

Circuit Court for Prince George's County
Case No. CAL20-12021

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0003

September Term, 2025

ESTATE OF LEONARD SHAND

v.

CITY OF HYATTSVILLE, MARYLAND,
et al.

Leahy,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 13, 2026

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

Introduction

On September 26, 2019, Leonard Shand died during an altercation with police in Hyattsville, Maryland. Shand's Estate (the "Estate") filed a civil suit in the Circuit Court for Prince George's County alleging, *inter alia*, claims of excessive force and wrongful death, and seeking compensatory and punitive damages. The amended complaint named the appellees in this case: the City of Hyattsville, Lieutenant ("Lt.") Zachary Nemser; and Private First Class ("PFC") Scott Hall (collectively, the "City").¹

This is the second time that an appeal by the Estate has come before this Court. In 2022, the circuit court initially granted the defendants' motion for summary judgment, which the Estate successfully appealed. Following remand to the circuit court, the case went to trial before a jury in January 2025. At trial, the Estate sought to admit a video compilation that it had prepared of law enforcement body-worn camera footage. Defense counsel's objection for failure to lay a proper foundation was sustained by the court. The Estate also called its expert witness to testify about events shown on the video compilation; however, the video was not admitted into evidence because it could not be authenticated.

¹ The amended complaint named two other defendants: Prince George's County, Maryland and the City of Mount Rainer, Maryland. When all defendants in the amended complaint moved for and were granted summary judgment on August 24, 2022, the Estate did not appeal the decision as to the claims against Prince George's County or the City of Mount Rainer, leaving the City of Hyattsville, Lt. Nemser, and PFC Hall as the only remaining active defendants named in the amended complaint.

The Estate brings four assignments of error for our review.² We rephrase the questions as follows:

1. Did the trial court abuse its discretion in not admitting the Estate's video compilation into evidence?
2. Did the trial court err in not permitting the Estate's expert witness to testify on certain matters prior to the Estate having presented the necessary factual foundation for that testimony?
3. Did the trial court err in not enforcing the purported stipulation between the parties?
4. Did the cumulative effect of the trial court's errors deprive the Estate of a fair trial, thereby warranting a new trial?

We hold that the circuit court did not err or abuse its discretion. *First*, the trial court did not abuse its discretion in excluding the video compilation offered by the Estate because the Estate did not properly authenticate the evidence. *Second*, in turn, we hold that

² The original phrasing of the assignments of error in Estate's briefing is as follows:

I. The Circuit Court abused its discretion in excluding evidence and testimony of the police officers' shooting Mr. Shand and simultaneously using a flash bang grenade and bean bag shotgun, under Md. Rules 5-401, 5-402, and 5-403, thereby prejudicing the Appellant's ability to present its case.

II. The Circuit Court erred when it refused to allow the Appellant to introduce facts relied upon by its expert pursuant to Rule 5-703, thereby excluding stipulated admissible evidence and precluding any facts of excessive force on the record as permitted by the rules.

III. The Circuit Court erred when it failed to enforce the parties' pretrial waiver regarding the body-worn camera footage produced in evidence, upon which the Appellant and Appellant's expert reasonably relied. Extract pg. 308.

IV. The Circuit Court erred when the cumulative effect of these evidentiary and procedural errors deprived the Appellant of a fair trial and thus warrant reversal or remand for a new trial.

the trial court acted within its discretion in preventing testimony of the Estate’s expert witness prior to laying the necessary factual foundation for that testimony. *Third*, we hold that because the Estate did not identify the purported stipulation, the trial court did not err by not enforcing it. *Fourth* and finally, because we discern no error or abuse of discretion, we do not need to reach the Estate’s final question invoking the cumulative effect doctrine. Accordingly, we affirm the judgment of the Circuit Court for Prince George’s County.

