Circuit Court for Baltimore City
Case No. 117166008 and 117233008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 349

September Term, 2019

LOUIS HERNANDEZ

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: April 15, 2020

A jury, in the Circuit Court for Baltimore City, convicted Louis Hernandez, appellant, of conspiracy to commit robbery with a dangerous weapon, robbery, conspiracy to commit robbery, first-degree assault, conspiracy to commit first-degree assault, second-degree assault, conspiracy to commit second-degree assault, theft, conspiracy to commit theft, and conspiracy to commit use of a handgun in the commission of a crime of violence. The court sentenced appellant to a total term of 40 years' imprisonment. In this appeal, appellant presents three questions for our review:

1. Did the trial court err in allowing a detective to testify regarding the victim's failure to identify appellant from a photographic array?

2. Did the trial court err in permitting testimony about a handgun seized from appellant's co-conspirator during an unrelated investigation and in permitting that handgun to be shown to the jury?

3. Did the trial court err in allowing a detective to testify as to what she saw in surveillance footage and in a still image taken from that footage?

We hold that appellant failed to preserve the issues raised in the first two questions and that, even if preserved; appellant's arguments are without merit. As to question 3, we hold that the trial court did not err in allowing the testimony. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

On May 19, 2017, Audberto Ramos was returning home after meeting with his grandson when he stopped to smoke a cigarette in the stairwell outside of his home. Around the same time, an unidentified individual approached Mr. Ramos, put a gun to his forehead, and demanded money. When Mr. Ramos tried to take the gun, the assailant hit

Mr. Ramos in the face with the gun, causing Mr. Ramos to fall to the ground. Around the same time, a second individual, who had approached Mr. Ramos from the rear, said, "Take everything from him." The two assailants then removed several items from Mr. Ramos' person and "took off." Mr. Ramos was ultimately taken to the hospital for treatment.

Baltimore City Police Detective Christy Post, the lead detective in the case, responded to the hospital to speak with Mr. Ramos following the attack. After speaking with Mr. Ramos, Detective Post traveled to the scene of the attack and discovered that there were several surveillance cameras in that area and that some of the cameras had captured video footage of the attack. Detective Post then reviewed those videos, which depicted the two assailants approaching Mr. Ramos outside his home and then committing the attack.

Six days after the attack, Detective Post was involved in an unrelated investigation outside of a residence. During that investigation, Detective Post observed an individual, whom she later identified as Bernabe Santiago, coming out of the suspect residence carrying "a black knapsack bag." Detective Post recognized Mr. Santiago from the surveillance videos as being the assailant who had put the gun to Mr. Ramos' head and then struck him with it. Detective Post arrested Mr. Santiago, searched his bag, and found "a loaded revolver."

Based on her discovery of the firearm, Detective Post obtained a search warrant for the suspect residence. Prior to effectuating that search, Detective Post went to the residence and asked the remaining occupants to exit. Several individuals, including appellant, emerged from the residence. Detective Post recognized appellant from the surveillance

videos as the assailant who had approached Mr. Ramos from the rear and took his belongings after he was knocked to the ground by the other assailant. Appellant was arrested.

Detective Post eventually searched the suspect residence and discovered clothing similar to the clothing worn by the assailant who had approached Mr. Ramos from the rear. Detective Post also searched appellant's cell phone and discovered a photograph of appellant wearing similar clothing.

At some point in her investigation, Detective Post arranged a photographic array that included appellant's picture. Upon being shown that array, Mr. Ramos did not identify appellant as being involved in the attack.

Appellant was ultimately charged with various crimes related to the attack on Mr. Ramos. At the trial that followed, Detective Post testified about, among other things, the photographic array she compiled, the gun she found in Mr. Santiago's bag, and her identification of appellant from the surveillance videos. Additional facts will be supplied below.

DISCUSSION

I.

Appellant first claims that the trial court erred in permitting Detective Post to testify about the photographic array. The relevant portion of that testimony was as follows:

> [STATE]: … When you spoke with Mr. Ramos, did you have an opportunity to create a photographic array for him to pick out any of the two suspects?

[WITNESS]: I did.

* * *

[STATE]: Detective Post, could you take a look at Defense 1. Just let me know if you recognize that.

