Circuit Court for Montgomery County
Case No. 131911

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 87

September Term, 2018

RAGHBIR SINGH

v.

STATE OF MARYLAND

Berger,
Woodward,*
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 20, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the adoption of this opinion.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Raghbir Singh was convicted by a jury the Circuit Court for Montgomery County of a single count of second-degree burglary, the result of the breaking and entering and theft of money from the Palm Beach Tan salon in Rockville, Montgomery County.[1]

On appeal, Singh presents five issues for our consideration, which we have recast for brevity and clarity.[2]

Did the trial court err:

1. in the admission of lay opinion evidence;

2. in the admission of evidence of his past purchase and use of drugs;

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[1] Singh was sentenced to ten years, all but three years suspended.

[2] In his opening brief, Singh asks:

1. Whether the circuit court erred in admitting the identification of Singh by his gait when (a) Plotas lacked personal familiarity with Singh, (b) the video was of such poor quality that Plotas was in no better position than the jury to identify the person on the video, and (c) the identification did not meet the criteria for lay opinion established by Maryland Rule 5-701.

2. Whether the circuit court erred in admitting evidence of Singh's past purchase and use of drugs over Singh's repeated objections when such evidence was overwhelmingly prejudicial and, at best, minimally probative.

3. Whether the circuit court erred in denying Singh's objections to the prosecutor twice improperly shifting the burden of proof to Singh during closing argument.

4. Whether the circuit court erred when it denied the motion to suppress Singh's statements to the police on January 26, 2017, even though the police had not provided a *Miranda* warning.

5. Whether the circuit court erred in denying the motion for judgment of acquittal when the evidence was insufficient to prove beyond a reasonable doubt either that there was a breaking or that Singh was the perpetrator of the crime.

3. in overruling his objections to the State's remarks in its rebuttal closing argument;

4. in denying his motion to suppress statements he made to police; and

5. in denying his motion for judgment of acquittal?

For the reasons that follow, we shall affirm the judgment of the circuit court.

BACKGROUND

For context, we provide a brief factual background of the events surrounding the underlying charge. Further details related to the trial court's proceedings and rulings will be supplemented as we discuss each of the challenges presented.

On the morning of January 16, 2017, Mary Plotas, an employee of Palm Beach Tan, a tanning salon located in Rockville, discovered while performing the opening procedures that there was no money in the salon's safe, as there should have been from the previous night's closing. The salon manager, Katya Ftomova, and the area manager, Michelle Tiedemann, were notified and the security camera video recording was reviewed. The police were contacted, and Tiedemann provided them with a copy of the security camera video, a list of current employees and potential suspects, and photographs she had taken of suspicious text messages between an employee, Amy Bormel, and Singh, Bormel's boyfriend at the time. Police spoke with Bormel about the incident which then led them to call Singh and to invite him to come to the station voluntarily and speak with them the following day.

On January 26, 2017, Singh met with Detectives Jason Plunkett and Sheri Rule, and spoke with them for approximately 45 minutes, answering their questions and providing

his whereabouts on the night of the crime. He also gave his explanation of the questioned text messages exchanged between Bormel and himself, discussing the need for money and various crimes they could commit to get money. During the interview, Singh disclosed that both he and Bormel were recovering heroin addicts, who were prescribed Suboxone to aide in their recovery, which they would also occasionally buy on the street to supplement their allotted prescription. At the end of the interview, the detectives requested, and Singh consented to, the search of his cell phone, which he left with the detectives for their use, to be retrieved at a later time. Singh was free to leave and did not return to retrieve his phone from police. On April 26, 2017, Singh was arrested and charged with the burglary of the tanning salon.

DISCUSSION

1. Lay Opinion Identification

The intruder was seen on the salon's interior security camera video, from which the identification of Singh was made. The in-court identification was made by Mary Plotas, an employee of Palm Beach Tan. Plotas identified Singh on the video by reference to his unusual gait.