Background

This Court has already addressed the tragic history of this case in our previous unreported opinion. *See Est. of Shand v. City of Hyattsville*, No. 1266, Sept. 2022, 2023 WL 3734287 (Md. App. May 31, 2023). To summarize, on September 26, 2019, Leonard Shand was “meander[ing] . . . on public streets” while armed with “a knife in each hand.” *Id.* at *1-2. Officers “from multiple police departments responded” to the scene. *Id.* at *1. A confrontation ensued and officers deployed various distraction devices—including a bean bag shot gun and a flash bang grenade—to attempt to disarm Shand. *Id.* at *2. When Shand “continued toward [the officers] . . . multiple officers fired their service weapons, killing [] Shand.” *Id.* at *2. The Estate filed a complaint alleging “use of excessive force in violation of Article 26 of the Maryland Declaration of Rights” and later amended the complaint to include assault and battery charges as well as a survival action. *Id.*

In the previous appeal, the Estate contested the circuit court’s grant of summary judgment as to defendants City of Hyattsville, Lt. Nemser, and PFC Hall regarding the Estate’s excessive force claims contained in “Count[s] 1, 10, and 14 of the Amended

Complaint[] against the City of Hyattsville, Lt. Nemser, and PFC Hall” respectively.³ *Id.* In our opinion, we explained that the circuit court, in its consideration of the motion for summary judgment, did not employ a “proper application of the reasonableness test” in reviewing the actions of the officers which, “in excessive force cases[,] ‘requires careful attention to the facts and circumstances of each particular case.’” *Id.* at *6 (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Accordingly, we “reverse[d] the grant of summary judgment and remand[ed] for the circuit court to decide whether the City of Hyattsville, [Lt.] Nemser, and PFC Hall [were] entitled to summary judgment[.]” *Id.* at *7. Following the remand, the circuit court conducted a factual inquiry into “whether the force employed by the defendants satisfied the reasonableness standard enunciated in *Graham*[,]” per the instructions of this Court. The circuit court held that this inquiry “should be determined by the factfinder” and denied the City’s motion for summary judgment. The case proceeded to trial.

Pre-Trial & Trial

On January 13, 2025, the City filed an amended pretrial statement along with a proposed verdict sheet, requested pattern and non-pattern jury instructions, and requested voir dire.⁴ In the amended pretrial statement, the City “request[ed] that [the Estate] stipulate to both the authenticity and admissibility of all audio and video produced in

³ The Estate “did not present arguments regarding the” other claims in the amended complaint as all other claims dismissed at summary judgment.

⁴ The docket does not show any corresponding filings from the Estate.

discovery by any party or non-party, without the need for any custodian of record or other foundation.” (Emphasis added). The Estate did not file an amended pretrial statement. The most recent pretrial statement filed by the Estate was entered on the docket on August 9, 2022, prior to the grant of summary judgment from which the previous appeal was filed. By the time the case was remanded by this Court and a new trial date set on the docket, more than twenty-one months had passed since the Estate filed a pretrial statement. A pretrial conference was not held in the underlying case prior to trial.

A jury trial began on January 27, 2025. While discussing preliminary issues prior to voir dire, counsel for the Estate informed the court and opposing counsel of the Estate’s plan to play a compilation of body-worn camera footage during opening statement. Opposing counsel objected to the use of the video during the Estate’s opening, stating that the footage “certainly can’t be played in opening.” Defense counsel pointed out that the video was provided by the Estate; that it was “a compilation of other videos that have been edited; and that “[t]here ha[d] been no agreement that evidence will be played for the jury in opening[.]” Counsel for the Estate countered that the video was a compilation of videos included in the City’s proposed exhibit list offered as part of pretrial communications:

[ESTATE COUNSEL]: . . . **[A]ll the videos that we are intending to play, they have already proposed as their exhibits,** and we have already also –

THE COURT: You are missing what I am saying. You are missing what I am saying. Proposed exhibits. A proposed exhibits [sic] is something that has been turned over in discovery, correct?

[ESTATE COUNSEL]: No, no, no. That is not what I am saying.

THE COURT: But listen to what I am saying is. You want to, during your opening, play a video that has potential evidentiary value, correct?

[ESTATE COUNSEL]: That is correct, Your Honor.

THE COURT: Before a foundation has been made for that evidence to come in.

[ESTATE COUNSEL]: Your Honor -- and I understand where the Court is confused about the nature of the video. **The video is something that has already been authenticated**, has already been –

THE COURT: Hold on a second. **Authenticated before what judge and what court proceeding?**

[ESTATE COUNSEL]: Your Honor, **I have already proposed this as an exhibit**. All of the video -- so, the video, if I could just explain what the video is. Maybe that would make sense. **Prior to this, in a pretrial statement, we are all required to state to the Court what the exhibits are going to be. If we don't make any objections, raise any objections to that, then those videos and that evidence is deemed admitted. There has been no objections to any of the proposed body worn cameras that we have in this video compilation.**

(Emphasis added).

