Circuit Court for Baltimore City
Case No. 117313016

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0224

September Term, 2019

RAEKWON THORNTON

v.

STATE OF MARYLAND

Friedman,
Beachley,
Wells,

JJ.

Opinion by Wells, J.

Filed: April 17, 2020

A jury empaneled in the Circuit Court for Baltimore City convicted Raekwon Thornton of first-degree murder, conspiracy to commit first-degree murder, and use of a handgun in a crime of violence. The court sentenced him to life imprisonment for first-degree murder, twenty years for the use of handgun in the commission of a crime of violence, and five years for possession of a regulated firearm when prohibited by law. Each of the handgun sentences were to be served consecutively to each other and those sentences were to be served consecutively to the life sentence for murder. Thornton appeals the convictions and raises five questions which we re-print verbatim:

I. Did the trial court abuse its discretion in denying Appellant's motion to suppress the photo arrays and identification testimony of witnesses Robert Bond and Cedric Manson?

II. Did the trial court abuse its discretion in admitting multiple versions of the Seven Day Mart Video?

III. Did the trial court commit reversible error in admitting hearsay testimony by Detective Sean McDonnel under the guise of the open door doctrine?

IV. Did the trial court abuse its discretion by giving the mere presence jury instruction?

V. Did the trial court fail to present sufficient evidence to support Appellant's convictions?

Finding no error, we affirm.

FACTS

On September 4, 2017 at approximately 12:30 p.m., members of the Baltimore City Police Department ("BPD") responded to a call for a shooting near the 7-Eleven at 4401

Belair Road. By the time the police arrived on scene, the victim, Tyrone Ray, Jr., had already been pronounced dead at Johns Hopkins Hospital. He had been shot 24 times.

The crime scene was a grassy area on the side of the 7-Eleven parking lot. There, the police recovered Ray's bloody clothing, a cell phone, crutches, and shell casings. A 911 caller described a white Infiniti with a partial tag reading 497 or 794 leaving the area at the time of the shooting.

Over the next two days, BPD obtained footage from a surveillance camera at the 7-Eleven, from a City Watch camera, and from a few neighboring businesses, including the Seven Day Mart and the Wing It Carry Out. BPD took still images from the 7-Eleven video showing a white Infiniti sedan and two African-American men the police believed were involved in the homicide and disseminated them as a "Be-On-The-Lookout" ("BOLO") flyer throughout the police department. On September 8, BPD released the BOLO and a video clip showing the suspects depicted in the Seven Day Mart surveillance video to the public through various media sources.

As a result of the multimedia release of the BOLO and video clip, two employees of the Department of Parole and Probation, Cedric Manson and Robert Bond, came forward and informed the police that they recognized Thornton from the videos. The police showed both men photo arrays containing Thornton's photograph, and Manson and Bond were able to identify Thornton from the arrays. Thornton was arrested and charged soon thereafter.

Thornton and co-defendant Lamont Kyler were tried by a jury in the Circuit Court for Baltimore City. The centerpieces of Thornton's trial were the surveillance video clips,

the still images derived from them, and the identification of Thornton by Manson and Bond. Thornton was convicted of first-degree murder and related handgun counts. The court sentenced him to life imprisonment for first-degree murder, twenty years for the use of handgun in the commission of a crime of violence, and five years for possession of a regulated firearm when prohibited by law. Each of the handgun-related sentences ran consecutively to each other and to the life sentence. This timely appeal followed.

Additional facts will be supplied as necessary.

DISCUSSION

I. The Motion to Suppress Robert Bond's and Cedric Manson's Out-of-Court and In-Court Identifications

A. The Suppression Hearing

In September 2017, the time that the BPD was seeking the public's help in solving Ray's murder, both Robert Bond and Cedric Manson were employed with the Maryland Department of Parole and Probation as "correctional case management specialists," or probation officers, who worked within the same office. Thornton moved to exclude both the extra-judicial identifications of him that Bond and Manson made after viewing separate photo arrays as well as their in-court identifications made while viewing the Seven Day Mart video clip during the trial.

At the suppression hearing, Bond testified that he saw one of the police video clips on television and believed Thornton was one of the men depicted. Bond knew Thornton because he had supervised him on home detention for several months.

Bond went to Manson and showed him a copy of the video. Manson had been Thornton's probation officer from May to September 2016 and had seen him seven times during this period. Manson testified that Bond sometimes filled-in for him, supervising some of his probationers, such as Thornton, if he was busy. After watching the video, Manson was sure that the person depicted in the video was Thornton.

Manson and Bond reported their discovery to the police. The police then showed Manson and Bond separate photo arrays containing Thornton's photograph from which both men positively identified Thornton. Later, at the suppression hearing, Manson and Bond identified Thornton in open court.

Thornton moved to suppress the photo array identifications arguing that Manson and Bond had only seen Thornton on a few occasions for several minutes each time. Thornton's attorney argued that both of the probation officers had several African-American men on their caseloads, implying that either man could have misidentified Thornton. Thornton's attorney also pointed out that it was Bond who first recognized Thornton, then went to Manson with the fixed belief that Thornton was shown in the police video. Counsel's theory was that Manson was influenced by Bond's certainty that Thornton was one of the suspects. Although Thornton's counsel admitted Bond was not "a state actor," he nonetheless argued that Bond telling Manson, "[t]his is the person you have [on your caseload]" before showing him the video "[was] suggestive."

The State argued that the holdings in *Washington v. State*, 406 Md. 642 (2008), *Moreland v. State*, 207 Md. App. 563 (2012), and *Paige v. State*, 226 Md. App. 93 (2015)

were applicable. According to the prosecutor, Manson's and Bond's identifications were reliable as they both had interactions with Thornton over several months. Furthermore, both men were sure of the identifications. Contrary to what the defense argued, long-term familiarity with the person identified is not required. The State argued there was nothing in either Manson's or Bond's extra-judicial identifications that demonstrated police impropriety requiring suppression.

The suppression court found that there was nothing "impermissibly suggestive about any of [Manson's or Bond's] identifications. There [was] no question about their reliability." The court also found that there was not a "likelihood of any irreparable misidentification." Finally, the court noted that "the basis for the identification was rational…and premised on the personal knowledge of the witness." The court then denied the motion to suppress Manson's and Bond's extra-judicial identifications.

