Circuit Court for Montgomery County
Case No. C-15-CR-23-000248

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 324

September Term, 2024

MARK KEVIN ABAD-MESINA

v.

STATE OF MARYLAND

Berger,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 2, 2025

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

The case arises following the conviction of appellant, Mark Kevin Abad-Mesina ("Abad-Mesina") in the Circuit Court for Montgomery County. Abad-Mesina was charged with possession of a controlled dangerous substance with the intent to distribute after a search incident to arrest uncovered multiple individually packaged bags of crystal methamphetamine. The State produced an expert in "drug trafficking and distribution" to establish that Abad-Mesina possessed the crystal methamphetamine with the intent to distribute. Following a jury trial, Abad-Mesina was convicted and sentenced to three years, all but three months suspended, to be served on weekends. This appeal followed.

QUESTIONS PRESENTED

Abad-Mesina presents three questions for our review, which we have recast and rephrased as the following two questions:[1]

I. Whether the trial court abused its discretion in permitting the expert witness's testimony.

II. Whether the trial court erred by denying Abad-Mesina's motion for acquittal based on insufficiency of the evidence.

[1] Abad-Mesina phrased the questions as follows:

1. Did the trial court err in finding there was a sufficient factual basis for testimony by the State's purported expert witness on drug distribution?

2. Was the evidence legally insufficient to support Appellant's conviction for possession with intent to distribute?

3. Did the trial court err in allowing an expert witness to testify as to the intent of the Appellant?

For the following reasons, we answer both questions in the negative and, therefore, affirm.

BACKGROUND

On November 29, 2022, the police were dispatched to respond to a vehicle collision. Upon arrival, the police observed Abad-Mesina asleep in the driver's seat. The police woke Abad-Mesina, and instructed him to exit the vehicle. An officer questioned Abad-Mesina, and based on his behavior, suspected that he had been driving while impaired. The officer decided to conduct field sobriety tests and based on Abad-Mesina's unsatisfactory performance, the officer determined that he had been driving while impaired and placed Abad-Mesina under arrest. Because there was no alcohol on Abad-Mesina's breath, the officer suspected that he was driving under the influence of drugs, which was later confirmed by a breathalyzer test that indicated the intoxicating substance was not alcohol.

The officer proceeded to conduct a search incident to arrest of Abad-Mesina. In Abad-Mesina's front left pocket, the officer found a clear bag with ten small bags containing crushed clear crystals, which the officer suspected was crystal methamphetamine. The forensic lab ultimately tested five of the ten bags, which were confirmed to contain crystal methamphetamine. The lab did not conduct tests on the other five bags. Nine of the bags contained an "eight ball design" on the packaging. In Abad-Mesina's back left pocket, the officer found four different "folds" of $20 bills folded in different groupings of $120, $100, $40, and an individual $20 bill. The officer suspected the folds to be indicative of drug dealing. A "glass smoking device" was also recovered during a search of the vehicle.

At trial, the State called Leah King, a forensic scientist, to testify. Ms. King was admitted as an expert in forensic chemistry. Ms. King testified that she received the evidence bags on January 24, 2024, and subsequently ran tests to identity the contents of the bags. Ms. King testified that she selected five of the bags, ran tests, and identified the contents of the bags as crystal methamphetamine. Ms. King acknowledged that she did not test the contents of the other five bags but reiterated that all ten bags appeared to contain the same "crystal and powder" substance. Of the five bags tested, the contents weighed a total of 13.15 grams. The other five bags weighed a total of 17.43 grams, including the packaging. King testified that of the five bags tested, four had the eight-ball design on the packaging. The fifth bag had no design on the packaging. King testified per the lab's standard operating procedures that in order to expedite sampling for cases, she was only required to test a subset of the items presented, and as such, she decided to test only five of the ten bags, including the single bag without an eight-ball logo.

In addition, the State produced Detective Patrick Skiba, who it sought to designate as an expert in the area of "drug trafficking and distribution" to establish Abad-Mesina's intent to distribute based on the packaging of the drugs and the grouping of the money. Abad-Mesina filed a pre-trial motion to preclude the expert's testimony. In his pre-trial motion to preclude the expert testimony, Abad-Mesina argued that Detective Skiba did not produce an expert report to substantiate the conclusion that "circumstances surrounding [Abad-Mesina's] arrest would lead him to conclude that [Abad-Mesina] was in possession of drugs with the intent to distribute them."

Abad-Mesina argued that Maryland Rule 5-702 requires a trial court to evaluate "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony." Specifically, Abad-Mesina noted that "sufficient factual basis" requires a showing of both "(1) an adequate supply of data; and (2) a reliable methodology." Abad-Mesina continued, observing that in *Rochkind*,[2] Maryland adopted the *Daubert*[3] standard for the admission of expert testimony, which laid out five factors from *Daubert* -- and five additional factors that have arisen out of the federal courts -- that a court should analyze to determine whether an expert's testimony should be admitted. Abad-Mesina argued that all of the factors weighed in favor of excluding Detective Skiba's testimony.