The court advised counsel that “the jury doesn't see evidence until a proper foundation has been made.” The court further inquired:

THE COURT: You are asking me to allow the jury to watch a video that has not been introduced into evidence, has not been authenticated, has not been introduced through any witnesses, that may or may not come in. So, what happens if you show the video and then we start the trial and then that video never comes into evidence?

[ESTATE COUNSEL]: Your Honor, I understand the Court's objection and just for time, I could –

THE COURT: I don't have an objection. Hold on a second. I have no objections. I am not a party to the case. I am just stating what the law is.

[ESTATE COUNSEL]: Your Honor, I understand the Court's position on this, so I won't play the video.

THE COURT: Okay.

Following opening arguments, the Estate began by calling its expert witness, Tyrone Powers, whom the trial court qualified as “a use of force expert” over the City’s objections. Powers testified that he reviewed both dashboard camera and body-worn camera footage “connected to this case[.]” Counsel for the Estate attempted to pull up its compilation of the footage, pre-marked as Plaintiff’s Exhibit 1, and counsel for the City objected. The court reminded counsel for the Estate that “before [Powers could] testify as . . . to what he observed in those videos, those videos ha[d] to come into evidence through some sort of authentication process under the Maryland Rules of Evidence[.]” Counsel responded that the video was a “business record” but admitted that Powers was not the custodian of record for the footage.

Outside the presence of the jury, counsel for the Estate explained to the court that Powers was “getting ready to testify about the facts of what he viewed . . . in order to conclude his opinion.” Counsel stated that the video compilation “is not something that was made in anticipation for litigation” and claimed that the video could come into evidence “under the business records exception” because Powers “was employed by the Prince George’s County State’s Attorney’s Office.” Defense counsel, however, argued that the videos needed to be authenticated by a different witness, and that publishing the videos to the jury in the way the Estate proposed was “fundamentally improper[.]”

The trial court directed the parties to Maryland Rules 5-803(b)(6) and 5-902(b)(12) as potential options for establishing a foundation for the video to come in under the business records exception. The court noted that this did not fully solve the Estate’s issues because Powers “was hired by way of a contract to review a video that was given to him[.]”

rendering him unable to “testify as to the business practices of the State’s Attorney’s Office or . . . as to how they kept those records.” Ultimately, the trial court determined that “Powers [was] not a person who [could] authenticate a video coming from the State’s Attorney’s Office” and “sustain[ed] the [City’s] objection” as it pertained “to any testimony regarding [the] video.”

When testimony continued, counsel for the Estate asked Powers to tell the jury “about the first part of the body[-]worn camera [footage he] viewed.” Defense counsel again objected, this time opposing Powers “testifying as to the content of the video.” The following exchange took place.

THE COURT: . . . **The problem is that the video at this juncture is not coming into evidence.** So you want him to testify as to the contents of a video that is not in evidence.

[ESTATE COUNSEL]: I am asking him to testify (inaudible).

(Pause)

THE COURT: And the basis of an appeal is evidence that is not relevant because it has not come into evidence yet.

[ESTATE COUNSEL]: (Inaudible)

THE COURT: The precursor for all testimony is relevance.

[ESTATE COUNSEL]: Correct.

THE COURT: And so, the problem is that there has been no evidence presented yet or (inaudible) the content is relevant. **How is that testimony relevant when there has been no evidence introduced to support it?**

[ESTATE COUNSEL]: (Inaudible)

THE COURT: Okay. So --

[ESTATE COUNSEL]: (Inaudible)

THE COURT: Hold on a second. Hold on a second. If there were witnesses and evidence presented by (inaudible) prior to him testifying – “This is what happened on this particular day” -- and if he takes the stand, his testimony is now relevant. He then comes in and testifies that, “Yes, I’m an expert in all these things. I reviewed all the witness statements. I (inaudible). I have come to this conclusion.” **But the precursor to everything he has to say has not come into evidence yet, which therefore makes his testimony not relevant.**

The court explained that until the video could be admitted into evidence, Powers’s testimony was “not relevant because there is no testimony for which [sic] him to provide an opinion. There has been no testimony as to any use of force at all.”