Later, at trial, Manson and Bond offered affirmative, in-court identifications of Thornton. They did so while watching the Seven Day Mart surveillance video clip with the jury.

In this appeal, Thornton claims the court erred in not suppressing Manson's and Bond's out-of-court identifications. Thornton also claims the court erred in not suppressing either Manson's or Bond's identifications at trial.

B. Standard of Review

Admissibility of evidence determinations are reviewed under an abuse of discretion standard. *Johnson v. State*, _____ Md. _____, No. 109, September Term, 2018 (citing

State v. Simms, 420 Md. 705, 724 (2011)) (filed January 31, 2020). "We will not disturb a trial court's evidentiary ruling unless 'the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.'" *Walter v. State*, 239 Md. App. 168, 200, (2018) (quoting *Moreland*, 207 Md. App. at 568-69 (internal citations omitted)). "A court's decision is an abuse of discretion when it is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id*. (quoting *Moreland*, 207 Md. App. at 569 (internal citations omitted)).

C. The Parties' Contentions

1. Thornton

Thornton asserts the court erred in not suppressing two separate identifications: the extra-judicial identifications and the in-court identifications that Manson and Bond made from the witness stand while viewing the Seven Day Mart video. We lay out each claim of error.

Thornton argues the trial court erred in not suppressing Manson's and Bond's in-court identifications because, in his view, they amounted to irrelevant lay witness testimony under Maryland Rule 5-402. That Rule states: "Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible." Simply put, Thornton claims that neither Bond nor Manson were qualified to offer lay

opinion testimony that the person they believed depicted in the Seven Day Mart videotape was Thornton.

Thornton finds support in several appellate opinions. First is *Paige v. State*, 226 Md. App. 93 (2015).[1] Paige was accused of shoplifting. *Id.* at 97. At trial, as surveillance videotape footage of what the State purported was the actual shoplifting was played for the jury, the store's loss prevention officer narrated what they believed was transpiring on the videotape. *Id.* at 102. The loss prevention officer testified that Paige's behavior, as depicted on the video, was consistent with her stealing items. *Id*. at 119. We held that the court did not abuse its discretion in allowing the loss prevention officer to narrate what was shown on the videotape as the officer was testifying from their personal knowledge of what happened. *Id*. at 130.

Thornton's focus, however, is on language we favorably quoted from *Cuzick v. Commonwealth*, 276 S.W. 3d 260, 2675-66 (Ky. 2009), where that court said "[W]hile a witness may proffer narrative testimony within the permissible confines of the rules of evidence, we have held [the witness] may not interpret audio or video evidence, as such testimony invades the province of the jury." *Paige*, 226 Md. App. at 129 (quoting *Cuzick*, 276 S.W. 3d at 265-66). From *Paige*, Thornton argues that the court erred in allowing Manson's and Bond's testimony to take the place of the jury's fact-finding.

[1] In his brief, Thornton provides us only with the Atlantic Reporter cite: 126 A.3d 793 (2015). The Maryland Reporter citation is as noted above.

Similarly, Thornton relies on *Washington v. State,* 179 Md. App. 32 (2008), *rev'd on other grounds*, 406 Md. 642 (2008) for the same proposition: a lay witness' testimony may not be a substitute for the jury's fact-finding. In *Washington*, a detective investigated an assault outside a bar. 179 Md. App at 41. At trial, the detective testified that based on his interpretation of still images derived from surveillance video, he believed the individual depicted assaulting another person was Washington. *Id*. Although we held that the detective's testimony was permissible because we determined the jury could decide on its own if Washington was the assailant there, *id*. at 61, Thornton urges us to reach a different conclusion**.** He argues that the court allowed Manson's and Bond's testimony to improperly influence the jury's perceptions, rather than allowing the jury to assess the video on its own.

Thornton also finds support in *Moreland*, *supra*. There, a police officer who was not assigned to investigate Moreland's alleged involvement in a bank robbery but who had known him for over 40 years, testified that Moreland was, in fact, shown on a surveillance videotape robbing a bank. *Moreland*, 207 Md. App. at 567. Thornton relies on that portion of the decision where we said that a witness may identify a suspect in court if "the witness is more likely to correctly identify the defendant from the photograph than the jury." *Id.* at 572 (citing *Robinson v. Colorado*, 927 P.2d 381, 384 (Colo. 1996) ("The intimacy level of the witness' familiarity with the defendant goes to the weight to be given the witness' testimony."). Thornton seemingly takes from *Moreland* that "years of familiarity" is the decisive factor in determining the reliability of the identification.

Thornton's second argument is that the court erred in not suppressing Manson's and Bond's extra-judicial identifications. Thornton apparently believes that Manson and Bond reviewed a single photograph, rather than photo arrays. As a result, he argues that Manson's and Bond's identifications must be viewed "with suspicion," citing *Manson v. Braithwaite*, 432 U.S. 98, 101 (1977). Further, he alleges that the suppression court failed to engage in the two-step analysis enunciated in *Neil v. Biggers*, 409 U.S. 188, 198 (1972) to determine: (1) whether Thornton met his burden of showing that the procedures the police used were impermissibly suggestive, and once having so found, (2) whether the out-of-court identifications were none the less reliable. *Manson*, *supra*; *Stovall v. Denno*, 388 U.S. 293 (1966); *accord*, *James v. State*, 191 Md. App. 233, 252 (2010).

2. The State

In response, the State offers a preliminarily argument that any claim of error as to Manson's and Bond's in-court identification testimony was waived. The State argues that at trial defense counsel did not object when the prosecutor asked Manson to identify Thornton as Manson watched a copy of the Seven Day Mart video clip. Further, the State argues that Thornton's counsel did not object when the prosecutor moved this video clip into evidence. The State notes that only after the prosecutor asked Manson if he recognized anyone in the video clip did Thornton's counsel then make a continuing objection.