(Witness reviewed the document.)

[WITNESS]: Yes, I do.

[STATE]: And specifically, what is it?

[WITNESS]: So this is a six-pack photo array. This is what we show people when we're trying for them to identify an individual who is involved in their case. I create the photo array, and then I will have a detective who's completely unrelated to the case show the photo array. That way, there's no type of leading someone or, you know, subconsciously staring at a photo that you want them to pick. There's absolutely no bias in that. So the individual that had shown this photo array was Detective Moss, who was completely uninvolved in this –

[STATE]: And –

[WITNESS]: – investigation.

[STATE]: – when you – when photographic arrays are shown to victims of violent robbery incidents, is it common for them to not pick out an –

[DEFENSE]: Objection, Your Honor.

THE COURT: Sustained as to leading.

[STATE]: What are the different kinds of results that you can obtain from a photographic array?

[WITNESS]: Sure. So in my – well, in my experience in Citywide Robbery, it really depends on the type of robbery that

> occurred. So if you have a robbery that is not so violent and there is lots of conversation between the victim … and the suspect, there is a much higher chance that that victim is going to identify that suspect because they've had that opportunity to look at them and have that conversation.
>
> So the time frame is very relevant in our percentages for someone picking out the correct suspect. And then in the same, you know – likewise, it's similar to a situation where there's very little contact with the suspect or if it's a violent robbery where the victim – lots of victims focus on what's going to hurt them which is usually the weapon –
>
> [DEFENSE]: Objection, Your Honor.
>
> [WITNESS]: – not the –
>
> THE COURT: Basis?
>
> [DEFENSE]: Your Honor, the detective is testifying to what a victim is thinking or what a victim is doing.
>
> THE COURT: She's testifying in terms of her experience on the ability of victims to identify or not identify their perpetrator based on the relevancy of the time and the violence of the incident. Overruled.
>
> [WITNESS]: So basically, to make it short, **if there is a short period of time where there is a significant amount of violence, it is unlikely that our victim is going to recognize our suspect** based off of that, based off of what I have observed as the usual reaction from a victim.

Appellant now claims that the trial court erred in permitting the highlighted testimony. Appellant maintains that the testimony "went beyond [Detective Post's] participation in this investigation" and was "admittedly based on her specialized experience

as a detective in Citywide Robbery." Appellant maintains, therefore, that the testimony constituted "expert testimony" and should have been excluded, as Detective Post was not tendered or admitted as an expert witness.

The State argues, and we agree, that appellant's argument is unpreserved. When defense counsel objected to the testimony, he provided as a basis for that objection that Detective Post was "testifying to what a victim is thinking or what a victim is doing." At no point did defense counsel argue that the testimony should have been excluded as improper expert testimony. Accordingly, that issue is not preserved for our review. *See Paige v. State*, 226 Md. App. 93, 122 (2015) ("'[I]t is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.'") (quoting *Klauenberg v. State*, 355 Md. 528, 541 (1999)); *See also* Md. Rule 8-131(a).

In his reply brief, appellant notes that, under Maryland Rule 8-131(a), an issue is properly preserved if it is "decided by" the trial court. Relying on that Rule, appellant asserts that, because the trial court overruled defense counsel's objection on the grounds that Detective Post was testifying in terms of her "experience," the issue appellant raises on appeal was decided by the trial court and thus was preserved. We disagree. The trial court's reference to Detective Post's "experience" had nothing to do with expert testimony; rather, the court made the comment to refute defense counsel's claim that the detective was "testifying to what a victim is thinking or what a victim is doing." Therefore, the instant issue was not "decided by" the trial court. *See* Md. Rule 8-131(a) ("Ordinarily, the

appellate court will not decide any [non-jurisdictional] issue unless it *plainly* appears by the record to have been raised in or decided by the trial court[.]") (emphasis added).

Even if preserved, appellant's claim is without merit. Maryland Rule 5-701 provides that testimony by a lay witness "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." Expert testimony, on the other hand, is "based on specialized knowledge, skill, experience, training, or education…[and] need not be confined to matters actually perceived by the witness." *Ragland v. State*, 385 Md. 706, 717 (2005). Before a witness may give expert testimony, however, the witness must be qualified as an expert by the trial court. Md. Rule 5-702.