The court heard arguments on the motion to preclude Detective Skiba's expert testimony. Discussing each of the *Rochkind* factors, Abad-Mesina essentially argued that there was "no supply of data and no methodology" to satisfy the sufficient factual basis prong to admit Detective Skiba as an expert in "drug trafficking and distribution." In response, the State contended that the court was granted the discretion to apply some, all, or none of the *Daubert* factors because courts recognized that "there is a distinction between scientific tests and expert testimony that's based off of training and experience,"

[2] *Rochkind v. Stevenson*, 471 Md. 1 (2020).

[3] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

because the *Daubert* factors do not lend themselves to applicability for experiential-based experts. The court denied the motion, stating:

> There isn't anything novel about a detective or a police officer testifying about whether certain paraphernalia or things that are found in a car or in possession of the defendant is an indicator of distribution. I have reviewed his CV. It seems to me that he certainly will testify as to his qualifications and his experience and his background in drug deals, but I think the testimony would be -- certainly is appropriate in this case. So I'm going to deny the motion.

Detective Skiba was admitted as an expert in "drug trafficking and distribution." Detective Skiba testified that he had 23 years of experience as a police officer, extensive trainings on drug identification, and had participated in "probably over 1,000" drug investigations that involved possession with intent to distribute. He testified that in preparation for the trial, he was asked to review the charging document, the corresponding police incident report, and lab test results from the bags tested by Ms. King.

Detective Skiba testified that the eight-ball sign on the bags recovered from Abad-Mesina appeared to be an advertising label, to help identify the dealer and build a client base. Detective Skiba continued, testifying that the methamphetamine users that he typically interacted with would buy approximately 2 to 3.5 grams to a maximum of 7 grams at a time. Detective Skiba acknowledged that only five of the ten bags were tested for methamphetamine but noted that the net weight of the tested samples -- 13.15 grams -- was significant, and that one gram of individually packaged methamphetamine had a street value of about $50. Detective Skiba further testified that drug dealers utilize small baggies to facilitate quick transactions and noted that users do not commonly purchase many

individually packaged baggies at once. Finally, Detective Skiba testified that the money folds of differently grouped $20 bills in Abad-Mesina's pocket suggested four separate transactions. As such, Detective Skiba opined that the evidence indicated that Abad-Mesina possessed methamphetamine with the intent to distribute. Detective Skiba did not consider Abad-Mesina's own drug use relevant to arriving at his conclusion.

Abad-Mesina was convicted and sentenced to three years, all but three months suspended, to be served on weekends. Abad-Mesina noted this timely appeal.

STANDARD OF REVIEW

We review a trial court's admission of expert testimony for abuse of discretion. *Abruquah v. State*, 483 Md. 637, 652 (2023).[4] The court may abuse its discretion by "admitting expert evidence where there is an analytical gap between the type of evidence the methodology can reliably support and the evidence offered." *Id.* An appellate court will "not reverse simply because the . . . court would not have made the same ruling. Rather, the trial court's decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *State v. Matthews*, 479 Md. 278, 306 (2022). As such, it is the "rare case in which a

[4] Abad-Mesina quotes the *Abruquah* case for the proposition that "[i]t 'is somewhat unfair' to apply the deferential standard of abuse of discretion 'to a trial court's application of a newly adopted standard, such as that adopted by this Court in *Rochkind* as applicable to the admissibility of expert testimony' given the 'absence of additional caselaw from [the Maryland Supreme Court] implementing the newly adopted standard.'") (citing *Abruquah v. State*, 483 Md. 637, 652 n.5 (2023). Notably, this passage is dicta. Even so, Abad-Mesina's trial began, and a *Daubert-Rochkind* hearing was held on March 4, 2024, over three and a half years after the Supreme Court announced the *Rochkind* standard. It is hardly new.

Maryland trial court's exercise of discretion to admit or deny expert testimony will be overturned." *Id*.

"The standard for appellate review of evidentiary sufficiency is 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." *State v. Smith*, 374 Md. 527, 533 (2003). We do not retry the case on appeal. *Smith v. State*, 415 Md. 174, 185 (2010). "We do not second-guess the jury's determination where there are competing rational inferences available." *Id*. Rather, "[w]e defer to the jury's inferences and determine whether they are supported by the evidence." *Id*. In conducting this review, we consider "not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in a light most favorable to the State." *Id*. at 185-86.

DISCUSSION

I. The trial court properly exercised its discretion in permitting Detective Skiba's expert witness testimony.

Abad-Mesina contends that the trial court made multiple errors regarding Detective Skiba's testimony. First, Abad-Mesina argues that the trial court erred in allowing Detective Skiba to testify as an expert witness in "drug trafficking and distribution" because there was not a sufficient factual basis to support the expert testimony. Second, Abad-Mesina argues that the trial court erred in allowing Detective Skiba to testify as to Abad-Mesina's "intent" to distribute. The State responds, arguing that Abad-Mesina's first claim is only partially preserved, and the second claim is wholly unpreserved. Even so,

the State argues, the trial court did not err in permitting any part of Detective Skiba's testimony. We address each of these arguments in turn.

A. The trial court did not err in determining that there was a sufficient factual basis to support Detective Skiba's admission as an expert witness in "drug trafficking and distribution."