Further, the State posits that Thornton waived any objection to Manson's and Bond's in-court identification testimony because similar testimony from the lead detective, Steve McDonnell, had already been elicited that revealed and Manson and Bond identified

Thornton after viewing separate photo arrays. Citing *Yates v. State*, 429 Md. 112 (2012), the State argues that this Court should not find reversible error "when objectionable testimony is admitted if the essential contents of the objectionable testimony [has] already been established and presented to the jury without objection through the prior testimony of other witnesses." *Id*. at 120.

If considered, the State argues Thornton misreads *Moreland* and the other authorities he cites. In the State's view, Thornton's reliance on the phrase, "years of familiarity," found in *Moreland,* is misplaced. The State says that because Manson's and Bond's in-court testimony "was helpful to the jury," their identification was reliable, regardless of how long they knew Thornton. The State argues their familiarity with Thornton exceeded the jury's, and therefore, their knowledge of Thornton informed their identification of him. Further, the State maintains that *Moreland* held the "intimacy level of the witness' familiarity with the defendant" goes to the weight to be given to the witness' identification, not its admissibility. *Moreland*, 207 Md. App. at 572.

As for the identifications made after viewing photo arrays, the State posits that the suppression court properly denied the motion to suppress, although on slightly different grounds. The State relies on our recent decisions in *Bean v. State*, 240 Md. App. 342 (2019) and *State v. Greene*, 463 Md. App. 119, *cert. granted*, 463 Md. 525 (2019), to argue that Manson's and Bond's identification of Thornton after viewing the photo arrays only confirmed an independent identification of him they made after watching the video clips

on television. As there was no "State action" involved in that initial identification, the State posits, the Fourth Amendment's Due Process protections are not implicated.

D. Analysis

We first consider the State's waiver argument with regard to Manson's and Bond's in-court identification testimony. We note that Maryland Rule 4–323(a), in pertinent part, provides that,

> An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs. The court shall rule upon the objection promptly....

The purposes of these rules are

> to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.

Fitzgerald v. State, 384 Md. 484, 505 (2004).

With regard to continuing objections, Maryland Rule 4-323(b) states:

> At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope.

But we reiterate our prior holding from *Choate v. State*, 214 Md. App. 118, 150 (2013), namely, that "[c]ontinuing objections do not persist in perpetuity." And if an "improper line of questioning is interrupted by other testimony or evidence and is thereafter resumed,

counsel must state for the record that he or she renews the continuing objection." *Id*. at 151 (citations omitted).

Here, the record reveals that Thornton's counsel did object before either Manson or Bond offered in-court identification testimony while viewing the Seven Day Mart video clip. In each case, counsel said that the objection was continuing. We determine that consistent with Rule 4-323(b) counsel's objection specifically addressed Manson's and Bond's identification of Thornton as each man viewed the video clip. Further, the court acknowledged the continuing objection was related to Manson's and Bond's identification of Thornton. *See* Md. Rule 4-323(c). We think the objection was timely and limited solely to the identification testimony of each witness and was not an on-going, blanket objection that covered multiple topics that we disfavor. *See Choate*, 214 Md. App. at 150-51.

Similarly, Thornton objected to the photo arrays, and, indeed, conducted a suppression hearing to exclude those identifications. On this record, we conclude that Thornton's objections to the in-court and out-of-court identifications are properly preserved for appeal.

1. Manson's and Bond's In-Court Identification Testimony

First, with regard to Manson's and Bond's in-court identifications, we conclude that Thornton's argument, that their identifications were irrelevant and inadmissible lay witness testimony, is without merit. Maryland Rule 5-401 defines "relevant evidence" to be "evidence having 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." And Maryland Rule 5-701 states that "[i]f 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."

Here, neither Manson nor Bond was testifying as an expert. Consequently, their opinion testimony had to be rationally based on their perceptions and "helpful" to the jury in determining whether Thornton might be involved in Ray's murder. *See* Md. Rule 5-701. We conclude that Manson's and Bond's testimony was rationally based and helpful to the jury. Both men testified that they were probation officers who had observed and spoken with Thornton in-person on multiple occasions, the most recent being Manson's contact with Thornton about a month before Ray was killed. Indeed, Manson was Thornton's assigned probation officer.

Further, we disagree with Thornton's analysis of *Moreland*. Moreland, like Thornton, argued that Officer Eric Owens's lay witness identification testimony was irrelevant. *Moreland*, 207 Md. App. at 567-68. Officer Owens, who had known Moreland for 40 years and thought of him as a "cousin," identified Moreland as the suspect in a surveillance video tape of a bank robbery despite not having seen Moreland for about four years before the robbery. *Id*. at 567-68.

In reviewing precedent that led us to affirm the trial court allowing Officer Owens' testimony, we adopted the analysis of the court in *Robinson v. State*, *supra*, 927 P. 2d 381

(Colo. 1996). There, the robbery of a convenience store was caught on a surveillance camera. *Id.* at 382. A police officer who had previously encountered Robinson recognized him in the video recording. *Id.* At trial, the officer identified Robinson from the video recording and still photographs made from the recording. *Id.* On appeal, Robinson asserted that the officer's testimony was "lay testimony not helpful to the jury." *Id.* After surveying cases from other jurisdictions, the Colorado court observed that "a significant majority" of courts that addressed the issue had determined that "a lay witness may testify regarding the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury." *Id.* at 383-84.

Finding the reasoning of the Colorado court and the other states that have adopted the "majority rule," to be sound, we held that Officer Owens' testimony was not based on "speculation or conjecture and did not amount to a mere conclusion or inference that the jury could make on its own." *Moreland*, 207 Md. App. at 573. Further, we determined that level of intimacy of the witness' familiarity with the defendant goes to the weight to be given the witness' identification, not the admissibility of such testimony." *Id.* at 572.

Moreland's analysis is applicable here. Manson's and Bond's relationship with Thornton, though not as lengthy as that of Officer Owens', nonetheless was more significant than the jury's knowledge of Thornton. Their testimony was rationally based on their perception and was helpful to the jury in determining whether Thornton played a role in Ray's death. *See* Md. Rule 5-701. Further, unlike in *Paige, supra*, where the

witness narrated what she saw on a surveillance camera, here neither Manson nor Bond narrated what they saw.[2] Rather, they identified Thornton as one of two men depicted on the Seven Day Mart video.