The Court of Appeals discussed the difference between lay opinion testimony and expert testimony in *Ragland v. State*. In that case, Jeffrey Ragland was arrested and charged with distribution of a controlled dangerous substance after members of the Montgomery County Police Special Assignment Team ("SAT") observed Ragland and several other individuals involved in what they believed to be a drug transaction. *Ragland,* 385 Md. at 709–10. At trial, two members of the SAT team testified regarding the events leading up to Ragland's arrest. *Id.* at 711, 713. Neither was called as an expert by the State nor qualified as an expert by the court under Maryland Rule 5-702. *Id.* Nevertheless, both officers testified that, based on their training and experience in the investigation of drug

crimes, what they observed was a "drug transaction." *Id.* at 712–14. Ragland was ultimately convicted of distribution of a controlled dangerous substance. *Id.* at 715.

On appeal, Ragland argued that the officers' conclusions constituted expert testimony and should have been excluded by the trial court. *Id.* at 716. The Court of Appeals agreed, noting that both officers "devoted considerable time to the study of the drug trade [and] offered their opinions that, among the numerous possible explanations for the [observed events], the correct one was that a drug transaction had taken place." *Id.* at 725–26. The Court further observed that "[t]he connection between the officers' training and experience on the one hand, and their opinions on the other, was made explicit by the prosecutor's questioning." *Id.* The Court concluded that "[s]uch testimony should have been admitted only upon a finding that the requirements of Md. Rule 5-702 were satisfied." *Id.*

The Court of Appeals similarly held, in *State v. Blackwell*, 408 Md. 677 (2009), that testimony about the results of a horizontal gaze nystagmus ("HGN") test constituted expert testimony "subject to the strictures of Md. Rule 5-702."[1] *Id.* at 691. In that case, the defendant, Paul Blackwell, was convicted of driving under the influence after a police officer testified that Blackwell failed an HGN test. *Id.* at 684–85. On appeal, Blackwell

[1] HGN is "a lateral or horizontal jerking when the eye gazes to the side." *Blackwell*, 408 Md. at 686 (internal citations and quotations omitted). "Although HGN is a natural phenomenon, alcohol magnifies its effects." *Id.* As a result, "law enforcement officials have looked to HGN as an indicator of alcohol consumption for several decades." *Id.* at 687.

contended that the trial court erred in admitting the officer's testimony because the officer had not been offered or qualified as an expert witness. *Id.* at 685–86.

Applying its holding in *Ragland*, *supra*, the Court of Appeals agreed with Blackwell, holding that the officer's testimony "about Blackwell's performance on the HGN test was clearly expert testimony within Md. Rule 5-702." The Court noted that the officer "reported, among other things, that Blackwell had 'lack of smooth pursuit' and 'distinct nystagmus at maximum deviation' in each eye." *Id.* at 691. The Court found this significant because "the HGN test is a scientific test, and a layperson would not necessarily know that 'distinct nystagmus at maximum deviation' is an indicator of drunkenness; nor could a layperson take that measurement with any accuracy or reliability." *Id.*

The Court also drew a distinction between the HGN test, which requires expert testimony, and other field sobriety tests, which may not:

> [T]he HGN test does differ fundamentally from other field sobriety tests because the witness must necessarily explain the underlying scientific basis of the test in order for the testimony to be meaningful to a jury. Other tests, in marked contrast, carry no such requirement. For example, if a police officer testifies that the defendant was unable to walk a straight line or stand on one foot or count backwards, a jury needs no further explanation of why such testimony is relevant to or probative on the issue of the defendant's condition. A juror can rely upon his or her personal experience or otherwise obtained knowledge of the effects of alcohol upon one's motor and mental skills to evaluate and weigh the officer's testimony. However, if a police officer testifies that the defendant exhibited nystagmus, that testimony has no significance to the average juror without an additional explanation of the scientific correlation between alcohol consumption and nystagmus. In effect, the juror must rely upon the specialized knowledge of the testifying witness and likely has no independent knowledge with which to evaluate the witness's testimony.

Id. at 691–92 (*quoting State v. Murphy*, 953 S.W.2d 200, 202–03 (Tenn. 1997)).