Abad-Mesina first contends that the court abused its discretion when it admitted Detective Skiba as an expert witness. Abad-Mesina argues that the State failed to establish a sufficient factual basis and reliable methodology to support the expert testimony, and the court therefore erred when it permitted certain testimony by Detective Skiba. Abad-Mesina takes particular issue with statements made by Detective Skiba at trial alleging that all ten bags found on Abad-Mesina were methamphetamine, possessing multiple bags is indicative of intent to distribute, and possessing money in different folds is indicative of intent to distribute. Regarding the reliable methodology requirement, Abad-Mesina alleges that Detective Skiba entirely ignored the alternate explanation that all of the methamphetamine in Abad-Mesina's possession was for his personal use, and argues that Detective Skiba's methodology was inconsistent and unreliable.

The State argues that a trial court has broad discretion to admit expert testimony. In addition, the State argues that the court soundly exercised its discretion in rejecting Abad-Mesina's pre-trial arguments to exclude Detective Skiba's expert witness testimony. The State further contends that some of the challenges are not preserved, and even so, the court properly exercised its discretion in permitting Detective Skiba's testimony in the challenged instances.

i. The pretrial motion to exclude Detective Skiba as an expert witness.

Abad-Mesina does not appear to argue that Detective Skiba's expert testimony should not have been admitted at all by challenging the court's denial of his pre-trial motion to exclude Detective Skiba's admission as an expert. Rather, Abad-Mesina particularly contends that Detective Skiba's testimony was based on neither sufficient supporting data nor a reliable methodology to satisfy the "sufficient factual basis" requirement for Rule 5-702(3). Even so, we find it useful to reiterate the standard for admitting expert testimony to provide proper context for our consideration of this contention.

Maryland Rule 5-702 governs the admission of expert witnesses. Rule 5-702 provides:

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

In *Rochkind v. Stevenson*, 471 Md. 1 (2020), the Maryland Supreme Court adopted the federal standard governing expert testimony, which was outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *Rochkind* outlined multiple factors that

a court may consider in its determination regarding whether the proposed expert testimony satisfies Rule 5-702. The factors include, but are not limited to:

> (1) whether a theory or technique can be (and has been) tested;
>
> (2) whether a theory or technique has been subjected to peer review and publication;
>
> (3) whether a particular scientific technique has a known or potential rate of error;
>
> (4) the existence and maintenance of standards and controls; and
>
> (5) whether a theory or technique is generally accepted.

Rochkind, 471 Md. at 35 (quoting *Daubert*, 509 U.S. at 593-94; Fed. R. Evid. 702 Advisory Committee Note). The Court continued, noting that although not enumerated in *Daubert*, "courts have developed additional factors for determining whether expert testimony is sufficiently reliable." *Id*. The additional factors that may be considered under *Rochkind* include:

> (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;
>
> (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
>
> (8) whether the expert has adequately accounted for obvious alternative explanations;
>
> (9) whether the expert is being as careful as he [or she] would be in his [or her] regular professional work outside his [or her] paid litigation consulting; and

> (10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Rochkind, 471 Md. at 35-36 (citing Fed. R. Evid. 702 Advisory Committee Note).

The *Daubert-Rochkind* inquiry is "a flexible one," and none of the factors are dispositive. *Rochkind*, 471 Md. at 36-37. In determining the reliability of expert testimony, the court may consider "some, all, or none of the factors depending on the particular expert testimony at issue." *Id*. at 37. When deciding whether to admit an expert witness, "[t]he question for a trial court is not whether proposed expert testimony is right or wrong, but whether it meets a minimum threshold of reliability so that it may be presented to a jury, where it may then be questioned, tested, and attacked through means such as cross-examination or the submission of opposing expert testimony." *Abruquah*, 483 Md. at 655.

In the present instance, Abad-Mesina filed a pre-trial motion to exclude Detective Skiba's admission as an expert witness. Abad-Mesina particularly contended that all ten *Daubert-Rochkind* factors favored excluding Detective Skiba's testimony, as the State did not establish a sufficient factual basis which required both a showing of an adequate supply of data and reliable methodology. Abad-Mesina insinuated that Detective Skiba's testimony was "not a scientific discipline, and so it does not lend itself to having expert opinions," and therefore it did not satisfy the *Daubert-Rochkind* test and should be excluded. The State noted that the court could apply some, all, or none of the *Daubert-Rochkind* factors because "there is a distinction between scientific tests and expert testimony that's based off of training and experience," as the *Daubert* factors do not lend

themselves to applicability for experiential-based experts. The court denied the motion and permitted Detective Skiba to testify as an expert witness.

To understand the court's decision to admit the testimony of Detective Skiba, we find *Ingersoll v. State*, 262 Md. App. 60 (2024) to be useful. In *Ingersoll*, we upheld the trial court's admission of an expert to testify as to gang activity and culture. *Id*. at 78. In doing so, we noted that:

> Federal decisions draw a distinction between expert testimony that is "primarily experiential in nature as opposed to scientific." *United States v. Wilson*, 484 F.3d 267, 274 (4th Cir. 2007). Scientific testimony is "characterized by 'its falsifiability, or refutability, or testability.'" *Id*. (quoting *Daubert*, 509 U.S. at 593). "Experiential expert testimony, on the other hand, does not 'rely on anything like a scientific method.'" *Id*. (quoting Fed. R. Evid. 702 advisory note). This does not diminish its reliability, however.