That identification testimony was relevant in that it tended to show that Thornton was one of two men seen in surveillance video captured by a camera outside the 7-Eleven during the same time period. The 7-Eleven video is more significant. It shows the same two men, wearing the same clothing, exiting a white Infiniti. Both men cross a parking lot and can been seen speaking with Ray behind what looks like a white truck. Ray abruptly drops out of sight and both men are seen running from behind the white truck and fleeing the scene. *See* State's exhibit 8. Of course, the jury was free to make its own, independent assessment of the video evidence. We conclude the court did not err in allowing Manson and Bond to offer in-court identification testimony.

2. Manson's and Bond's Extra-judicial Identifications

As for the identifications Manson and Bond made after viewing separate photo arrays, we agree with the State: the court did not abuse its discretion in denying Thornton's request to suppress the men's in-court identifications. The rationale supporting our holdings in *Bean*, *supra* and *Greene*, *supra*, should apply in Thornton's case. Bean was convicted of armed carjacking, among other crimes, due, in part, to the victim's identification of him from a BOLO flyer. *Bean*, 240 Md. App. at 345. The victim's brother

[2] We hasten to add that in *Paige*, we affirmed the trial court allowing the witness to narrate because she was also testifying from her personal knowledge. *Paige*, 226 Md. App. 93, 126, 130 (2015)

saw a copy of a BOLO the police created on Facebook. *Id*. at 349. The BOLO consisted of stills from a surveillance video of the suspects and the stolen car. *Id*. The brother showed the BOLO to the victim, who recognized Bean as one of the "gentlemen" involved in the carjacking. *Id*. The victim contacted the police with this information. *Id*. at 350. The police then showed the victim a photo array containing Bean's picture from which she made a positive identification. *Id*.

Before trial, Bean moved to suppress the victim's pre-trial identification arguing that the procedures the police used "were impermissibly suggestive and the underlying identification was not reliable." *Id*. at 351. The suppression court found that the release of the BOLO constituted "State action," and the police procedures were impermissibly suggestive. *Id*. at 352. The court denied the motion to suppress, however, finding that the factors enumerated in *Neil v. Biggers*, *supra*, weighed in favor of the reliability of the identification. *Bean*, 240 Md. App. at 352.

We affirmed the suppression court, but on different grounds. We determined that the police dissemination of the BOLO did not constitute "State action" to trigger a Fourth Amendment Due Process analysis as articulated in *Biggers*. We concluded that the

> police did not "arrange or encourage" [the victim] to view the BOLO; nor was there any evidence that the police directed the BOLO toward [the victim] in any sort of targeted manner…. Moreover, to the extent the identification was arranged, it was arranged by [the victim's] brother, not the police department. With no evidence that police arranged for [the victim] to view the BOLO, which was extremely suggestive, the Due Process Clause is not implicated.

Id. at 358 (citations omitted).

We reached a similar result in *Greene*. There, Daniel Greene was indicted for the first-degree murder of Jon Hickey. *Greene*, 240 Md. App. at 122. The crime occurred at Hickey's apartment building. *Id*. at 124. The police recovered a surveillance videotape from the apartment's security cameras that depicted an unknown man outside of Hickey's apartment on the day of the murder. *Id*. Jenifer McKay had dated both Greene and Hickey. *Id*. at 124-25. The police asked McKay to view the surveillance video to see if she could identify the man depicted. *Id*. at 125. After viewing the videotape, McKay identified Greene as the person at Hickey's door. *Id*. The police then recorded an interview with McKay. *Id*. The transcript of that interview was the focus of suppression. *Id*. After a suppression hearing, the court concluded that McKay's statement and her in-court identification should be suppressed. *Id*. at 122-23. The State appealed. *Id*. at 123.

We rejected Greene's argument, that the suppression court properly suppressed McKay's identification based on "standard" constitutional identification jurisprudence, when we concluded that the police did not ask McKay to select anyone. *Id*. at 126. Because they bear on Thornton's appeal, Judge Moylan's comments are worth quoting in full:

> Over the decades, it has been recognized that the very purpose of constitutional identification law has been to guarantee the reliability of the selection process. Whenever a witness is asked to select the wrongdoer from a line-up of suspects, to select a photograph of the wrongdoer from a photographic array, or otherwise to select the wrongdoer from a larger group, the law's concern is that the selection process be untainted by the police slipping the answer, by word or by more subtle behavior, to the witness.
>
> In this case, by contrast, there was no selection process in play. Jennifer McKay was not asked to look at three separate video cam tapes and to select

> the one with the appellee in it. Jennifer McKay was asked simply to confirm, if she could, that the man on the surveillance tape was the appellee, Daniel Greene. Jennifer McKay's knowledge of the appellee's appearance was absolute, beyond any peradventure of a doubt. All that Jennifer McKay was asked to do could as readily have been asked of the appellee's mother or of his best friend **or of his probation officer**.

Id. (emphasis added).

Our focus then shifted to the reliability of McKay's seemingly non-committal identification made after viewing the videotape and what the police said to her as a result. *Id*. at 126-27. In other words, after determining that the reliability factors found in *Biggers* were inapplicable, we identified the true appellate inquiry as whether the police had coached McKay into making a more certain identification of Greene. *Id*.

In reaching the conclusion that McKay's identification of Greene did not implicate the Fourth Amendment, Judge Moylan examined precedent from several state jurisdictions that drew a distinction between "selective identification," which triggers application of Fourth Amendment jurisprudence, and "confirmatory identifications," which do not. "Our primary conclusion is that what was involved in this case was a mere confirmatory identification, and not a selective identification. Under these circumstances, the constitutional law governing identification procedures did not apply." *Id*. at 134-35. After an exhaustive review of constitutional identification law, we concluded that the real issue -- potential police coaching -- was not before us. *Id*. at 155. Nonetheless, what is relevant to this appeal is Judge Moylan's holding that McKay's viewing of the surveillance video, even when under police supervision, was not a selection but merely a confirmation of Greene's identity.