In *In re Ondrel M.*, 173 Md. App. 223 (2007), on the other hand, this Court held that, under *Ragland*, a police officer could give lay opinion testimony on the odor of marijuana. *Id.* at 238. In that case, a juvenile, Ondrel M., was a passenger in a vehicle that had been stopped by the police. *Id.* at 227–28. Upon approaching the vehicle, Officer Brett Tawes "smelled an odor of marijuana emanating from inside." *Id.* at 228. A search of the vehicle revealed marijuana, and Ondrel M. was arrested. *Id.* At trial, Officer Tawes testified as a non-expert that "in his training at the police academy and in his work in the field as a police officer, he had been exposed previously to the smell of burning marijuana and therefore could recognize its smell." *Id.* Ondrel M. was subsequently found involved by the juvenile court. *Id.* at 229.

Relying on *Ragland*, Ondrel M. argued, on appeal, that the juvenile court erred in admitting the officer's lay opinion because it was based on the officer's training and experience as a police officer. *Id.* at 238. This Court disagreed and held that Officer Tawes' testimony was properly admitted as lay opinion and did not require prior qualification. *Id.* Relying on the Court of Appeals reasoning in *Blackwell*, *supra*, this Court reiterated that certain testimony, even if given by a police officer, is not expert testimony if it was rationally based on the witness' perceptions:

> No specialized knowledge or experience is required in order to be familiar with the smell of marijuana. A witness need only have encountered the smoking of marijuana in daily life to be able to recognize the odor. The testimony of such witness thus would be "rationally based on the perception of the witness." *Ragland*, 385 Md. at 717.

In re Ondrel M., 173 Md. App. at 243.

This Court further pointed out that, "[i]n determining whether an opinion offered by a witness is lay opinion or expert testimony, it is not the status of the witness that is determinative. Rather, it is the nature of the testimony." *Id.* at 244. We explained that "[t]here are certain fields where a witness may qualify as an expert based upon experience and training, however, use of the terms 'training' and 'experience' do not automatically make someone an expert." *Id.* (internal citations omitted). We concluded that "the fact that Officer Tawes based his opinion regarding the odor of marijuana on his prior training and experience as a police officer does not render the opinion, *ipso facto*, an expert opinion." *Id.* at 245.

Applying the above principles to the facts of the instant case, we hold that the trial court did not abuse its discretion in allowing Detective Post to offer her opinion regarding the ability of victims to identify a perpetrator in a photographic array in light of the time and violence of the incident. *See generally Warren v. State*, 164 Md. App. 153, 166 (2005) ("The decision to admit lay opinion testimony is vested within the sound discretion of the trial judge."). Unlike the officers in *Ragland* and *Blackwell*, Detective Post did not rely on any scientific or technical analysis requiring specialized explanation or measurement, nor did she cite to any specific training in the field of photographic arrays when proffering her testimony. Instead, Detective Post merely provided a factual synopsis of her observations when conducting photographic arrays with victims, and any opinions she may have provided were rationally based on those perceptions and helpful to the factfinder in

understanding her testimony. *See Bruce v. State*, 328 Md. 594, 630 (1992) ("[L]ay opinions which are derived from first-hand knowledge, are rationally based, and are helpful to the trier of fact are admissible."). That Detective Post's opinion was based on her "experience" as a police officer did not automatically render the opinion "expert testimony."

Moreover, Detective Post provided her opinion in response to a general question from the State regarding the different kinds of results one could expect from a photographic array. In other words, the State did not ask Detective Post to give her opinion as to the relationship between the length and violence of an attack and the likelihood of a subsequent identification, nor did the State rely on that opinion as proof of any fact. *See Fullbright v. State*, 168 Md. App. 168, 181 (2006) ("Opinion evidence, by definition, is testimony of a witness, given or offered in the trial of an action, that the witness is of the opinion that some fact pertinent to the case exists or does not exist, *offered as proof of the existence or nonexistence of that fact*.") (citations and quotations omitted) (emphasis added). Thus, unlike in *Ragland*, the State's question did not evoke an explicit connection between Detective Post's training and experience on the one hand and her opinion on the other. *See Id.* (noting that, "[i]n *Ragland*, the State introduced the officers' opinions that the events they observed constituted a drug transaction in order to prove that those events were *in fact* a drug transaction.") (emphasis in original). For those reasons, the trial court did not err in admitting the opinion.