Singh asserts:

> The identification was inadmissible because (a) Plotas lacked personal familiarity with [him], (b) the video was of such poor quality that Plotas was in no better position than the jury to identify the person on the video, and (c) the identification did not meet the general criteria for lay opinion established by Maryland Rule 5-701.

The State responds that Singh's challenge to the admission of the identification has not been preserved, which Singh recognizes and preemptively addresses, asserting that he

had made a general objection to the admission of the identification evidence, thereby allowing him to now argue any grounds for its inadmissibility.

As the State points out, Singh's "general objection" to the lay opinion identification came only after a lengthy discussion concerning a belated out-of-court identification discovery violation.[3] The security camera video had been previously admitted into evidence through the salon's area manager, Michele Tiedemann. At that time, the objection asserted only a lack of foundation for admission of the security video.[4] With respect to the identification evidence, the court ruled: "So, if you want me to exclude the pretrial identification, I'll exclude the pretrial identification, but that does not make her in Court [sic] identification from looking at a video and her saying that she can identify him inadmissible because there's absolutely nothing suggestible [sic] about the procedure that I've heard about."

Based on its contemplation of the testimony from the *voir dire* of Plotas and Detective Plunkett, the court explained: "[Plotas] says, I know who did it and [the police]

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[3] The issue of the pre-trial identification first came in the form of an oral motion *in limine* on the morning of trial, in which Singh argued only as to the State's belated disclosure that Plotas identified Singh from the security camera video based on his unusual gait. The court denied the motion, but precluded the State from mentioning the identification in its opening statement. At the same time, the court held the matter for reconsideration when the witness was called at trial.

[4] Singh also asserts that the video ought not to have been admitted because the image was "hopelessly obscure" and was "blurry." However, that ground was not argued below – Singh objected only on the basis of authentication – and is unpreserved. "'[W]hen specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.'" *Handy v. State*, 201 Md. App. 521, 537 (2011) (quoting *Klauenberg v. State*, 355 Md. 528, 541 (1999)).

don't ask who did it, it makes absolutely no sense which strongly suggests to me, that the officer's recollection of what occurred is superior to her recollection because she's demonstrated she doesn't have a good recollection." The court concluded: "I find, as a matter of fact, that the witness [Plotas] did not tell the police about it [her identification of Singh from the video]."

We have said, in order "[t]o preserve an assignment of error based on an evidentiary question, a party is required to bring its position to the attention of the trial court so that the court may pass upon any objection, and possibly correct any errors." *Jones v. State*, 213 Md. App. 483, 493 (2013) (citing *Robinson v. State*, 404 Md. 208, 216–17 (2008)). As such, the "failure to raise a particular argument … acts as a waiver of the argument for the purposes of appellate review." *Id. See also* Rule 8-131(a).

Notwithstanding waiver, Maryland Rule 5-701 provides that a "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." Rule 5-701. As we have recently explained, "'[t]he rationale for the standard set by [Md.] Rule 5-701 is two-fold: the evidence must be probative; in order to be probative, the evidence must be rationally based and premised on the personal knowledge of the witness.'" *Paige v. State*, 226 Md. App. 93, 125 (2015) (alteration in *Paige*) (quoting *State v. Payne*, 440 Md. 680, 698 (2014)).

Assuming, *arguendo*, that Singh's general objection was sufficient to satisfy the preservation requirement, we find no error in the court's admission of Plotas' identification based on Singh's distinct walk.

Singh makes the bald assertion that Plotas was not sufficiently "familiar" with him to make her identification reliable. He provides little guidance as to what degree of familiarity might be required to support a reliable identification, relying primarily on *Moreland v. State*, 207 Md. App. 563 (2012). He asserts that: "How substantial the familiarity is goes to the weight given to the identification, but as a threshold matter, the witness must have *some* familiarity with the person she is identifying." (Citing *Moreland*, 207 Md. App. at 572-73).

Plotas knew Singh from his visits to the salon to see his girlfriend, Bormel, an employee of the salon. She testified that Singh, whom she knew only as Bormel's boyfriend, was present during the closing procedure on three occasions. On those occasions, she observed him watch the key being removed from the drawer, the money being counted and then placed into the safe, and the key being returned to the drawer.