We conclude that the Seven Day Mart video clip the BPD disseminated city-wide was of a similar nature to the BOLO in *Bean*. The police created it, but there was no State action when either Manson or Bond viewed it. As in *Bean*, the mere dissemination of a BOLO, or the release of a video by the police through various media outlets, as here, does not constitute "State action" implicating the Fourth Amendment. *Bean*, 240 Md. App. at 358. Further, Manson's and Bond's selection of Thornton did not change after they viewed separate photo arrays. That process merely confirmed what Manson and Bond had already disclosed to the police: they believed Thornton was depicted in the Seven Day Mart video clip. *See Greene*, 240 Md. App. at 126. Consequently, we perceive no error in the circuit court denying the motion to suppress either Manson's and Bond's out-of-court or in-court identifications.

II. Admission of the Seven Day Mart Video Clip and Still Images Derived From It

Thornton asserts two claims of error regarding the surveillance videos the police collected from businesses around the crime scene. First, he argues the circuit court erred in admitting the Seven Day Mart video clip into evidence, because he claims it was manipulated in some way. Specifically, Thornton avers that no one testified how the video was created. Second, according to Thornton, the court erred in admitting about 80 still photographs derived from multiple angles of different surveillance cameras. Thornton claims this evidence was "duplicitous."

In response, the State argues that Thornton's counsel did not object when the Seven Day Mart video was admitted into evidence. The State notes that at that time, counsel did

not so much as suggest that any of the videos introduced had been altered. With regard to the introduction of approximately 80 photographic stills culled from different camera angles, the State maintains that Thornton's claim is without merit, as the court correctly determined that multiple, time-stamped views of the crime scene could assist the jury in its deliberations.

On the second day of trial, the State called Detective Eric Perez to testify. As part of the investigation into Ray's death, Det. Perez testified he went to the three businesses near Belair Road where the homicide occurred: a 7-Eleven (State's exhibit 8 video disc), Joy's Deli and Wings (State's exhibit 9 video disc), and the Seven Day Mart (State's exhibit 10 video disc). From each business, Perez obtained its exterior surveillance video, copied it, and put it on to a disc. As Thornton recognizes in his brief, State's exhibit 10, from which Manson and Bond identified Thornton, was critical to the State's case.

The transcript of the trial shows that Thornton's counsel did not object when the prosecutor moved State's exhibit 10 into evidence.

> [PROSECUTOR]: With regards to the Seven Day Mart, I'm going to show you what's been marked for identification as State's exhibit 10. Have you had the opportunity to review that compact dis[c]?
>
> [PEREZ]: Yes.
>
> [PROSECUTOR]: Okay. And does that truly and accurately record the video that you recovered from the Seven Day Mart?
>
> [PEREZ]: Yes, ma'am.
>
> [PROSECUTOR]: Ok. So at this time, Your Honor, the State is going to move into evidence State's exhibit 10, which is the Seven Day Mart.

THE COURT: So admitted.

On this record, we determine that any claim of error regarding the introduction of State's exhibit 10, the Seven Day Mart video, is not preserved as no objection to that piece of evidence was made at trial. Rule 4–323(a), in pertinent part, provides that, "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court…" Rule 8-131. Thornton's claim of error in admitting the Seven Day Mart video is not before us.

Turning to Thornton's second claim of error, namely that on the third day of trial, the State moved for the admission of State's exhibits 18 A through 18 FFFFF, roughly 80 photographs derived from the Seven Day Mart surveillance video.[3] At a bench conference, Thornton's counsel objected to the admission of these exhibits asserting that they were duplicitous. The prosecutor maintained that the photographs supplemented the video, giving a time sequence and allowing the jury to focus on any one part of the video without "stopping it and starting it." Additionally, the prosecutor argued that it showed whoever committed the crime did so with deliberation as the photos (and video) showed the men waiting in the Infiniti, going to the alleyway, confronting Ray, and the leaving.

[3] We have called it "the Seven Day Mart video." The video is actually footage showing the exterior of the Mart from several angles on the afternoon of September 4, 2017.

After considering counsels' arguments and looking over the photographs the court said:

> THE COURT: In looking through all of these exhibits, 18-A through and including 18-FFFFF, it would be assisting the jury with regards to the time line and combining all of the videos into one. And I think it would be helpful to them in deciding what occurred at that time and in finding what, if anything they are interested in on the videos. It gives the camera and the time. And so I'm going to allow it.

Thornton's counsel then made a continuing objection to Det. McDonnell testifying about the photographs.

Maryland Rule 5-403 provides, in pertinent part, that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). In so doing, "[w]hat must be balanced against 'probative value' is not 'prejudice' but, as expressly stated by Rule 5-403, only 'unfair prejudice.'" *Newman v. State*, 236 Md. App. 533, 549 (2018). Moreover, "[t]o justify excluding relevant evidence, the 'danger of unfair prejudice' must not simply outweigh 'probative value' but must, as expressly directed by Rule 5-403, do so 'substantially.'" *Id*. at 555. "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

We agree with Thornton that Maryland Rule 5-403 permits a court to exclude relevant evidence if it amounts to a "needless presentation of cumulative evidence." Here, however, the evidence was relevant and not "unfairly prejudicial." The court noted that each photograph displayed a time stamp from each camera at the Seven Day Mart. The effect was that the exhibits created a montage of all of the camera angles from which, as the prosecutor and the court noted, the jury could establish a chronology of events that led to Ray's murder. We certainly agree that the stills were derived from the video, yet we nonetheless conclude that State's exhibits 18A through 18 FFFFF was a separate set of exhibits that was helpful in the jury's deliberations. We conclude that the court's decision was not "removed from [the] center mark" nor "beyond the fringe of what [we] deem[] minimally acceptable" to constitute an abuse of discretion. *North v. North*, 102 Md. App. 1, 14 (1994). Consequently, we hold that the circuit court did not err in admitting the exhibits.