Ingersoll, 262 Md. App. at 78. In *Ingersoll*, we held that the officer's "extensive experience and training in prison gangs over many years, coupled with his knowledge of the history, hierarchy, and practices of [a particular gang] served as a reliable basis for him to testify as an expert on those subjects." *Id*. We then highlighted several federal cases where experts have been admitted to testify based on similar gang-related expertise gained from experience and training. *Id*. at 79.

In the present instance, the reliability of Detective Skiba's expertise, although based on experience and training rather than the scientific method, is similarly not diminished. We again note that Abad-Mesina no longer challenges Detective Skiba's admission on these grounds, and only challenges admission under Rule 5-702(3). Even so, we emphasize that the court's decision to admit Detective Skiba was not in error. The State noted that

Detective Skiba had extensive experience and training as a police officer and participated in "thousands of drug investigations." As the court observed, "[t]here isn't anything novel about a detective or a police officer testifying about whether certain paraphernalia or things that are found in a car or in possession of the defendant is an indicator of distribution."

To be certain, federal courts have routinely held that officers with extensive experience in drug investigations may be certified as expert witnesses in cases requiring expert testimony to establish drug trafficking. *See, e.g.*, *United States v. Peebles*, 883 F.3d 1062, 1069-70 (8th Cir. 2018) ("We have recognized that the relevant reliability concerns may focus upon personal knowledge or experience rather than scientific foundations. . . . [The expert's] extensive service record related to drug investigations, consisting of twenty-eight years of law enforcement experience and hundreds of narcotics investigations, makes plain that his testimony based on experience was reliable and would have satisfied a more detailed, individualized evaluation."); *United States v. Dunston*, 851 F.3d 91, 97 (1st Cir. 2017) (holding "without serious question" that an expert witness with significant experience in undercover drug investigations permissibly testified from his personal experiences to the meaning of terms used in the drug trade); *United States v. Garrett*, 757 F.3d 560, 568 (7th Cir. 2014) ("We have consistently upheld prosecutors' practice of calling expert witnesses to discuss common practices of the drug trade in cases of drug dealing."); *United States v. Winbush*, 580 F.3d 503, 510-11 (7th Cir. 2009) ("Our court has long recognized that testimony regarding the methods used by drug dealers is helpful to the jury and therefore a proper subject of expert testimony."); *United States v. Gastiaburo*, 16 F.3d 582, 589 (4th Cir. 1994) ("We have repeatedly upheld the admission of law

enforcement officers' expert opinion testimony in drug trafficking cases."). In our view, the court properly admitted Detective Skiba as an expert in drug trafficking and distribution.

ii. There existed a sufficient factual basis to support Detective Skiba's expert testimony.

Abad-Mesina contends that Detective Skiba's testimony did not satisfy Maryland Rule 5-702(3), which requires the trial court to evaluate "whether a sufficient factual basis exists to support the expert testimony." "The factual basis for an expert's opinion can come from 'facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions.'" *Frankel v. Deane*, 480 Md. 682, 700 (2022) (quoting *Sippio v. State*, 350 Md. 633, 653 (1998)). To satisfy the sufficient factual basis requirement, the court must consider "two sub-elements: (1) an adequate supply of data; and (2) a reliable methodology." *Rochkind*, 471 Md. at 22. In the absence of either factor, an expert's opinion is "mere speculation or conjecture." *Id*. The court need not "admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *Id*. at 36. Rather, "[a] court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id*. An "analytical gap" may occur due to "the failure by the expert witness to bridge the gap between his or her opinion and the empirical foundation on which the opinion was derived." *Savage v. State*, 455 Md. 138, 163 (2017).

Regarding an adequate supply of data, Abad-Mesina alleges three specific errors by the court in permitting Detective Skiba to testify: that all ten bags found on Abad-Mesina's

person were methamphetamine; that possessing multiple bags indicated an intent to distribute; and that the groupings of money recovered from Abad-Mesina's pocket indicated an intent to distribute. The State counters that Abad-Mesina's challenges to the first two issues are not preserved, and that his challenge regarding the folds of money supporting an intent to distribute is without merit.

We agree with the State that Abad-Mesina's first two contentions are not preserved. Regarding the first contention, Detective Skiba was asked a question about the packaging of the bags recovered from Abad-Mesina:

> [THE STATE:] I'm going to move forward to the -- talking about the packaging. You described for us the packaging of State's Exhibit 3. Could you tell us whether that was significant in your analysis?
>
> [DETECTIVE SKIBA:] The way it was packaged?
>
> [THE STATE:] Yes.
>
> [DETECTIVE SKIBA:] You have 10 individual bags packaged with crystal methamphetamine.
>
> [THE STATE:] Is that significant compared to just having one big bag of methamphetamine?
>
> [DETECTIVE SKIBA:] Yes.
>
> [THE STATE:] Why?
>
> [DETECTIVE SKIBA:] Because this is packaged for distribution. This is packaged to go out on the street and make street sales. If you have one giant bag of methamphetamine --
>
> [COUNSEL FOR ABAD-MESINA]: Your Honor, I would object to how this is packaged. *The detective can testify as to his opinion but not what it is*. He doesn't know how it's packaged or why it's packaged a certain way. He can testify

> as to his opinion and what it's consistent with as opposed to what it is.