Plotas recalled Singh's gait as "lanky" with a "very long" stride and referred to his unusual gait as a "very distinct walk." Explaining further her familiarity, that: "Just the way that he carries himself I even noticed while we were closing the store, in my terms, it's not funny, it's definitely distinct[.]" She expressed no doubt as to her identification from the video.

Plotas' degree of familiarity with Singh was a question of the weight of the identification, not its admissibility.

2. Reference to Singh's Drug Use

After Singh was developed as a suspect in the burglary, he was twice interviewed by police investigators. In those recorded interviews, in which he was remarkably forthcoming, Singh repeatedly discussed his past purchase and use of illegal drugs. Singh moved, pre-trial, to exclude the introduction of those video interviews by the State. The court denied the motion, as well as Singh's continuing objections as the videos were introduced.[5] Singh now asserts that, even assuming the tapes were probative of motive, they were unfairly prejudicial, in contravention of Rule 5-403.

Relying on *Jones v. State*, 38 Md. App. 432 (1978), he contends that "[g]iven the substantial amount of evidence of [his] alleged motive apart from the statements regarding [his] drug use, there was no need for additional cumulative evidence of motive, particularly when the statements were extremely prejudicial."

In its ruling on the motion *in limine*, the court determined:

> So, being addicted isn't a crime and none of the discussions they discuss according to the State's proffer, committing all sorts of crimes at or about the time the crime occurs, but none of those are crimes, I mean, have such discussions are not in and of themselves crimes. So, it's really not another crimes analysis.

[5] The court reserved on the issue of redacting all references to heroin. When the videos were offered at trial, the court revisited the issue, determining that it would be impossible to redact such references. However, the court undertook a line-by-line review of transcripts of both interview recordings, permitting the thorough discussion of particular statements to be redacted for various asserted objections. The court allowed admission of the two interviews subject to the redactions it ordered pursuant to those discussions, which included the redaction of some references to Singh's drug use. In addition to the redactions, the court provided cautionary instructions to the jury, explaining the purpose of the redactions and that the statements of the detectives, seeking to elicit a confession, in the interviews were not being offered for their truth.

* * *

> So, with respect to this issue, leaving aside whether or not these statements could be redacted to remove the reference to heroin, you're talking about, at worst, it's bad conduct, it's not other crimes evidence based on what has been proffered to me and what it seems to me makes this uniquely probative is here you have statements, allegedly, by [Singh] himself, who, in effect, is saying to somebody else, that because of this problem I have, I am prepared and willing to commit crimes to solve my need for money.
>
> So, I think, in that, it's a very unusual circumstance, very rare circumstance, where it, the evidence, itself, demonstrates that the addiction is not only potentially a motive for this particular crime, but [Singh], himself, has expressed that he is prepared to contemplate committing all sorts of different crimes to solve this problem that he has, in an expression by him, that he will consider that alternative.

In concluding its ruling, the court said:

> So, the motion in limine as to the statements that he makes, including the fact that he's addicted, that he's in need of money and that he is considering, at least, committing crimes is denied. Leaving aside the issue of whether or not potential statements can be and should be redacted to exclude reference to heroin in particular.
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> * * *
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> And again, in this particular case that it's extremely probative because not only does it provide a motive for the crime, but [Singh], himself, makes statements that basically because of the desperate need for money, he's willing to contemplate committing crimes to solve the need for money, it makes it uniquely probative and it's a case where there really is no other evidence that it is [Singh] who committed the crime other than it appears to be an inside job from what the proffer is. But he's not an employee there, but he dates an employee and that, now, apparently, there may be a witness who will say, as I've said, that somebody in the videotape who is masked and with gloves on is the defendant because of the way they walk.
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> So, I've listened to the motion. I understand it. It's well taken, but I, frankly, under these circumstances, disagree with your analysis and think because of the unique nature of this particular case and because of the expressed link that the defendant, himself, makes between the addiction and

> the willingness to go so far as to commit crimes to do it and it occurs a couple of days before this crime, that under the circumstances, it is probative and that the probative value far outweighs any prejudicial effect.

