling that permitted the State to impeach her with the prior conviction for unauthorized use of a motor vehicle.

III.

Finally, appellant contends that the court erred by denying her motion for new trial based on newly discovered evidence. The State responds that the court properly exercised its discretion under the circumstances. We agree with the State.

Over a month after the jury convicted appellant, she moved for a new trial on the ground that her nephew's post-verdict confession that he took her car and crashed it was exculpatory and amounted to newly discovered evidence. The circuit court denied the motion, concluding that appellant did not act with due diligence in discovering this evidence:

> I don't believe that's sufficient in this case. It is her nephew. He certainly was aware she was facing these charges, and certainly if she was aware that he could use her car, it's not new evidence that could not have been discovered prior to trial.
>
> I am going to deny the Motion for New Trial and will proceed to sentencing today.

"Whether to grant a new trial lies within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent an abuse of discretion." *Brewer v. State*, 220 Md. App. 89, 111 (2014). "[W]e do not consider that discretion to be abused unless the judge exercises it in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Id*. (internal quotation marks and citations omitted). In order to reverse a court's denial of a motion for a new trial, "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Arrington v. State*, 411 Md. 524, 552 (2009) (quoting *Gray v. State*, 388 Md. 366, 383 (2005)). And, it is the defendant's burden to persuade the court that a new trial should be granted. *Jackson v. State*, 164 Md. App. 679, 686 (2005), *cert. denied*, 390 Md. 501 (2006).

In order to prevail on a motion for new trial based on newly discovered evidence pursuant to Maryland Rule 4-331(c), a defendant must demonstrate (1) that the evidence was newly discovered; (2) that the newly discovered evidence was not capable of being discovered by due diligence; and (3) that the newly discovered evidence "may well have produced a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would have been affected." *Jackson v. State*, 358 Md. 612, 626 (2000) (internal quotation marks and citation omitted).

Moreover, "[w]hen dealing with Rule 4-331(c), . . . due diligence may not be ignored." *Ross v. State*, 232 Md. App. 72, 107 (2017). That is because due diligence "is a threshold question." *Argyrou v. State*, 349 Md. 587, 602 (1998). "[A person] cannot fail to investigate when the propriety of the investigation is naturally suggested by

circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect." *Id.* at 603 (internal quotation marks and citations omitted). Further:

> [T]he concept of "due diligence" has both a time component and a good faith component; the movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion, but he or she must act reasonably and in good faith as well. Thus, we believe that, as used in Maryland Rule 4-331(c), "due diligence" contemplates that the defendant act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her.

*Id.* at 604-05.

Appellant proffered that her nephew made a post-trial confession to taking the Jeep, crashing it, and then abandoning it afterwards. She claims that this was newly discovered evidence and that it was sufficient to warrant a new trial. The trial court found that appellant had not acted with due diligence in obtaining this evidence before trial. As the trial court stated, appellant's nephew was certainly "aware she was facing these charges," and if appellant was aware that her nephew could have used her car, she could have discovered evidence of his taking and crashing the car prior to trial. Moreover, appellant did not provide any evidence in the form of an attachment to her motion for new trial, and, as explained, *infra*, her motion was devoid of any request for a hearing, much less any indication that her nephew was willing to testify that he had stolen appellant's Jeep. Accordingly, we are persuaded that appellant failed to meet her burden on this question and that the court did not abuse its discretion in so finding.

Finally, we are not persuaded by appellant's argument that the trial court abused its discretion by not holding an evidentiary hearing on her nephew's claim. Notably, the record does not clearly indicate that appellant requested such a hearing when filing her motion for a new trial. Like the ultimate decision on the merits of a new trial motion, whether to hold a hearing on the motion is also generally a matter of trial court discretion. *See, e.g.*, *Campbell v. State*, 373 Md. 637, 645, 671-72 (2003) (affirming denial of motion for new trial where, "rather than conduct an evidentiary hearing regarding the new evidence as to [a State's witness], as requested by Petitioner, the judge denied the motion for a new trial based on the proffer"). We conclude that the court properly exercised its discretion in denying the motion for new trial.

**JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**