Then it was established that Lt. Nemser and PFC Hall were not present at trial, and that the Estate had not issued any subpoenas requiring their presence. Still, Estate counsel objected to their not being present. The trial court reminded counsel that “only in criminal cases are defendants required” to be present absent a subpoena from the plaintiff “because the [c]ourt issues them a summons.” Counsel for the Estate stated that Maryland Rule of Civil Procedure 2-510 “only allows [him] to serve a subpoena on a non-party” and that he did not “see how [he] would have the authority to send a subpoena to an actual party.” In response, the court said, “[a]s an attorney, you have the same powers as any other attorney to have subpoenas issued on your behalf for any witnesses you plan on calling before the [c]ourt.” When counsel for the Estate continued to object to the absence of the defendants, the court stated “parties don’t always show up. They don’t have to. They have attorneys that show up on their behalf.”

Counsel for the Estate returned to the issue of Powers’s testimony and suggested that the video could come in as a statement by a party opponent. The court disagreed,

explaining that the statements in the video footage were reviewed *by* Powers, and not statements he witnessed personally. Following this, the Estate decide to rest its case and the City made a Motion for Judgment:

[CITY COUNSEL] All right. Thank you, Your Honor. . . . As to the Plaintiff resting, **obviously we move for judgement. No evidence has been admitted in the case.** Plaintiff has not made any type of prima facie case as to any of the elements of the State constitutional violation. And I think it is pretty clear all three Defendants are entitled to judgement on that basis. There has been literally no evidence admitted in the case.

THE COURT: And your response?

[ESTATE COUNSEL]: No response, Your Honor.

THE COURT: **The Court will grant Motion for Directed Verdict for the defense, being that there has been no evidence.** Plaintiffs have rested. There has been no evidence admitted to establish a *prima facie* case in this matter.

Following the grant of the motion for judgment, the trial concluded. On February 18, 2025, the Estate filed a Motion for a New Trial, which the trial court denied.

The Estate timely noted this appeal.

I. Admissibility of the Estate's Evidence

The Parties Contentions

The Estate assigns error to the trial court's decisions related to the admission of evidence at the trial. First, the Estate argues that the trial court abused its discretion in violation of Maryland Rules of Evidence 5-401, 402, and 403 when the court excluded evidence related to the use of force against Shand. The Estate asserts that the trial court violated Rule 5-401 when it did not admit the video evidence relevant to the Estate's excessive force claim. Citing *Graham v. Connor*, 490 U.S. 386 (1989), the Estate further

avers that the exclusion of this evidence denied the jury the “opportunity to assess the totality of the circumstances as perceived by the officers at the time of the incident.”

The Estate also alleges that the trial court violated Rule 5-402 when the court excluded the evidence because it “was necessary to corroborate [] Shand’s encounter with law enforcement officials” and was “needed to determine the [] officers’ state[s] of mind.” Moreover, the Estate contends, “[t]he excluded evidence was not subject to any statutory or rule-based exclusion, nor was it cumulative or otherwise inadmissible. Its exclusion was therefore arbitrary and contrary to the presumption of admissibility for relevant evidence under Md. R. Evid. 5-402.”

According to the Estate, the court also abused its discretion and violated Rule 5-403 by excluding evidence with “substantial” probative value. The trial court should have admitted the evidence, the Estate claims, because the “probative value of this evidence far outweighed any potential for unfair prejudice, and its exclusion deprived [t]he Estate of a fair trial on the merits of its excessive force claim.”

In response, the City asserts that “the Estate utterly failed to present any admissible evidence[.]” The City assigns error, not to the trial court, but to the Estate’s “improper practice” of attempting to introduce a “‘compilation video’ that was never produced in discovery, created by an unknown person, compiled from unknown sources, and for which no evidentiary foundation was ever even attempted to be laid at trial.”

Legal Framework

When tasked with the review of a court’s evidentiary decisions, the standard of review applied by our Court hinges on the issue presented. Our standard of review for

questions of the relevancy of evidence “depends on whether the ‘ruling under review was based on a discretionary weighing of relevance in relations to other factors or on a pure conclusion of law.’” *Parker v. State*, 408 Md. 428, 437 (2009) (quoting *J.L. Matthews, Inc. v. Md.-Nat’l Capital Park & Planning Comm’n*, 368 Md. 71, 92 (2002)). Therefore, when considering the admission of evidence based on relevance,

we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403. . . . During the first consideration, we test for legal error, while the second consideration requires review of the trial judge’s discretionary weighing and is thus tested for abuse of that discretion.