The "[a]dmissibility of prior bad act evidence is limited to situations in which the evidence is 'specially relevant' to a contested issue, beside an accused's propensity to commit crime, 'such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.'" *Burris v. State*, 435 Md. 370, 386 (2013) (quoting Rule 5–404(b)). "In starting from a point of exclusion of prior bad act evidence, a trial court must weigh both the '*necessity for* and probativeness of the evidence … against the untoward prejudice which is likely to be the consequence of its admission.'" *Id*. at 392–93 (quoting *State v. Faulkner*, 314 Md. 630, 640-41 (1989)).

As the State correctly points out, "the evidence established a direct link between Singh's drug use and the motive for the burglary," and because of that, "evidence that Singh was a drug user was specially relevant under Rule 5-404(b)."

We leave to the discretion of the trial court questions of the admissibility of evidence. *Mines v. State*, 208 Md. App. 280, 291 (2012) (citations omitted). The discretion to be exercised by the trial court includes, where presented, the weighing of the probative value of the offered evidence against potential unjust prejudice to the defendant. *Burris*, 435 Md. at 392-93.

On this record, we are satisfied that the trial judge conducted a thorough balancing exercise before admitting the challenged evidence. We find no abuse of discretion.

3. Burden Shifting

Next, Singh asserts that "[t]he circuit court erred when it overruled [his] objection to the [State's] remarks during closing argument because (a) these remarks improperly shifted the burden of proof onto [him] and (b) the State cannot show beyond a reasonable doubt that these remarks did not prejudice [him]." (Citing *Donaldson v. State*, 416 Md. 467, 473-74, 500-01 (2010)). He contends that "the State improperly suggested that [he] should have conducted his own investigation into other suspects, and that even though [he] 'ha[d] his own investigator … there was no … proof' offered by [him] that other suspects committed the crime." (Quoting the December 5, 2017 Trial Transcript at 241). Further, he asserts that the State "made two separate improper remarks that completely eviscerated [his] defense."

While Singh, in his brief, offers excerpts from the transcript of the prosecutor's rebuttal closing arguments, we provide a more complete recitation of the particular exchange:

> [THE STATE]: Ladies and gentlemen of the jury, a lot of what counsel just argued to you is a bunch of what ifs, right, one or the other. He just got up in front of you and asked you to say, well, Detective Plunkett is just, he's a trained investigator and he should be the one who should tell you about the law, but, oh wait, Detective Plunkett didn't do this, didn't do that, didn't do his homework, didn't follow-up. Nothing could be further from the truth because today what did we learn? We learned that the defense, Mr. Singh, has his own investigator. And while it is the State's burden, there was no --
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> [DEFENSE]: Objection.
>
> [THE STATE]: -- proof --
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> THE COURT: Overruled. But, ladies and gentlemen --

[THE STATE]: -- at, not --

THE COURT: Wait one second. The State does have the burden of proof, but with that understanding, I'll permit the reference.

[THE STATE]: And no photos were introduced about all these other --

[DEFENSE]: Objection.

[THE STATE]: -- suspects.

THE COURT: Hold on one second. Come on up.

(Bench conference follows:)

[THE STATE]: Your Honor, this is absolutely fair.

THE COURT: Just wait one second. Go ahead.

[DEFENSE]: (Unintelligible 3:57:30.)

THE COURT: No, I don't think it's, it's not, specifically reminded the jury that you have, I'm sorry, that the State has the burden of proof. You do not have the burden of proof. But for them, I think, the comment on the circumstances that there be, because otherwise I mean your argument is that they have to prove the innocence of every other suspect as part of every case. So I think it's a fair comment in light of your argument, but I have reminded the jury that they have the burden of proof and they can't say, they can't shift the burden to the defense.

[DEFENSE]: I meant the State is saying that we didn't do something, like introducing photos, that's shifting the burden to us to introduce photos.