III. The Court's "Opening the Door" Rulings

Thornton next challenges a set of rulings the trial court made during Det. McDonnell's re-direct testimony. Thornton claims the court erroneously allowed the State, on re-direct, to: (1) ask Det. McDonnell whether anyone else had identified Thornton, and (2) ask Det. McDonnell whether there was a connection between Thornton and another man, Keyon Evans, who the police originally suspected might have played a role in Ray's slaying. According to Thornton, "[t]he [c]ourt allowed the questions and testimony, reasoning that [Thornton's] counsel 'opened the door' for the State's inquiries."

Thornton elaborates that on cross-examination, his trial counsel only asked Det. McDonnell who had viewed the surveillance videos. Later, on re-direct, the court ruled that the defense had "opened the door" in asking that question and permitted the prosecutor to ask the detective if anyone else had identified Thornton. Det. McDonnell replied that someone had, in fact, also identified Thornton aside from Manson and Bond, although the court did not permit Det. McDonnell to say who that person was.

Additionally, Thornton explains the court improperly permitted the prosecutor to ask Det. McDonnell whether Thornton was somehow associated with Keyon Evans. Det. McDonnell answered that, in fact, Thornton was associated with Evans, but, again, the court did not permit Det. McDonnell to explain the degree of association. Thornton argues the question and answer were improper because his trial counsel had asked Det. McDonnell if it was true the police had information that Evans had, in the past, driven the white Infiniti, not whether Thornton was associated with Evans. Det. McDonnell had testified that the police stopped Evans while he was driving the Infiniti the day before Ray's murder. The thrust of Thornton's argument is the court allowed the State to link him with someone who might have committed Ray's murder.

The State argues that Thornton's challenge to Det. McDonnell's re-direct testimony is not preserved. The State explains that during the detective's testimony the court heard defense counsel's argument that the court's "opening the door" ruling was improper. The court seemed willing to strike Det. McDonnell's redirect testimony but asked counsel to discuss what, exactly, should be stricken. During a recess, defense counsel and the State

struck a deal about how to address any objectionable testimony Det. McDonnell might have given. Thornton's counsel then withdrew his objection to the detective's re-direct testimony. Consequently, the State argues, Thornton cannot complain on appeal about what he permitted at trial. We agree with the State.

The trial transcript reveals that during the State's re-direct of Det. McDonnell, the court stopped the proceedings, dismissed the jury for "an extended lunch," and permitted counsel to argue whether the court erred in ruling the defense had "opened the door" to the prosecutor eliciting testimony the defense considered damaging. The court seemed ready to strike some of Det. McDonnell's testimony but wanted counsel to agree on what should be excised:

> THE COURT: Right. Why don't the three of you discuss it? Because I'm looking here at the evidence that came in, the actual physical evidence that came in through this witness [Det. McDonnell]. So I'm not going to strike his testimony in totality because it doesn't warrant that.
>
> [THORNTON'S COUNSEL]: And that all came in during the direct anyways.
>
> THE COURT: Correct.
>
> [THORNTON'S COUNSEL]: We understand that.
>
> [KYLER'S COUNSEL]: Can we step out, your Honor?
>
> THE COURT: Sure.

The attorneys soon returned. Kyler's counsel told the court:

> [KYLER'S COUNSEL]: I think we've figured it out. We're not asking to have you strike the redirect. The State is not going to ask any further questions. I'm going to be very specific, and we've spoken with the witness [Det. McDonnell] to make sure he knows not to mess up.

I will clarify the things that need to be clarified, and then I will defer to my co-counsel [Thornton's attorney] and [he will] have a few more questions that will be of nothing of the subject matter that's been a problem.

THE COURT. Okay. Wait a minute.

* * *

THE COURT: All right. The jury is instructed to strike the redirect testimony of this witness ---

[KYLER'S COUNSEL]: No. We're not asking that.

THE COURT: Okay. What do you want me to do?

[KYLER'S COUNSEL]: I may just take care of it on cross. Nothing.

THE COURT: Nothing.

* * *

THE COURT: Okay. So, Defense I, ---

[KYLER'S COUNSEL]: Uh-huh.

THE COURT: --- **what, if any instructions do you wish me to give to the jury in reference to any testimony presented by this witness?**

[KYLER'S COUNSEL]: Nothing at this point based on what they've agreed.

THE COURT: Defense 2?

[THORNTON'S COUNSEL]: **Nothing**.

THE COURT: State?

[PROSECUTOR]: I never wanted anything. So nothing.

THE COURT: Nothing. Okay.

> **So would it be fair to say that the conversation we've had since – on the bench since two o'clock in reference to the redirect testimony of this witness [Det. McDonnell], the issues are now moot based on what you believe is an agreement; State?**
>
> [PROSECUTOR]: Yes, Your Honor.
>
> THE COURT: Defense 1?
>
> [KYLER'S COUNSEL]: Yes.
>
> THE COURT: Defense 2?
>
> [THORNTON'S COUNSEL]: **Yes, Your Honor**.
>
> (Pause).
>
> THE COURT: Thank goodness. No – see this is what I like[;] no court intervention needed. And this is what I wanted you to do at lunchtime.

(emphasis added). Defense counsel conducted re-cross examination without incident and Det. McDonnell was excused.

Based on this record, Thornton has waived any objection to Det. McDonnell's re-direct testimony. In *Lohss v. State*, 272 Md. 113 (1974) the Circuit Court for Anne Arundel County had ruled that a state police search of Lohss' luggage was illegal. *Id*. at 115. As the State was prevented from introducing evidence derived from the search, Lohss moved to dismiss the charges. *Id*. The State had "no objection" to the dismissal. *Id*. The State then moved to dismiss the charges against a co-defendant because the court had "suppressed [the] evidence," and it was unable to proceed. *Id*. The co-defendant did not object to the State dismissing the charges. *Id*. The State then appealed the court's rulings. *Id*. On direct appeal we reversed and re-instated the charges. *See State v. Lohss*, 19 Md.

App. 489, (1973). The Court of Appeals disagreed with this Court, reversed, and re-instated the dismissal of the indictments holding:

> [T]he right of appeal may be lost by waiver or estoppel when there is acquiescence or recognition in the validity of the decision from which the appeal is taken or by otherwise taking a position inconsistent with the right of appeal. Nor can one appeal from a judgment or order where the relief he prays for is granted.