(Emphasis added). Abad-Mesina's objection at this point appears to be to the framing of Detective Skiba's testimony that the individual bags are "packaged for distribution" as a statement of fact rather than his opinion. The objection is not to Detective Skiba's implication that all ten bags contained crystal methamphetamine. The court asked the State to rephrase the question, which it did as follows:

> [THE STATE:] *In your opinion*, why is the individual packaging significant?
>
> [DETECTIVE SKIBA:] It's significant because it's packaged for street sale.

(Emphasis added). Abad-Mesina lodged no further objections to this line of questioning, and never made a specific objection to Detective Skiba's statement that there were ten bags of crystal methamphetamine. As such, Abad-Mesina has not preserved for appellate review his challenge to this statement. *See* Md. Rule 4-323(a) ("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.").

Regarding the second contention, Detective Skiba was asked a series of questions during cross-examination during which Abad-Mesina attempted to elicit testimony that his possession of five bags of methamphetamine was indicative of extensive methamphetamine use rather than an intent to distribute. Detective Skiba answered these hypothetical questions to the effect that a dealer would most likely not sell five three-gram bags to one user, and would instead package the same amount of methamphetamine in one

larger bag. On re-direct examination, Detective Skiba elaborated, noting that packaging bags for individual sale in the amount of approximately three grams is "very labor-intensive," that it would be "bad business," and that, in his opinion, it would not be common for a dealer to sell a user five bags at a time. At no point, either during cross-examination or re-direct examination by the State, did Abad-Mesina object to any of Detective Skiba's statements as inappropriate. As such, his appellate challenge is likewise waived.

Finally, Abad-Mesina alleges that Detective Skiba's testimony regarding the folds of money recovered from Abad-Mesina amounted to improper speculation lacking a sufficient factual basis. Abad-Mesina, therefore, contends that the court abused its discretion when it overruled objections to the testimony. Detective Skiba testified that in preparing for trial, he reviewed the incident report prepared by the arresting officer, and did not otherwise see how the money was folded. The incident report provided: "In his back left pocket [Abad-]Mesina had four separate 'folds' of cash. All of them consisted of $20 bills. The first was $120, the second was $100, the third was $40, and the last was a single $20 bill." Abad-Mesina maintains that because Detective Skiba only reviewed the incident report, his testimony lacked the sufficient factual basis needed to support his conclusion that the folds of money were indicative of an intent to distribute.

Detective Skiba, however, did not testify that having money in separate folds alone demonstrated an intent to distribute. Responding to the State's question as to the significance of Abad-Mesina having four separate folds of currency, Detective Skiba testified that:

> during these hand-to-hands which we have seen, drugs go out in one hand, cash comes back into another, and it's put into a pocket. They don't intermingle their drugs with their cash. Once the deal is done, they separate. We don't ever see -- or I have never seen a dealer stop, count out his money to make sure it was all correct, and move on. The deal is very quick. Drugs, cash, they move on; they separate.

Detective Skiba testified that in his experience -- which he previously noted included assisting in approximately 1,000 investigations involving possession with the intent to distribute -- drug deals happen quickly, with dealers depositing currency into their pockets without pausing to count the bills. Detective Skiba did not opine that the folds alone indicated an intent to distribute; rather, based on the totality of his analysis -- which included the amount and packaging of the methamphetamine recovered -- there was sufficient evidence to charge Abad-Mesina with possession with the intent to distribute. As such, we cannot say that Detective Skiba's testimony was "mere speculation or conjecture" and that the trial court abused its discretion in failing to exclude this testimony as lacking an adequate supply of data. *Rochkind*, 471 Md. at 22.

Regarding a reliable methodology, Abad-Mesina alleges that the court erred because Detective Skiba ignored the obvious alternate explanation that the methamphetamine was for Abad-Mesina's personal use, and alleges that Detective Skiba's methodology overall was inconsistent and unreliable.

"[T]o satisfy the requirement of a reliable methodology, 'an expert opinion must provide a sound reasoning process for inducing its conclusion from the factual data and must have an adequate theory or rational explanation of how the factual data led to the expert's conclusion.'" *Oglesby v. Balt. School Assocs.*, 484 Md. 296, 328 (2023). As noted

above, one of the factors that a court may way in determining reliability is "whether the expert has adequately accounted for obvious alternative explanations." *Rochkind*, 471 Md. at 36.

Detective Skiba testified that he reviewed the incident report created following Abad-Mesina's arrest and the charging document. In the incident report, it noted that Abad-Mesina failed the standardized field sobriety test administered by the arresting officer, and that a glass smoking device was recovered from Abad-Mesina's vehicle. Nevertheless, when questioned, Detective Skiba opined that Abad-Mesina's possible history of drug use was not relevant in considering whether there was sufficient evidence to charge Abad-Mesina with intent to distribute. Detective Skiba also testified, however, that he has "never met a dealer that's not a user." As we noted previously, the court may consider "some, all, or none" of the *Daubert-Rochkind* factors. *Rochkind*, 471 Md. at 37. It is not evident what action by the court Abad-Mesina is challenging in this regard. To the extent that he challenges the weight given to Detective Skiba's testimony that Abad-Mesina's personal drug use is not relevant to whether he possessed methamphetamine with the intent to distribute, that is a question pertaining to the sufficiency of the evidence. As such, we decline to address it here but do so at the conclusion of this opinion.