[THE STATE]: It's not burden, Your Honor, this is rebuttal. Counsel literally just went through all these things the State didn't do when they just put on, they didn't have to, they put on an investigator.

THE COURT: At some point it can be understood as shifting the burden. I think the case law is clear on that, but I don't think in light of the defense argument that was presented, in light of the fact that you elected to present this testimony, but it's unfair under those circumstances so far as it goes, but at some point --

> [THE STATE]: I'm not going to --
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> THE COURT: -- you can push it too far.
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> [THE STATE]: -- belabor it, but I just want to address it.
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> THE COURT: You could potentially shift the burden, but I will remind them that the State has the burden of proof, not the defense.
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> (Bench conference concluded.)
>
> THE COURT: Ladies and gentlemen, as I said, with the understanding, keep in mind the State has the burden of proof, not the defense. But keeping that in mind, the State may, nevertheless, present this argument to you in light of the defense in closing.

Following the court's curative instructions to the jury, the State proceeded with its rebuttal, moving on to the testimony of Singh's investigator and the text messages between Singh and his girlfriend. No other objections were elicited.

It is evident throughout his closing argument that Singh was focused on attacking the adequacy of Plunkett's investigation, equating it with poor performance on a homework assignment in school. Singh's counsel charges that "it's not just speculation in this case that inadequate police work could lead to a wrongful charge…. because this isn't a case where we don't know … who the other suspects are…. We actually have names." Counsel characterized that list of names as the detective's homework assignment, reiterating throughout closing that "[h]e didn't do [his] homework[,] [h]e didn't get the gold star." Later, counsel then elaborated on a few potential suspects from the list of names provided to the police by the salon, for each, offering to the jury varying iterations of his evaluation:

> Blake Overmiller, that's a name that you'll see on this list because he was the boyfriend of … an employee who had a key, who had the alarm code. He's somebody that we don't seem to know much about because the

> detectives never called him…. Do we know if he matches the description of the person in the video? Do we know if he has any other motives? Do we know where he was on that night? We don't know any of that because there was never any investigation. But we do know that he had an opportunity because he was dating somebody who worked at the Palm Beach Tan.
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> [H]e's pretty much in the same position that Mr. Singh was in, dating somebody who currently worked at the Palm Beach Tan who had a key, who had the alarm codes. The difference between Mr. Singh and Blake Overmiller is that the detectives decided to call Mr. Singh first …. He's a drug addict…. And that caused the officer, the detective, to jump to a conclusion.
>
> But what, [sic] the detective had called Blake Overmiller, and Blake Overmiller is not a drug addict, but has actually a history of theft or burglary. What if there's something that connects Blake Overmiller to the Palm Beach Tan on that Sunday night? It's entirely possible. It's impossible to know at this point because the detective completely didn't do his job.

Singh's criticism of the State's investigation escalated throughout his closing to include statements that, "the detective completely didn't do his job[,]" that "[t]here has never been a case where a detective did less detective work than this one[,]" and that "if the State really believed in their case, if the detectives really believed in their case, there are many things that they could have done to attempt to get more information to make your job easier…. [but] [t]hey didn't do it for whatever reason."

We review challenges to allegedly prejudicial closing remarks under the following standard:

> Not every improper remark, however, necessarily mandates reversal, and [w]hat exceeds the limits of permissible comment depends on the facts in each case. We have said that [r]eversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused. This determination of whether the prosecutor's comments were prejudicial or simply rhetorical flourish lies within the sound discretion of the trial court.

> On review, an appellate court should not reverse the trial court unless that court clearly abused the exercise of its discretion and prejudiced the accused.

Degren v. State, 352 Md. 400, 430–31 (1999) (internal quotations and citations omitted). *See also Martin v. State*, 165 Md. App. 189, 208 (2005) (quoting *Degren*, 352 Md. at 431).