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

When reviewing questions regarding the authentication of the evidence, we “review[] for abuse of discretion a trial court’s determination[.]” *Mooney v. State*, 487 Md. 701, 717 (2024). The same standard applies when this Court reviews “rulings on the admissibility of evidence[.]” *Bernadyn v. State*, 390 Md. 1, 7 (2005). We find an “abuse of discretion [] 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)). In applying the abuse of discretion standard, “absent a showing of abuse of that discretion, [the trial court’s] rulings will not be disturbed on appeal.” *Farley v. Allstate Ins. Co.*, 355 Md. 34, 42 (1999) (citing *White v. State*, 324 Md. 626, 636-37 (1991)).

The relevancy of evidence is governed by Maryland Rules 5-401, 402, and 403. Evidence which has “any tendency to make the existence of any fact that is of consequence

to the determination of the action more probable or less probable than it would be without the evidence” is relevant, Md. Rule 5-401, and any evidence that does not meet that standard is inadmissible. Md. Rule 5-402. Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Md. Rule 5-403.

In considering an excessive force claim, the trier of fact evaluates, in accordance with Fourth Amendment jurisprudence, the reasonableness of a “particular use of force . . . from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396. The United States Supreme Court has instructed that, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-97. This calculus requires the trier of fact to analyze and weigh the evidence presented by the parties to “decide whether an objectively reasonable officer would have used deadly force in the same or similar situation.” *Est. of Blair by Blair v. Austin*, 469 Md. 1, 18-19 (2020).

For the trier of fact to reach this decision, the parties must submit relevant evidence for the trier of fact’s consideration. In excessive force cases, relevant evidence may show the officer’s “motive, intent, and *modus operandi*, as well as [] rebut [the officer’s] testimony that . . . [the officer] followed the various levels of the continuum of force.” *Espina v. Prince George’s Cnty.*, 215 Md. App. 611, 653 (2013), *aff’d sub nom.*, *Espina v.*

Jackson, 442 Md. 311 (2015) (emphasis in original). Evidence showing the type of force used, the severity of the force, and physical results of the force may also be relevant in the consideration of excessive force claims. *See, e.g., Hines v. French*, 157 Md. App. 536, 578 (2004) (holding that “a jury could conclude that [an officer] used excessive force when he pointed his gun at appellant, grabbed her and threw her up against the side of her truck, and slamm[ed] her head into the side of the truck.”) (citations omitted). Ultimately, evidence which assists plaintiffs in their charge to “prove, ‘by a preponderance of the evidence that the officer exceeded the level of force an objectively reasonable officer would use under the same or similar situation’” will also be admitted. *Cunningham v. Balt. Cnty.*, 246 Md. App. 630, 691 (2020) (quoting *Blair*, 469 Md. at 21-22).

Although a party may establish that the evidence the party seeks to admit is relevant, the admission of the relevant evidence is still subject to other limitations, including authentication. As the Supreme Court of Maryland recently summarized,

Maryland Rule 5-901(a) provides that “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Maryland Rule 5-901(b) includes a nonexclusive list of ways to authenticate evidence.^[5] Under Maryland Rule 5-901(b)(4),

⁵ Specifically, Md. Rule 5-901(b) provides:

(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:

(1) Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.

(2) Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by the court or an expert witness with specimens that have been authenticated.

(Continued)

evidence can be authenticated through “[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.”

Irwin Indus. Tool Co. v. Pifer, 478 Md. 645, 667 (2022); *accord Mooney*, 487 Md. at 705.

Our decisional law further elaborates on ways to authenticate video evidence. In *Mooney v. State*, the Supreme Court of Maryland described three primary theories of authentication for video evidence. 487 Md. at 705-06. The first method is “pictorial testimony” by which 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.” *Id.* at 705-06 (quoting *Dep’t of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12,

(4) Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.

(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, based upon the witness having heard the voice at any time under circumstances connecting it with the alleged speaker.

(6) A telephone conversation, by evidence that a telephone call was made to the number assigned at the time to a particular person or business, if

(A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

(B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7). Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, is from the public office where items of this nature are kept.