II.

Appellant's next claim of error concerns the gun seized from Mr. Santiago at the time of his arrest. At trial, Detective Post testified about the circumstances surrounding Mr. Santiago's arrest and the seizure of the handgun. During that testimony, the State moved to have the firearm marked for identification, and defense counsel objected. At the bench conference that ensued, defense counsel argued that the handgun had "no probative value" and was "just prejudicial" because it was found on Mr. Santiago six days after the attack and because there was no evidence linking the gun to appellant or the attack. The State responded that it was up to the jury to decide whether the gun found in Mr. Santiago's bag was the same gun used in the attack on Mr. Ramos. The court responded to the State's argument as follows:

> THE COURT: It could've been, but you didn't ask the victim to identify that gun or in any way connect that gun to this incident. So at this juncture, I find it somewhat relevant. Balancing the prejudice, outweighing any probative value, there's not going to be any testimony that [appellant] was any way connected with that gun, just that Mr. Santiago had that gun on him at the time of the arrest. So I'm going to let them ID it.
>
> [DEFENSE]: Okay.
>
> THE COURT: I'm not going to let you introduce –
>
> [STATE]: Okay.
>
> THE COURT: – it into evidence. Okay?
>
> [DEFENSE]: Okay. Thank you, Your Honor. That's fine.

The State then asked the trial court whether the court wanted the State "to identify the gun with a sticker and hand it to Detective Post" or just have her "handle everything." The following colloquy ensued:

THE COURT: It's up to you. Just –

[DEFENSE]: I usually – Your Honor, in my experience, and most judges are like this, just have the detective – mark the bag, have the detective open it and pull the gun out.

THE COURT: I have a trial every single week and I have lots of gun cases. But I just let the prosecutor do it.

[DEFENSE]: Okay.

[STATE]: Thank you, Your Honor.

At the conclusion of the bench conference, the State resumed its examination of Detective Post by handing her the firearm, which was inside of a bag, and asking her to identify it. Detective Post testified that the firearm was "a silver and black handled Smith and Wesson revolver" and that it was the same firearm that was recovered from Mr. Santiago at the time of his arrest. Appellant did not object to any of that testimony. Shortly thereafter, the State attempted to move the firearm into evidence, and the following colloquy ensued:

[DEFENSE]: Objection, Your Honor.

THE COURT: I'm only allowing you to mark it for ID.

[STATE]: And may we approach, Your Honor?

THE COURT: Yes.

(Counsel and Defendant approached the bench, and the following occurred:)

THE COURT: Yes.

[STATE]: Your Honor, am I able to ask the detective just was their observing Mr. Santiago with a handgun, did that create any pertinence to your investigation in the robbery of Mr. Ramos?

THE COURT: So that's a leading question and she's your direct examination witness, so you can ask –

[STATE]: I'm just, if I can – I was just kind of proffering what may be said in her response.

THE COURT: Oh. Well, she can definitely testify what led her to her next actions.

[STATE]: Okay.

THE COURT: Is that okay? All right. Thank you.

(Counsel and Defendant returned to the trial tables, and the following occurred in open court:)

[STATE]: So Detective, when that revolver was recovered, what did that lead you to believe relative to your investigation of the robbery against Mr. Ramos?

[WITNESS]: Well, believing that that person was involved in the incident [when] Mr. Ramos was struck in the face multiple times with a weapon. And so, therefore, believing that that could very well be the weapon involved in that incident, that led us into the house.

Appellant now claims that the trial court erred in permitting Detective Post to testify about the handgun and in allowing the State to show the handgun to the jury. Appellant claims that the evidence was irrelevant and prejudicial.

The State argues, and we agree, that appellant's argument was either waived or unpreserved. As the above colloquy makes clear, defense counsel agreed with the trial court's decision to have the gun marked for identification and shown to the jury and to permit Detective Post to testify that the gun had been found on Mr. Santiago. *See Simms v. State*, 240 Md. App. 606, 617 (2019) ("[W]here a party acquiesces in a court's ruling, there is no basis for appeal from that ruling."). From that point forward, other than when the State attempted to move the firearm into evidence, which the court did not allow, defense counsel did not lodge a single objection to the State's production of the handgun or to Detective Post's testimony regarding said handgun. *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.").