Finally, Abad-Mesina alleges that Detective Skiba failed to articulate a consistent methodology throughout his testimony. Abad-Mesina contends that in Detective Skiba's testimony regarding the weight and number of bags, the eight-ball logo sticker on most of the bags, and the folds of money, he never articulated a methodology for determining that

these elements indicated an intent to distribute, and simply engaged in "mere speculation or conjecture." *Rochkind*, 471 Md. at 22.

As we previously explained, the *Daubert-Rochkind* factors do not lend themselves to applicability for experiential-based experts. We have held that an expert's testimony applying knowledge gained through experience and training is in and of itself a reliable methodology that satisfies the *Daubert-Rochkind* standard. *See Ingersoll*, 262 Md. App. at 79-80 ("[The gang expert's] testimony applied his extensive knowledge about gangs, generally, and DMI, in particular, garnered from training and experience, to reach conclusions about the gang's structure, hierarchy, and internal rules. This was a reliable methodology that satisfied the *Daubert-Rochkind* standard."). Likewise, Detective Skiba offered testimony applying his extensive knowledge about drug trafficking and distribution -- garnered from extensive training and experience participating in over 1,000 investigations involving drug distribution -- to reach the conclusion that there was sufficient evidence to charge Abad-Mesina with possession with the intent to distribute. This was a reliable methodology to satisfy the *Daubert-Rochkind* standard. As such, the court did not abuse its discretion in permitting Detective Skiba to testify to that end.

B. We decline to exercise plain error review to determine whether the trial court erred in permitting Detective Skiba to testify that Abad-Mesina demonstrated an intent to distribute.

Abad-Mesina next argues that the court erred when it allowed Detective Skiba to testify that Abad-Mesina intended to distribute the methamphetamine found on his person. Abad-Mesina contends that an expert witness may not testify regarding a defendant's requisite mental state. Abad-Mesina recognizes that he did not object to this testimony

during trial and has thus not preserved the issue for appeal. Nevertheless, he requests that we exercise plain error review and reach the issue anyway. Abad-Mesina contends that the case law examining Maryland Rule 5-704(b)[5] is "incredibly dense" and courts have had "only limited success" in crafting a general rule to address this issue. *Barkley v. State*, 219 Md. App. 137, 145 (2014).

The State argues that Abad-Mesina did not preserve this issue for appeal, and it does not meet the threshold requirements for plain error review. Even if we were to address this issue, the State argues, Detective Skiba only opined that there was sufficient evidence to support a charge of possession with the intent to distribute; he did not offer the impermissible expert opinion that Abad-Mesina had the requisite intent to distribute the methamphetamine.

"Ordinarily, an 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[.]" Md. Rule 8-131(a). When an issue is not preserved for appeal, we may, however, opt to exercise plain error review. "Plain error review is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (internal quotations omitted). Whether an appellate court should exercise plain error review involves a four-part analysis:

> (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished

[5] Maryland Rule 5-704(b) provides in relevant part: "An expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may not state an opinion or inference as to whether the defendant had a mental state or condition constituting an element of the crime charged. That issue is for the trier of fact alone."

> or abandoned, i.e., affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Newton, 455 Md. at 364 (quoting *State v. Rich*, 415 Md. 567, 578 (2010)) (cleaned up). It is "rare" for the court to engage in plain error review. *Yates v. State*, 429 Md. 112, 131 (2012). "[W]e will do so only when the error was 'so material to the rights of the accused as to amount to the kind of prejudice [that] precluded an impartial trial.'" *Newton*, 455 Md. at 364 (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)).

Detective Skiba testified as follows:

> [THE STATE:] So based on the totality of your analysis in this case, did you come to an opinion as to whether the evidence in this case is consistent with the distribution of methamphetamine?
>
> [DETECTIVE SKIBA:] Yes.
>
> [THE STATE:] What was that opinion?
>
> [DETECTIVE SKIBA:] That there was enough evidence for the charge of possession with the intent to distribute.

Abad-Mesina contends that this opinion testimony was in violation of Maryland Rule 704(b), which provides: "An expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may not state an opinion or inference as to whether the defendant had a mental state or condition constituting an element of the crime charged." The State argues that nothing in Detective Skiba's testimony opines on whether Abad-Mesina actually had the mental state of "intent" or was guilty of intent to distribute;

rather, Detective Skiba merely testified that the evidence presented was consistent with the intent to distribute.

In arguing for us to undertake plain error review, Abad-Mesina encourages us to clarify present case law examining Rule 5-704(b), as we have previously noted that the case law is "incredibly dense" and in addressing the issue, courts have had "only limited success." *Barkley*, 219 Md. App. at 145. This may be so, however, Abad-Mesina has not pointed to a "compelling, extraordinary, exceptional or fundamental" error that denied him personally the right to a fair trial. *Newton*, 455 Md. at 364. The Supreme Court of Maryland has held that an expert's testimony did not violate Rule 5-704(b) when the expert "never directly and unequivocally testified to [Appellant's] mental state; he never stated directly that [Appellant] had the intent to distribute." *Gauvin v. State*, 411 Md. 698, 711 (2009) (noting that even when the State's question -- "whether or not the PCP that was seized from [Appellant] was for her personal consumption or for distribution?" -- sought an impermissible opinion under Rule 5-704(b), the expert's answer was permitted). Although the State's question "strayed from the track," the expert never "crossed the line" established by Maryland Rule 5-704(b). *Id*. at 713, 711.