(8) Evidence that a document or data compilation:

(A) is in such condition as to create no suspicion concerning its authenticity,

(B) was in a place where, if authentic, it would likely be, and

(C) has been in existence twenty years or more at the time it is offered.

(9) Evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.

20-21 (1996)); *see, e.g., Campbell v. State*, 267 Md. App. 248, 306-07 (2025) (describing the authentication of an officer’s body worn camera video during her testimony “regarding the events depicted therein.”), *cert. denied*, 493 Md. 71 (2026). If the party cannot produce a witness with the requisite first-hand knowledge to make such a representation, the evidence may not be admitted in this manner. *Cole*, 342 Md. at 21.

Next, “under the ‘silent witness’ theory of authentication, a video can be authenticated where there is ‘an adequate foundation assuring the accuracy of the process producing’ the video.” *Mooney*, 487 Md. at 706 (quoting *Cole*, 342 Md. at 21). The Supreme Court in *Mooney* held that video evidence may also be authenticated through circumstantial evidence. *Id.* at 728. In sum, the Court explained that “[v]ideo footage can be authenticated in different ways under the rules governing authentication, including through the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1), circumstantial evidence under Maryland Rule 5-901(b)(4), or a combination of both[.]” *Id.* at 730. Ultimately, “for a trial court to admit a video, 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. The *Mooney* Court acknowledged that the above-described methods are *not* the *only* ways to authenticate video evidence. *Id.* at 728-29. A video may also be authenticated as a business record “where . . . the exhibit satisfies the requirements for the ‘business record’ hearsay exception under Md. Rule 5-803(b)(6).⁶ One of those requirements is

⁶ Md. Rule 5-803(b)(6) states as follows:

(6) A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if

(Continued)

establishing that ‘the regular practice of [the] business was to make and keep the’ exhibit.”
Id. at 706, n.1.

In short, excessive force claims require the parties to offer evidence which provides the trier of fact with information regarding the circumstances surrounding the actions of the officer. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). Even if the evidence offered is relevant to the excessive force claim, establishing relevance is not a green light to admittance. The evidence must also abide by other rules of evidence, including the rules governing authentication as determined by the court hearing the evidence. *See* Md. Rule 5-101 (“[T]he rules in this Title apply to all actions and proceedings in the courts of this State.”). When relevant evidence runs afoul of other evidentiary rules, the trial court’s decision to not admit that evidence will not be disturbed by the appellate court unless we find the decision to be “beyond the fringe” of “minimal[] acceptab[ility.]” *Freeman v. State*, 487 Md. 420, 429 (2024).

(A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis,

(B) it was made by a person with knowledge or from information transmitted by a person with knowledge,

(C) it was made and kept in the course of a regularly conducted business activity, and

(D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, “business” includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Analysis

It is the role of the trial court to make sure *all* the rules of evidence are followed so that, in the case of a jury trial, the jurors only rely on relevant evidence that is properly authenticated and admitted. When the trial court below declined to admit the Estate's video compilation, the court acted within its discretion to enforce the rules of admitting evidence in Maryland.

The Estate's briefing focuses on the potential relevancy of the body-worn camera video counsel offered at trial, but upon reviewing the record before this Court, we conclude the Estate's arguments are misdirected. We do not question the potential relevancy of the body-worn camera footage, but, like the trial court below, we identify numerous errors in the way the evidence was presented. As provided in Maryland Rule 5-402, relevant evidence is admissible "[e]xcept as otherwise provided by" other authorities, including the Maryland Rules of Evidence. *Washington Metro. Area Transit Auth. v. Washington*, 210 Md. App. 439, 450-51 (2013) (quoting Md. Rule 5-402). The trial court correctly advised counsel for the Estate that the footage needed "to come into evidence through some sort of authentication process under the Maryland Rules of Evidence[.]"

Under the circumstances, the trial court was correct in preventing the footage coming in as a business record. *See* Md. Rule 5-803(b)(6). Powers's contract with the State Attorney's Office did not put him in the position to speak to the authenticity of the body-worn camera footage he reviewed to form his opinion. More importantly, the record does not establish who created the video compilation for the Estate. We agree with the

City that allowing Powers to authenticate the video would have been “fundamentally improper[.]”