The comments challenged by Singh were made in the State's rebuttal closing argument, in response to criticism about the investigation made by Singh's counsel in his closing argument. In response to Singh's objections, the court gave two curative instructions, reinforcing the State's burden of proof. *See Quinones v. State*, 215 Md. App. 1, 18 (2013) (recognizing that "'generally cautionary instructions are deemed to cure most errors, and jurors are presumed to follow the court's instructions ….'" (quoting *Carter v. State*, 366 Md. 574, 592 (2001))). Following that ruling, the State moved on from those questioned comments and did not revisit the subject. To be clear, prior to closing arguments, the court gave thorough and explicit jury instructions as to the burden of proof, in accordance with the Maryland Criminal Pattern Jury Instructions (MPJI-Cr), stating:

> "With respect to the presumption of innocence and reasonable doubt, which I discussed with you earlier, the defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.
>
> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving beyond a reasonable doubt each and every element of the crime … charged. The elements of a crime are the component parts of the crime about which I will instruct you shortly. This burden remains on the State throughout the trial. The defendant is not required to prove [his] … innocence[.] [H]owever, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty[.] [N]or is the State required to negate every conceivable circumstance of innocence."

(Quoting MPJI-Cr 2:02 – Presumption of Innocence and Reasonable Doubt (2016)).

In *Mitchell v. State*, 408 Md. 368 (2009), the Court of Appeals determined that "the prosecutor's remarks during rebuttal argument constituted a reasonable reply to arguments made by defense counsel in closing argument." 408 Md. at 393. As in the instant case, in his closing argument, Mitchell's counsel remarked about the absence of several witnesses and the weakness of the State's case. *Id*. at 375-77, 385-86. In its rebuttal argument, the State noted that defense also had subpoena powers and could have called the missing witnesses. *Id*. at 377, 389-90. Concluding that the burden had not been shifted, the *Mitchell* Court held that "the prosecutor's remarks calling attention to [the defendant's] subpoena power were a narrow and isolated, justified response to defense counsel's 'opening the door[.]'" *Id*. at 392.

4. Suppression of Police Interview

During the investigation, Singh was first interviewed by Detectives Plunkett and Rule at the police station for approximately 45 minutes on January 26, 2017. Singh attended the interview voluntarily, having driven himself to the station in response to an invitation from Plunkett. At the outset, he was told by Plunkett: "I can guarantee you are walking out of here today[,]" a point which was supported later in the interview when that detective told him, "there's no charges against you." Singh did leave the police station at the conclusion of the interview.

Singh challenges the denial of his motion to suppress statements made during the police interview, asserting that the interview was custodial and that he had not been given

Miranda warnings.[6] He contends that the questioning constituted a custodial interrogation since he was "questioned for approximately forty-five minutes at a police station by two officers with the intent of eliciting incriminating statements." Further, he contends that he should have been given *Miranda* warnings because the "totality of the circumstances demonstrates that the interrogation … was custodial."

Maryland Rule 4-252(h)(2)(c) provides, in relevant part, that "[a] pretrial ruling denying the motion to suppress [evidence] is reviewable … on appeal of a conviction." This is so even if no contemporaneous objection is made at trial. *See Jackson v. State*, 52 Md. App. 327, 331 (1982). *Accord Hof v. State*, 337 Md. 581, 607-09 (1995) (footnotes omitted) (citing *Jackson*, 52 Md. App. at 331). "The entitlement of a criminal defendant to claim the Fifth Amendment privilege generally and the establishment of the constituent element of compulsion specifically are ultimate constitutional facts with respect to which we are enjoined to make our own independent *de novo* judgment, without regard to any ostensible concession." *Smith v. State*, 186 Md. App. 498, 522–23 (2009) (citations omitted), *aff'd*, 414 Md. 357 (2010).

The record reveals that the court undertook a thorough review of the facts developed at the suppression hearing, and devoted particular attention to the question of whether the interview was custodial. The court found that: the police called Singh and "invite[d]" him to come into the station for an interview after having interviewed his girlfriend about the burglary; Singh voluntarily drove to the police station the next day; he was interviewed by

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

two detectives; he was advised that the interview was being recorded; he was told that he would be going home that day; he was not in fact arrested until more than a month later; he was not physically restrained during the interview; the police "were dressed in plainclothes" and had their duty weapons holstered; the police had used "conversational tone[s]" throughout; and the interview "lasted about 45 minutes."