Similarly, in *Barkley*, this court held that "[e]ven though the circumstances may implicate the defendant, an opinion based on the circumstances themselves rather than on some special knowledge about the defendant's mind does not offend Rule 5-704(b)." 219 Md. App. at 155 (holding that expert who testified that 53 bags of heroin were intended for distribution based his opinion exclusively on "[w]hat [the expert] heard today based on the

amounts that were located, the manner of the bands, the lack of any type of device to utilize the heroin.").

Returning to the present appeal before us, Detective Skiba was merely asked to opine whether the evidence that he reviewed was sufficient to support a charge of possession with the intent to distribute. He was not asked to opine whether Abad-Mesina personally possessed the requisite intent for the crime. Detective Skiba's testimony did not cross the line into inadmissibility under Rule 5-704(b). Instead, his testimony was based on his knowledge and experience with drug investigations and the facts adduced at trial. The question was then presented to the jury to determine Abad-Mesina's ultimate guilt. Abad-Mesina has not pointed to an error that is so "clear and obvious" under the second prong of the plain error test, let alone so "compelling, extraordinary, exceptional or fundamental" that he was denied a fair trial. *Newton*, 455 Md. at 364. We, therefore, decline to exercise our discretion to undertake plain error review.

II. The evidence was sufficient to sustain Abad-Mesina's conviction of possession of a controlled dangerous substance with the intent to distribute.

Finally, Abad-Mesina contends that the trial court erred in denying his motion for judgment of acquittal because the State did not present sufficient evidence to sustain his conviction of possession of a controlled dangerous substance with the intent to distribute. Abad-Mesina particularly contends that his personal drug use was clearly established at trial and there was not sufficient evidence to prove that the five crystal methamphetamine bags were for distribution rather than his personal use. Additionally, Abad-Mesina contends that the evidence regarding the number of bags in his possession, the labels on

the bags, and the folds of money recovered from his pocket was insufficient to sustain his conviction of possession with intent to distribute methamphetamine.

The State disagrees, arguing that it presented sufficient evidence to sustain Abad-Mesina's conviction. Taken together, the State argues, because Abad-Mesina possessed folds of money and ten[6] bags of crystal methamphetamine with advertising logos, there was ample evidence for a jury to conclude that Abad-Mesina intended to distribute the methamphetamine.

As noted, appellate review of sufficiency of the evidence is highly deferential. We consider "whether 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." *State v. Smith*, 374 Md. 527, 533 (2003). "We give due regard to the fact finder's findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Id*. at 534 (cleaned up). "We do not re-weigh the evidence, but 'we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Id*. (quoting *White v. State*, 363 Md. 150, 162 (2001)).

Additionally, we will only review "a question of legal sufficiency of the evidence 'for the reasons given by [the defendant] in his motion for judgment of acquittal.'" *Cornell*

[6] All parties acknowledge that only five of the bags were tested -- four with the eight-ball logo and the single bag without the logo. The five remaining bags appeared to contain the same substance, although they were not tested and not confirmed to be crystal methamphetamine.

v. State, 215 Md. App. 483, 497 (2013) (quoting *Taylor v. State*, 175. Md. App. 153, 159 (2007)). A defendant who moves for judgment of acquittal "is not entitled to appellate review of reasons stated for the first time on appeal." *State v. Rich*, 415 Md. 567, 574 (2010).

At the conclusion of the State's case, Abad-Mesina moved for judgement of acquittal, and the following colloquy ensued:

> [COUNSEL FOR ABAD-MESINA]: I would ask that Your Honor find that the State did not meet its burden. And at this stage, it's in the light most favorable to the State, that it has shown that Mr. Abad-Mesina possessed methamphetamine with the intent to distribute. We have the pipe. We have the fact that he was under the influence of controlled dangerous substances, that he was consuming. And I know the expert said he doesn't know a dealer who is not himself a user. However, there is not sufficient evidence in this case to indicate that Mr. Abad-Mesina was selling as opposed to simply possessing with the intent to use himself for personal use.
>
> THE COURT: Thank you.
>
> [COUNSEL FOR ABAD-MESINA]: Thank you.
>
> [THE STATE]: Your Honor, the State had to show that the defendant was in possession of a controlled dangerous substance and did so through the testimony of [the arresting officer], who found State's Exhibit 3 on the defendant's person and who submitted it for testing, which was confirmed to be methamphetamine, a Schedule II controlled dangerous substance.
>
> And the State also had to show that the defendant was in possession with the intent to distribute. The evidence of that is from [Detective] Skiba, who testified that, first of all, the packages -- or the packaging was significant, the fact that there were 10 bags. He said, in his experience, what would be common for a user is just to buy one bag of whatever size he