The Estate’s argument to admit the footage as a statement by a party opponent was similarly inapplicable because, as counsel for the City rightly pointed out, the footage used in the video compilation contained more than just party statements. Even if the only statements on the video compilation were statements by a party opponent, the fact that those statements fall under a valid hearsay exception does address the threshold authentication issue. Before its admission as substantive evidence, counsel is still required to authenticate the video compilation. Accordingly, we hold that the trial court did not abuse its discretion in sustaining the City’s objection to the admission of the video compilation because the Estate did not properly authenticate the video as required under the Maryland Rules of Evidence and applicable decisional law.

II. Admissibility of the Estate’s Expert Witness Testimony

Parties’ Contentions

The Estate also claims that the trial court’s decisions violated Rule 5-703 because it prevented it from presenting its expert’s testimony based on the Estate’s video compilation of body-cam footage. In support of its argument, the Estate draws parallels between this case and *Cooper v. State*, 434 Md. 209 (2013). In *Cooper*, the Supreme Court of Maryland held that the testimony of an expert DNA analyst based on the report of an unavailable DNA analyst whom the expert supervised was properly admitted because the report was unprivileged, trustworthy, and reasonably relied upon by the expert. 434 Md. at 230-31. As in *Cooper*, counsel offers, the evidence reasonably relied upon by the Estate’s expert to

form his opinion should have been admitted by the trial court because the videos were unprivileged and trustworthy. Moreover, “[t]he Estate’s efforts to present its case were thwarted not by any deficiency in its approach,” avers counsel for the Estate, “but by the trial court’s erroneous evidentiary and procedural rulings.”

In its briefing, the City points to case law, *e.g. Alban v. Fiels*, 210 Md. App. 1, 21 (2013), specifying that an expert’s opinion must be based operative facts proved by admissible evidence. The City claims that the Estate sought to provide expert testimony without the necessary evidentiary support in direct conflict with established evidentiary standards. Accordingly, the City asserts that the “trial court correctly precluded” the Estate’s expert from offering this testimony based on the video compilation absent the sufficient foundation.

Legal Framework

The admission of expert witness testimony is “reviewed under an abuse of discretion standard.” *Frankel v. Deane*, 480 Md. 682, 701 (2022). This Court “will not affirm a decision within the discretion of the trial court if the judge acts in an arbitrary or capricious manner or beyond the letter or reason of the law.” *Id.* (quoting *Rochkind v. Stevenson*, 471 Md. 1, 11 (2020)).

Expert witness testimony is admitted per the standard laid out in Md. Rule 5-702:

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 bases of expert witness testimony are provided by Md. Rule 5-703:

(a) An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(b) If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

The primary purpose of expert testimony is to “give the jury assistance in solving a problem for which their equipment of average knowledge is inadequate.” *Radman v. Harold*, 279 Md. 167, 169 (1977). In providing this assistance, our courts require “[a]n adequate factual basis for expert testimony . . . so that the testimony ‘constitutes more than mere speculation or conjecture.’” *Roy v. Dackman*, 445 Md. 23, 42 (2015) (quoting *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 478, *as supplemented on denial of recons.*, 433 Md. 493 (2013)); *see also State Dep’t of Health v. Walker*, 238 Md. 512, 520 (1965) (explaining that “[t]he facts upon which an expert bases his opinion must permit reasonably accurate conclusions as distinguished from mere conjecture or guess.”). We measure the adequacy of the factual basis by analyzing “two subfactors: (1) an adequate supply of data; and (2) a reliable methodology.” *State v. Matthews*, 479 Md. 278, 309 (2022). An acceptable factual foundation for the testimony of an expert witness “may arise from a number of sources, such as facts obtained from the expert’s first-hand knowledge, facts obtained from the

testimony of others, and facts related to an expert through the use of hypothetical questions.” *Roy*, 445 Md. at 43 (quoting *Sippio v. State*, 350 Md. 633, 653 (1998)).