Assuming, *arguendo*, that the issue was properly before this Court, we conclude that the trial court did not err. Evidence is relevant if it makes "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." Md. Rule 5-401. Evidence that is relevant is generally admissible; evidence that is not relevant is not admissible. Md. Rule 5-402. Establishing relevancy "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). We review the court's determination of relevancy under a *de novo* standard. *State v. Simms*, 420 Md. 705, 725 (2011).

Even if legally relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "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 [fact-finder's] 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).

Here, the evidence concerning Mr. Santiago's possession of a handgun was relevant in supporting the State's theory that Mr. Santiago was the person who struck Mr. Ramos, the victim, with a handgun. The evidence was also relevant in explaining the course of Detective Post's investigation, as the discovery of the handgun led to the search of the suspect premises, which in turn led to Detective Post's identification of appellant as the second assailant and her discovery of the clothing inside of the residence that was similar to the clothing worn by one of the assailants.

We also conclude that the evidence was not unduly prejudicial. We fail to see how Detective Post's testimony regarding the gun found on Mr. Santiago prejudiced appellant,

given that none of that testimony suggested that the gun was ever in appellant's possession or otherwise linked to appellant.[2] For those same reasons, we fail to see how showing the gun to the jury caused undue prejudice for appellant.[3]

III.

Appellant's final contention concerns testimony given by Detective Post regarding the surveillance videos of the attack. At trial, Detective Post testified that, when she attempted to retrieve those videos from the surveillance cameras, she was unable to download one of the videos, so she recorded the contents of that video using the camera on her cell phone. That cell phone recording, along with a still image taken from that recording, was shown to the jury and introduced into evidence as State's Exhibits 4 and 5, respectively. The State then asked Detective Post about the recording and still image:

> [STATE]: And Detective Post, so State's Exhibit 4, the video you just saw, what . . . was the relevance of this video to your investigation?
>
> [WITNESS]: After speaking with my victim, I was aware of what he was wearing. I know that he had explained his direction of travel, where he was coming from, that he had met

[2] For this reason, appellant's reliance on *Smith v. State*, 218 Md. App. 689 (2014), and *Anderson v. State*, 220 Md. App. 509 (2014), is misplaced, as the firearms at issue in those cases were found in the defendants' possession. *See e.g. Smith*, 218 Md. App. at 705-06; *Anderson*, 220 Md. App. at 523.

[3] Appellant argues that "[i]t is difficult to understand how the trial court could believe that the prejudicial effect outweighed the probative value of admitting the handgun into evidence, but that un-packaging it from its sealed evidence packaging and showing it to the jury would not result in that same prejudice." Appellant is mistaken. The court did not find that admitting the handgun into evidence was prejudicial. Rather, when the court excluded the gun, it found that it would unduly prejudicial to permit "any testimony that [appellant] was any way connected with that gun." True to its word, the court did not permit such testimony,

with his grandson prior to being assaulted further down Highland Avenue. So I knew what he was wearing. And when I sent to review this footage, I see the victim Mr. Ramos walking southbound on Highland Avenue from crossing Baltimore Street. And there are two young men who were following him[.]

* * *

[STATE]: Detective, if you would just take a look at [State's Exhibit 5.] What is it?

[WITNESS]: So that is a still shot taken from the video footage. Basically, when I got back to my office, I took the video footage that I had recorded and played it frame-by-frame and tried over and over to try and capture some of the best angles of this person because I was trying to put a flyer together as a, you know, "can you identify" kind of thing.

[STATE]: And what, if anything, does State's Exhibit 5 show to you?

* * *

[WITNESS]: This shows an individual walking by the camera at a very close angle which just means that he was closest to the camera at the time.

[STATE]: And do you see anything of note with that individual appearance-wise, clothing, et-cetera?

[WITNESS]: Yes. The baseball cap is distinctive. It's probably a little easier to see in the video footage. **You can see a shining, like, circular** –

[DEFENSE]: Objection, Your Honor.

[WITNESS]: – **medallion** –

THE COURT: Overruled.