> was looking for, and 10 bags was indicative of someone who was distributing drugs.
>
> He also testified that the money found in the defendant's back pocket was significant, that it is common in his experience for dealers who are doing quick drug transactions to keep separate folds of cash like the ones that were found in the defendant's back pocket.
>
> And he also testified that the -- that the glass pipe was not significant in his analysis because every dealer that he is aware of also uses, and it's very common for people who are dealing methamphetamine to also be using.
>
> And so the Defense's cross-examination and evidence as to the defendant was a drug user at the end of the day does nothing to negate the evidence that he was a drug seller or distributor. And so at this stage, taking all the evidence in the light most favorable to the State, the State has established a prime facie case of possession with intent to distribute methamphetamine.
>
> [THE COURT:] And so, well, I'll say, while the evidence reflecting that the defendant is a drug user could certainly create some reasonable doubt, I think that there -- that viewing the evidence in a light most favorable to the State, there is sufficient -- a sufficient amount of evidence to find guilty of the charge. So I will deny the motion for judgment of acquittal.

Abad-Mesina only preserved for appeal his contention that the State did not sufficiently prove intent to distribute because he was also a heavy methamphetamine user, and did not point to specific ways in which the evidence was insufficient. Even so, we will address his contentions that specific elements of Detective Skiba's testimony did not establish an intent to distribute, ultimately holding that the court did not err in denying his motion for judgment for acquittal based on insufficiency of the evidence.

A. Testimony about the number of bags, labels, and money folds, and Abad-Mesina's personal drug use.

Abad-Mesina argues that the State presented insufficient evidence to sustain his conviction for possession with the intent to distribute. Abad-Mesina again argues that Detective Skiba presented inconsistent testimony, and particularly stated that if an individual possessed ten bags of methamphetamine, that would indicate an intent to sell the drugs. Because the State only proved that Abad-Mesina possessed five bags of methamphetamine, he argues it was unreasonable for the jury to infer that all ten bags contained methamphetamine and that Abad-Mesina intended to distribute the methamphetamine.

Notably, Detective Skiba testified that the net weight of the five tested samples, 13.15 grams, was nearly twice as much as, through his training and experience, he believed an individual would purchase for personal use. Detective Skiba further observed the significance that the five bags were packaged individually, testifying that it would be "bad business" and "labor-intensive" for a dealer to individually package five bags of methamphetamine just to sell it to one individual. Although Detective Skiba stated in one instance that Abad-Mesina possessed ten bags of methamphetamine, it was emphasized throughout the trial that only five of the bags were tested and confirmed as containing methamphetamine. We cannot conclude that the jury reached their verdict based on possession of ten bags of methamphetamine.

Abad-Mesina also contends that the labels on the bags and folds of money were not indicative of intent. He argues that Detective Skiba's testimony that the eight-ball design

is an "advertising label" used to build a client base and that the folds of money were indicative of distribution amounted to mere speculation.

Finally, Abad-Mesina contends that there was not sufficient evidence to convict him of intent to distribute due to his personal history of drug use. He argues that all of the evidence addressed previously instead indicates that he is a heavy drug user, and the jury improperly found that he possessed with intent to distribute rather than to use the drugs on his own. In support of this contention, Abad-Mesina notes that the methamphetamine was uncovered as a result of the search. It was later confirmed that the intoxicating substance was not alcohol. Further, Abad-Mesina argues, a glass pipe was recovered from Abad-Mesina's vehicle, also indicating that the drugs were for his personal consumption.

B. The State presented sufficient evidence to sustain Abad-Mesina's conviction of possession with intent to distribute.

"[I]intent . . . is seldom proved directly, but is more often found by drawing inferences from facts proved which reasonably indicate under all the circumstances the existence of the required intent." *Waller v. State*, 13 Md. App. 615, 618 (1971). It is the fact finder's role to "choose among differing inferences that might possibly be made from a factual situation" and we must give "deference . . . in that regard to the inferences a fact-finder may draw." *Smith*, 374 Md. at 534.

The State presented the jury with evidence that Abad-Mesina possessed five bags of a substance that was confirmed to be methamphetamine, the methamphetamine weighed a total of 13.15 grams -- which exceeded what the expert testified an individual would purchase for personal use, there were "eight-ball" advertising logos on the majority of the

ten bags in Abad-Mesina's possession, and Abad-Mesina had several groupings of cash folds of $20 bills in his possession. Abad-Mesina elicited on cross-examination that he was a user of methamphetamine and was under the influence at the time of his arrest. After presented with the testimony outlined above, the jury was required to examine whether the methamphetamine in Abad-Mesina's possession was either for his personal use, or for distribution. The jury concluded that Abad-Mesina intended to distribute the drugs. Viewing the evidence in the light most favorable to the State, we agree that a rational jury could have found beyond a reasonable doubt that Abad-Mesina possessed the drugs with the intent to distribute. *Smith*, 374 Md. at 533. The court, therefore, did not err in denying Abad-Mesina's motion for judgment of acquittal.

CONCLUSION

Perceiving no error in the court's admission of Detective Skiba's expert witness testimony, and no error with the sufficiency of the evidence presented by the State, we affirm Abad-Mesina's conviction for possession of a controlled dangerous substance with the intent to distribute the substance.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.