Lohss, 272 Md. at 118-19.

We conclude *Lohss*' rationale applies with equal force here. Thornton initially opposed Det. McDonnell's re-direct testimony and moved to strike it. After reaching an agreement with his co-defendant and the State, he allowed Det. McDonnell's testimony to stand, and specifically asked the court to do so. He may not now claim error for that which he permitted at trial. We conclude that Thornton has waived any complaint regarding Det. McDonnell's re-direct testimony.

IV. The Mere Presence Instruction to Jury

Thornton argues he was entitled *not* to have the presence instruction used, since it "presented the defendant's presence at the scene of the crime as fact," and thus conflicted with his mistaken identification defense. The State counters the circuit court properly exercised its discretion in providing the presence instruction, since it was generated by the evidence, a correct statement of law, and not fairly covered by other instructions.

Thornton's argument is based on language from *Brogden v. State*, 384 Md. 631 (2005) providing, "[W]ith respect to the law to be applied in the case, when requested, it is the duty of the trial judge to instruct on . . . any defenses *supported by the evidence*…[.]"

Id. at 641 (emphasis in original). Thornton's argument, as we understand it, is that the presence instruction related to a defense—i.e., that he may have been present at the shooting, but nonetheless did not commit the homicide—that he did not argue and that ran counter to his defense theory of misidentification.

At issue is the following instruction:

> THE COURT: A person's presence at the time and place of a crime, without more, is not enough to prove that the person committed the crime. The fact that a person witnessed a crime, made no objection, or did not notify the police does not make the person guilty of the crime. However, a person's presence at the time and place of the crime is a fact in determining whether the defendants are guilty or not guilty.

We disagree with Thornton's contention that the instruction treats his presence at the scene of the homicide as fact. This contention fails to properly consider context—specifically, the other instructions given immediately after the presence instruction.

> THE COURT: **The burden is on the State to prove beyond a reasonable doubt** that the offenses were committed and **that the defendants were the persons who committed it—or them.**
>
> You have heard evidence about the identification of the defendants as the persons who committed the crime. You should consider the witness' opportunity to observe the criminal act and the person committing it, including the length of time the witness had to observe the person committing the crime, the witness' state of mind, and other circumstances surrounding the events.
>
> You should also consider the witness' certainty or lack of certainty, the accuracy of any prior description, and the witness' credibility or lack of credibility, as well as any other factors surrounding the identification.
>
> You have heard evidence that prior to trial witnesses have identified the defendants by photographic array. The identification of the defendant or of a defendant by a single witness as the person who committed the crime, if believed beyond a reasonable doubt, can be enough evidence to convict the

> defendant. **However, you should examine the identification of the defendant with great care.**
>
> **It is for you to determine the reliability of any identification and give it the weight you believe it deserves.**

(emphasis added). In light of all of the instructions the court gave, as well as the efforts made by the parties during trial to either prove or disprove that Thornton was one of the two men in the video evidence, it seems unlikely the jury would have interpreted the presence instruction to mean it need not decide whether Thornton was actually depicted in the videos. *See, e.g.*, *Jones v. State*, 310 Md. 569, 589 (1987), *vacated on other grounds*, 468 U.S. 1050 (1988) ("The propriety of a specific jury instruction may not be considered in isolation, apart from its overall context. On the contrary, it should be considered within the context of all the instructions given the jury.").

The mere presence instruction reminds the jury they cannot presume without deciding whether the crime's actus reus element is satisfied simply because the defendant was present at the scene of the crime. This makes the presence instruction distinct from an instruction regarding an *affirmative defense*, as was at issue in *Brogden*, 384 Md. at 641–42. There, the defendant was charged with violating a statute that prohibited carrying a handgun, and he did not argue any defense at trial. *Id.* at 632–33. Our Court of Appeals held the trial judge erred in providing the jury with a supplemental instruction stating the burden was on the defense to prove the defendant had a handgun permit, if one existed. *Id.* at 634. The Court explained,

> [b]ecause petitioner chose not to pursue a defense relating to him possessing a license for a handgun (or any defense), there was absolutely no

> reason for the trial judge, over objection, to instruct the jury as to the law of handgun licenses and its effect on the burden of proof (whatever that might be).

Id. at 644.

Importantly, having a handgun permit was an express exception to the statute under which Brogden was convicted. *Id.* at 642. Since it was thus not one of the crime's elements, "it was not the responsibility of the State to prove that the exception did not apply, but it was exclusively within petitioner's discretion as to whether he would pursue such a defense." *Id.* at 643. In contrast, Thornton's conviction for first degree murder does not list as an exception "presence at the scene of the homicide without participation." Md. Crim Law § 2-201. A person fitting this description simply will not satisfy the actus reus element of murder. Accordingly, the State needed to prove beyond a reasonable doubt not only that Thornton was one of the men in the video (i.e., present at the scene of the crime) but that he participated in some way in Ray's murder. Therefore, Thornton need not have advanced a "mere presence" defense for the instruction to have been appropriate. The Court of Appeals recognized this distinction in *Brogden*:

> [W]hen a penal act contains an exception so incorporated with the substance of the clause defining the offense as to constitute a material part of the description of the acts, omission or other ingredients which constitute the offense, the burden is on the State to prove beyond a reasonable doubt, that the offense charged is not within the exception. In other words, when an exception is descriptive of the offense or so incorporated in the clause creating it as to make the exception a part of the offense, the State must negate the exception to prove its case. *But, when an exception is not descriptive of the offense or so incorporated in the clause creating it as to make the exception a part of the offense, the exception must be interposed by the accused as an affirmative defense.*

Id. at 643 (quoting *Mackall v. State*, 283 Md. 100, 110–11 (1978)) (emphasis added in *Brogden*).

In sum, *Brogden* does not support Thornton's position that the mere presence instruction introduced a defense that was within his discretion to not have put before the jury. In our view, the case indicates the mere presence instruction was actually in Thornton's favor. We agree with the State that if the jury accepted Thornton's misidentification theory, it would have disregarded the presence instruction entirely, and if it did not accept the theory, the instruction would still have aided the defense in reminding the jury it must still decide whether Thornton and his co-defendant committed the murder. We conclude the circuit court did not err in providing the mere presence instructions.