[WITNESS]: – **on the top of the baseball cap.** You also see a white reflection of, like, a curved line on the actual baseball cap, as well as a small tab at the very corner on the left-hand side of the baseball cap. It's two-toned; that's obvious from this video footage. But all of those are very distinctive things for the baseball cap. As far as the features on the person, **you can tell that the person has dark thick eyebrows** –

[DEFENSE]: Objection, Your Honor.

THE COURT: Overruled.

[WITNESS]: Okay. And, you know, from here, you can tell that this person also has, like, a mustache.

[STATE]: And Detective Post, can you tell what kind of color the hat is?

[WITNESS]: Yeah. Well, this is black, and then this is either gray or, like, a lighter color here (indicating).

Later, Detective Post testified about her identification of appellant outside of the suspect residence six days after the attack:

[STATE]: And what about – what about [appellant] led you to recognize him?

[WITNESS]: So immediately when I saw [appellant], he was, I believe, the third person . . . to walk out of that residence when I went there and knocked on the door. . . . . And as soon as I saw [appellant], I pulled one of my sergeants aside and I said, "That's going to be my second suspect. That's him." Because I immediately recognized him based off his features.

[STATE]: And specifically, what features are those?

[WITNESS]: So he has very distinct dark thick eyebrows as well as a mustache below. He's got young features. **He looks**

young, and the individual in the video footage looked very young.

[DEFENSE]: Objection, Your Honor.

THE COURT: Overruled.

Detective Post then testified that, when she searched the suspect residence, she discovered "a pair of Adidas sneakers, white with the black lines on them" and "a baseball cap that had the Red Sox logo on it along with a shiny medallion on the top of the cap." Detective Post testified that the sneakers were "very similar to the sneakers worn by the second suspect in [the] video footage" and that certain features of the baseball cap, including the shiny medallion, were "significant."

Appellant now claims that the trial court erred in permitting Detective Post to provide her "lay opinion" as to the contents of the video and still image. Appellant contends that Detective Post lacked "first-hand knowledge of the events" because she "was not present when the events portrayed in the footage and still photograph transpired." Appellant also contends that Detective Post's opinion was not helpful to understanding her testimony or determining a fact in issue because "the jurors were capable of drawing their own conclusions about what the images showed."

We hold that the trial court did not abuse its discretion in allowing Detective Post to testify as to what she saw in the video and still image. *See generally Warren*, *supra*, 164 Md. App. at 166 (2005) ("The decision to admit lay opinion testimony is vested within the sound discretion of the trial judge."). Detective Post's testimony, namely, her description of the assailant's hat and physical features, was based on her own observations of the video

and still image. At no time did the Detective Post provide anything other than a factual recitation of what she personally observed. *See Thomas v. State*, 183 Md. App. 152, 178 ("An opinion is a belief or view based on an interpretation of observed facts and experience.").

Moreover, Detective Post's testimony was helpful to the jury in understanding the officer's investigation of the incident, her identification of appellant at the time of his arrest, and the significance of the clothing found at the suspect residence following appellant's arrest. Although the jurors may have been capable of looking at the evidence and drawing their own conclusions about what they saw, they would likely not be able to understand what Detective Post observed and the significance of those observations. Importantly, because Detective Post investigated the attack and, in so doing, became intimately familiar with the videos and other evidence, *i.e.*, the assailant's physical appearance and clothing, she was in a unique position to comment on the significance of those observations. *See Moreland v. State*, 207 Md. App. 563, 572–73 (2012) (holding that the trial court did not err in permitting a lay witness to identify the defendant in a video recording where the witness was familiar with the defendant and had intimate knowledge of his appearance).

In sum, Detective Post's opinions were rationally based on her perceptions and helpful to the factfinder in understanding her testimony. *See Paige*, *supra*, 226 Md. App. at 130 (lay witness's opinions about events in surveillance video were permissible, as they were "rationally based on [her] perceptions and were helpful to the jury to understand the

facts at issue."). Based on the record before us, we cannot say that the court abused its discretion or failed to exercise caution in permitting Detective Post's testimony. *Cf. Payton v. State*, 235 Md. App. 524, 540 (2018) (noting, in dicta, that "caution should be exercised by the trial court when determining whether to permit a police officer to narrate a video when the officer was not present during the events depicted therein.").

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