The court explained:

> There is no doubt in my mind that Mr. Singh as using a reasonable person standard felt free to break off the questioning, the discussion, the whole interaction because he made it clear he was in a time crunch to get to his next obligation that day, which was a job interview. Nobody said you're not going to any job interview or this is going to take two more hours so maybe you want to call them and tell them you'll be late. None of that happened. In fact, what happened was this detective on the screen, Detective Rule, said well, yeah. We need to get you on your way so that you are not late. That's when the discussion about he needed to get home and get cleaned up to go to this interview took place.
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> So he did leave freely. He was not detained or arrested….

When reviewing the denial of a motion to suppress evidence, we rely only on the evidence developed at the suppression hearing. *Fields v. State*, 203 Md. App. 132, 140 (2012) (explaining that "[w]e review the circuit court's ruling on a motion to suppress based solely on the record developed at the suppression hearing, viewing the evidence and reasonable inferences drawn therefrom in the light most favorable to the prevailing party"). We accept the suppression court's findings of fact, unless clearly erroneous, but consider questions of law *de novo*. *Smith*, 186 Md. App. at 522–23.

Applying those standards to the record of the suppression hearing, including the video recording of Singh's interview, we find support for the suppression court's finding

of fact. Moreover, we accept the sound reasoning of the court in its conclusion that Singh was not in custody at the time of the police interview.

5. Sufficiency of the Evidence

Singh's final challenge is to the sufficiency of the evidence generally. He asserts that the State failed in its proof of a "breaking" and further in its proof that he was the perpetrator. Singh contends that "the State failed to introduce sufficient evidence that (1) there was a breaking or (2) that [he] was the individual who committed the crime." He contends as well that the court erred in its denial of his motions for judgment of acquittal.

To support his arguments as to the lack of evidence for the element of "breaking," Singh proffers that "[t]here were no pry marks on the door[,]" and that "no one testified that the door was closed[,]" only that a manager did admit that "the back door could have been propped open[.]"

As to the sufficiency of the evidence that Singh was the perpetrator, he asserts that he had successfully introduced evidence that "the perpetrator was roughly six inches shorter" than he is, and he reasserts that "Plotas's purported identification of [him] lacked any factual predicate."

The State initially suggests a lack of preservation of the sufficiency issue, but does not pursue that argument in its brief. Rule 8-504(a)(6). We need not review any matter that is not adequately briefed. *See Anne Arundel Cty. v. Harwood Civic Ass'n, Inc*., 442 Md. 595, 614 (2015) (explaining that "'arguments not presented in a brief or not presented with particularity will not be considered on appeal'" (quoting *Klauenberg*, 355 Md. at 552)). Hence, we shall consider that Singh's challenge is ripe for our review.

The only argument by defense counsel in support of his initial motion for judgment of acquittal related to the element of "breaking." In moving for judgment of acquittal, Singh averred that:

> The State hasn't shown the breaking. You know, that is a, an element of the offense that [sic] State has to prove and it hasn't been proven in this case. Now I will grant this because I know that the State is going to bring this up, a breaking can be however slight, something moved out of the way can be a breaking, opening a window can be a breaking, turning a doorknob and opening a door can be a breaking, but they have to prove that there was a breaking.
>
> And what we have in this case is the State has not called the person who knows whether the door was closed and/or locked the night that the incident occurred and that is Ashley Bebe. We've heard two witnesses say that that was the person who closed that might. We also -- and, and I think that alone would be enough to, to create a serious problem, but in addition to that, we heard that, Ms. Tiedmann [sic] say that she did not know if the, if the door had been rigged to stay open or not. So, you know, and that's on top of Ms. Ftomova's testimony that there were problems with the door. This is not an ordinary door that the State, you know, can just assume is closed and/or locked.
>
> If the State wanted to prove this issue, they could have called Ms. Bebe to say I locked up, the door was closed, end of story, but they didn't do that and we have testimony that this door could have been opened at the time of the, of the entry.