Analysis

In the case of the expert testimony offered by the Estate, the transcript from the trial shows that counsel for the Estate did not lay an adequate foundation to admit Powers’s testimony based on the video compilation. First, there was no other evidence on the record upon which Powers could base his testimony. As detailed above, the Estate was unable to authenticate the video. Authenticating the video in this case was especially important because, as the City noted before the trial court, the video was a compilation of different body-worn camera videos. Any testimony the expert witness may have offered based on the video footage would have been premature for consideration by the jury because, as the trial court noted, the required factual predicate for admission of the video—such as who created the video, when, and how—had not been established. In fact, prior to Powers taking the stand, the Estate had offered no other evidence—no witnesses, no exhibits of any kind—for the jury to consider to support the Estate’s initial attempt have him tell the jury “about the first part of the body[-]worn camera [footage he] viewed.” Without the proper foundation, the testimony offered by Powers was inadmissible. *See Zilichikhis v. Montgomery Cnty., Md.*, 223 Md. App. 158, 185 (2015).

This case is distinguishable from *Cooper* because the expert who testified at trial in *Cooper* was the technical reviewer of the analyst who authored the DNA report at issue, and had reviewed the report before it was released for accuracy and concurred with its results. 434 Md. at 221, 231. As the Supreme Court of Maryland observed in *State v.*

Miller, the expert in *Cooper* “relayed the conclusions that she drew before she signed off on the report, based on her independent review of the same data upon which Mr. Herbert relied to draft the report.” 475 Md. 263, 291 (2021). Although the record on appeal reveals that the trial court attempted to explain the issue to counsel and provided opportunities for the Estate to correct course, the Estate was unable to provide the necessary factual foundation. Accordingly, we hold that the trial court properly exercised the discretion afforded to it under the Maryland Rules of Evidence and our jurisprudence to prevent the admission of irrelevant evidence.

III. Enforcement of the Stipulation

Legal Framework

We review a court’s enforcement of stipulations between parties *de novo*. See *Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 137 (2000) (applying a *de novo* standard when determining ambiguity of stipulation). Parties “may make stipulations concerning the trial that do not contravene requirements of the law or rules of court.” 83 C.J.S. Stipulations § 39. Stipulations between the parties in an action have “all the binding force of a contract[.]” *C & K Lord, Inc. v. Carter*, 74 Md. App. 68, 94 (1988), and are “based on mutual assent and interpreted to effectuate the intent of the parties.” *State v. Broberg*, 342 Md. 544, 558 (1996); see also *Bloom v. Graff*, 191 Md. 733, 736 (1949); 83 C.J.S. Stipulations § 39 (“Agreements and stipulations made in a pretrial order are binding on the parties and control the subsequent course of the suit.”). A “stipulation may be abrogated or abandoned or its provisions waived by the acts of the parties.” *Peddicord v. Franklin*, 270 Md. 164, 175 (1973).

We acknowledge, however, “that all stipulations are not necessarily binding *on the courts* under all circumstances and, under the circumstances of a particular case, a court may be justified in disregarding a stipulation.” *Id.* at 174-75 (emphasis added). The “good cause” justifications for a court to ignore a stipulation between the parties are “frequently grounds which would justify the setting aside of a contract such as mutual mistake, fraud, invalidity and the like[.]” *Id.* at 175.

Analysis

In this appeal, the Estate assigns error to the trial court for not enforcing a putative pretrial agreement between the parties. In our examination of the trial transcript, however, we find that the Estate merely alluded to the existence of some kind of agreement between the parties in its assertion that the video evidence had “already been authenticated” based upon the lack of “objections to any of the proposed body[-]worn camera[.]” footage included in the pretrial statements. When the trial court asked how the video had already been authenticated, the Estate did not provide the court with the specific details as to a stipulation regarding admissibility or authentication. Nor did the Estate identify the specific pretrial statement to which it may have been referring for the trial court’s consideration.⁷ Further, counsel for the Estate did not explain on the record before the trial court his reliance on the stipulation. Without any argument or evidence from the parties

⁷ The record extract prepared by the Estate in anticipation of this appeal includes only the City’s amended pretrial statement. At oral argument before this Court, counsel for the Estate confirmed that he relied upon the stipulation in the City’s amended pretrial statement.

regarding a stipulation, the trial court did not have the opportunity to consider, much less enforce, any such agreement between the parties.⁸

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

⁸ Even if City's pretrial statement reflected a stipulation between the parties, it is not likely, as the City points out in its briefing, that the stipulation would have governed the authentication and admission of the evidence in question. The City's pretrial statement requests the parties to stipulate to audio and video "produced in discovery." The video compilation created by the Estate was not produced during discovery.