V. Sufficiency of the Evidence

Thornton argues the evidence, which he contends was little more than Manson's and Bond's identification testimony and the video evidence, was insufficient to support his convictions. Thornton emphasizes the absence of eyewitnesses to the crime. He notes that there was no forensic evidence that connected him to the vehicle seen in the surveillance videos on the day of the murder. Further, Thornton contends the State could not prove a connection between him and his co-defendant nor show a connection between him and Ray, the decedent. Additionally, Thornton points out that the State provided no motive for the murder.

The State counters the evidence was sufficient because the jurors had the benefit of viewing each of the videos obtained from the area stores and stills from those videos and

were able to compare the persons in those images to Thornton as he sat before them in trial. We agree with the State.

In assessing the sufficiency of the evidence for a criminal conviction, the reviewing court determines "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457 (1997) (citations omitted). Essentially, Thornton takes issue with the jury's reliance on Manson's and Bond's testimony that they recognized Thornton in the Seven Day Mart video, as well the inference drawn by the jury that the men in the video committed the murder. But neither the assessment of witnesses' credibility nor the weighing of potential inferences before the trier of fact are tasks for this Court to undertake. As our Court of Appeals said in *Briggs v. State*, 348 Md. 470, (1998), the reviewing court does "not inquire into the credibility of witnesses, or weigh the evidence to ascertain whether the State has proven their case beyond a reasonable doubt; that is the responsibility given to the trier of fact." *Id*. at 475. Applying that same principle in *Reeves v. State*, 192 Md. App. 277 (2010), this Court denied a sufficiency challenge where victims and police officers provided contradictory testimony describing the appellant. We reasoned, "[t]o the extent that [the victim's] and the officers' identifications of appellant were allegedly vague or inaccurate, the jury accepted their testimony, and we will not disturb that determination." *Id*. at 307.

Here, the jury may not have needed entirely rely on Manson's or Bond's credibility, since, as the State points out, they saw both (1) the surveillance videos showing the suspects

and (2) Thornton in person at trial. The surveillance videos were supplemented by stills that showed closer views of the suspects, which could reasonably be used to confirm their identities in person. But if the jurors could not independently and definitively conclude that one of the suspects was Thornton, they were free to rely on either Manson's or Bond's testimony if they found either witness credible. We do not attempt to re-weigh the witnesses' credibility.

The jury was likewise free to infer from the evidence that the men in the multiple videos committed the murder. The Court of Appeals has explained that

> a valid conviction may be based solely on circumstantial evidence. The same standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.
>
> A trial court fact-finder, i.e., judge or jury, possesses the ability to "choose among differing inferences that might possibly be made from a factual situation" and this Court must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference.

State v. Suddith, 379 Md. 425, 430 (2004). This Court has similarly explained, "[c]hoosing between competing inferences is classic grist for the jury mill." *Cerrato-Molina v. State*, 223 Md. App. 329, 337 (2015).

Accordingly, we defer to the inference the jury made below that the men in the video committed the homicide, but we nonetheless find the surveillance videos and derivative stills provide sufficient evidence to support the inference. We note the following evidence: Camera Two from the Seven Day Mart video shows the white Infiniti pull upon Kavon

Avenue at 12:12pm. Two men, with one wearing a longer than usual gray hooded sweatshirt, and the other in a black hooded sweatshirt, can be seen exiting the vehicle, and then getting back into the Infiniti as it backs up to ultimately park on the other side of the street. At 12:17 p.m. the two men exit the car again and walk down an alley perpendicular to Kavon Ave. Less than a minute later, they walk back to the Infiniti and, get back inside, and the vehicle rolls out of view. Around 12:23 p.m. the Infiniti can be seen once again, but driving quickly down Kavon Ave. Although there are no close-ups of the suspects' faces on Camera Two, their clothing may be clearly seen.

Camera Three from the Seven Day Mart shows the Infiniti driving by the entrance of that store at 12:12 p.m. At 12:15 p.m. the same two men can be seen walking down and then back out of the alley. Barely within the camera's view is the Infiniti, which the men get in and out of. Around 12:17 p.m., the suspects once more walk down the alley and back out to Kavon Ave and get into the Infiniti, which pulls away a minute later. Again, around 12:23 p.m. the Infiniti can be seen driving quickly by down Kavon Ave.

Camera Six from the Seven Day Mart shows the alley and the same two men more clearly and completely as they walk up and then quickly back down the alley at 12:15 p.m. At 12:17 p.m. they are seen once more walking up the alley, then turning back again.

Camera One from 7-Eleven shows what appears to be the same two men, based on their clothing, walking across the parking lot around 12:21 p.m. At 12:24 p.m., a patron who had just walked out of the 7-Eleven can be seen ducking and running a few steps in the other direction, and moments later the two men sprint back across the parking lot.

Again, their clothing—particularly the distinctive long gray hooded sweatshirt of the one suspect—indicates they are the same two men. Camera Two from 7-Eleven shows the opposite angle with the men walking across the parking lot at 12:21 p.m. Although this camera does not have a close-up view, the men can be seen walking across the street from the 7-Eleven, then back to the grassy area next to the 7-Eleven. A minute later, a man can be seen walking toward them on crutches and the men come face-to-face with him. The camera's view is partly obscured by a vehicle, but the heads of the three men are still visible above the vehicle. In an instant, the head of the man on crutches drops out of view, and at the same moment, two people outside of 7-Eleven duck down and run in the opposite direction. The two men are seen sprinting back across the 7-Eleven parking lot.

In each of the videos, the two men can reasonably be identified as the same pair given the corresponding times of the videos, the locations of the men, and their clothing. On review of the evidence, the inference that the two men in the video committed the homicide was not unreasonable, and so we see no reason to disturb it.

In sum, we decline to second guess the jury's assessment of the evidence. For that reason, we decline to weigh competing inferences about whether the men in the video committed the murder, in light of the existence of evidence that sufficiently supports the inference the jury apparently made. We hold the evidence was not insufficient as to warrant disturbing the jury's verdict.

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