The court inquired as to whether there was any other argument to be presented, to which defense counsel responded: "As for the, the motion for judgment of acquittal, that's the only argument." In denying the motion, the court found:

> [T]here's abundant testimony about what the, the practice, the routine was in order to close the store and universally the manager, the assistant manager on this area, the supervisor, have all testified consistently that the practice was you had to make sure the rear door was closed and you closed and locked the front door as well[.]…

* * *

> [I]t's clear from the evidence that you couldn't set the alarm with the back door wide open and even if the back door was rigged as … Tiedmann [sic] said, so that it wouldn't lock, still inferentially you would have to push the door open even though if it was somehow if they had manipulated the lock so that you could, so it wouldn't lock but, nevertheless, it wasn't wide open. I think you could reasonably find beyond a reasonable doubt from the evidence that has been adduced in this case, at minimum, and the person clearly entered from the back according to the surveillance video….
>
> So, clearly, at a minimum, they would have had to push the door open, even if it wasn't locked, to be able to gain entry. So the motion is denied.

When counsel renewed his motion at the close of all the evidence, the court expressly asked if he had "[a]ny grounds other than that previously argued?" To which counsel responded:

> Well, Your Honor, at this point it's, it's a different standard … now I think we're at a stage where we should consider the, the evidence includes Mr. Singh's repeated denials during about two hours of questioning, the fact that his story remains consistent and the fact that there's no direct remaining evidence, no physical evidence, nothing that ties Mr. Singh to this other than, you know, his geographic location and the State's insinuations that because he was a drug addict, but had a motive …. I think the Court should also consider the fact that if we only know about his drug addiction and supposed motive for money from him and by his same statement he said, he didn't have that on the day of this incident because we got money …. So taking all of those facts, I don't think a reasonable fact finder could find proof beyond a reasonable doubt of all the elements of the charge.

In its ruling, the court determined that "there is sufficient evidence before the jury, which if they choose to credit, from which they could find unanimously beyond a reasonable doubt the defendant committed the crime of second-degree burglary, or alternatively, fourth-degree burglary. So the motion is denied."

Maryland Rule 4-324 specifically requires that "[t]he defendant shall state with particularity all reasons why the motion should be granted." Rule 4-324(a). Further, when

a defendant moves for judgment of acquittal at the close of the State's case in chief, he "may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made." Rule 4-324(c). And, "[i]n so doing, the defendant withdraws the motion." Rule 4-324(c). Thus, giving rise to the need to renew the motion "at the close of *all* the evidence." Rule 4-324(a) (emphasis added).

In his renewed motion, Singh waived the issue of the "breaking" element and focused only on the evidence of him being the actual perpetrator.

Notwithstanding Singh's not having clearly articulated a renewed challenge to the sufficiency of the evidence to establish that a "breaking" had occurred, the court's ruling was sufficiently broad to include both the "breaking" and "criminal agency" challenges.

We review the sufficiency of the evidence in the light most favorable to the prosecution and will uphold a conviction if we are satisfied that "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Bordley v. State*, 205 Md. App. 692, 716 (2012) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). *See also*, *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson*, 443 U.S. at 319).

With the incriminating text messages sent between Singh and his girlfriend, coupled with his familiarity with the salon and its closing procedures, and the money problems two days prior to the incident that were tied to his drug addiction, provided evidence sufficient to tie Singh to the crime. In fact, the court had previously admitted evidence of Plotas' identification of Singh from the security video. Furthermore, the testimony of the routine

closing procedures concerning the locking of the front and back doors, the setting of the alarm, and the security video showing the perpetrator entering from the back of the salon, provided sufficient evidence to support a reasonable inference that a breaking had occurred.

We find no error in the court's denial of Singh's motions for judgment of acquittal.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.