Circuit Court for Baltimore City
Case No. 116042002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 457

September Term, 2017

DONTAE BREEDEN

v.

STATE OF MARYLAND

Berger.
Arthur,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 14, 2018

On January 24, 2017, after a jury trial in the Circuit Court for Baltimore City, Dontae Breeden, appellant, was found guilty of first-degree murder, use of a handgun in the commission of a felony or crime of violence, and wearing, carrying, and transporting a handgun on his person. The court sentenced appellant to incarceration for life for the first-degree murder conviction, twenty years, the first five years without the possibility of parole, for use of a handgun, and three years for wearing, carrying, and transporting a handgun. All of the sentences were to run consecutively to each other and to any of appellant's outstanding unserved sentences. On March 15, 2017, the State filed a motion to correct an illegal sentence on the ground that the offense of wearing, carrying, and transporting a handgun on a person should have merged into the offense of use of a handgun in the commission of a felony or crime of violence. The court granted the State's motion and merged the charges, making appellant's sentence life plus twenty years. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents four questions for our consideration which we have reordered and rephrased slightly as follows:

I. Did the circuit court err in admitting evidence relating to vehicles associated with appellant at a time and location different than the time and location of the shooting?

II. Did the circuit court err in permitting police officers to narrate what they saw on a video recording admitted into evidence?

III. Did the circuit court err in permitting testimony regarding appellant's manner of walking?

IV. Was the evidence sufficient to sustain appellant's convictions and did the circuit court abuse its discretion in denying appellant's motion for new trial on the ground that the evidence was inconsistent with the verdict?

For the reasons discussed below, we shall affirm.

FACTUAL BACKGROUND

This case arises out of the December 28, 2015 shooting of Rykeise Shaw in front of the Obama Deli and Grocery Store ("Obama's") located at 1011 Greenmount Avenue. At about 1:00 a.m. on December 28, 2015, Barbara Coleman walked to Obama's to purchase cigarettes. As she approached the store, she saw a man she identified as Charles, who was later identified as Charles Pinnick,[1] outside the store entrance selling DVDs from a bag. As Coleman entered the store, a brown-skinned man who was taller than she and another man were exiting the store. The brown-skinned man, whom she had seen before in the neighborhood and on Abbott Court, brushed against her. Coleman looked at him and waited for him to say, "excuse me." As she looked at the man, Coleman saw "[b]eside him" "a long metal object" that she believed was a gun. Thereafter, Coleman heard a gunshot and then ran and hid behind an ATM in Obama's. When she came out from behind the ATM, she saw a man she knew as Gucci in a kneeling position on the ramp leading to the store. Gucci, who was later identified as Rykeise Shaw, had been shot in the back of his head and died. An assistant medical examiner for the State of Maryland performed an

[1] Charles Pinnick was interviewed by Baltimore City Detective Luis Delgado on December 30, 2015 but died prior to trial.

autopsy on Shaw and testified that the cause of his death was a gunshot wound to the head and the manner of death was homicide.[2]

Coleman admitted that she used heroin and cocaine about one hour before the shooting. She claimed to use those drugs to "tune things out" and so that she "won't have a care in the world." After the shooting, she went to the police station where the police "made" her speak with them. Initially, she told police that she did not see anything because she did not want to get involved. Police then showed her a video recording of the shooting and told her that she had to tell the truth. According to Coleman, she did so.

Later, on January 20, 2016, Coleman was brought back to the police station and was shown photographs. She identified one of them as a photograph of the man who had the gun at Obama's. At trial, she identified appellant as that man. Coleman acknowledged that she asked police and the State's Attorney for help obtaining drug treatment and therapy.

Baltimore City Police Detective Lee Brandt recovered video recordings of the shooting from eleven cameras inside and outside of Obama's. From those recordings, he made a DVD for Baltimore City Police Detective Luis Delgado, the primary investigator on the case. Detective Brandt also made still photographs from the recordings. Additional video was obtained from Baltimore City's "City Watch" video surveillance system.

[2] There was no evidence of stippling to show that Shaw was shot at close range, but the assistant medical examiner testified that stippling could have been lost when Shaw's head was shaved as part of the autopsy.

Detective Delgado reviewed the surveillance video from Obama's and noted that the shooting suspect arrived and departed in a vehicle that appeared to be an Acura TL. From the surveillance video, Detective Delgado concluded that the vehicle appeared to be "blue-ish" or "[s]ilver or blue." During the course of the investigation, Detective Delgado began looking for a different colored Acura.

During an investigation into a breaking and entering at 818 Abbott Court, Detective Delgado developed appellant as a suspect in Shaw's murder. Detective Delgado located traffic citations related to appellant that were issued in Baltimore County on December 17, 2015, by Baltimore County Police Officer Aundre Smith. Detective Delgado met with Officer Smith and showed him the video of the homicide. Officer Smith testified that the vehicle in the video "matched the same type of car," "[t]he same, like an Acura TL," he had seen during the traffic stop of appellant. Officer Smith stated that on December 17, 2015, he conducted a traffic stop of a maroon 2001 Acura TL operated by appellant because, after a random check of the Maryland temporary tag on the vehicle, "nothing came back listed." Officer Smith asked appellant for his license, which identified him as Dontae Breeden, and obtained the vehicle identification number ("VIN") from the car. As he was speaking with appellant, Officer Smith observed a white van park about two blocks away. Officer Smith asked appellant if the people in the van were with him and appellant answered in the affirmative. Officer Smith removed the temporary tag from the Acura and issued a ticket to appellant. Appellant said he was only going a couple of blocks further, so Officer Smith allowed him to drive the vehicle to that location but told him not to drive it again until it was properly registered.

Three witnesses testified on appellant's behalf. All of them testified that on December 27, 2015, appellant's half-brother, Darren Thomas, was killed. From about 10:00 or 10:30 that night until about 4:00 or 5:00 a.m. the following day, appellant was with them at the home of Reneta Latham, the mother of Thomas's children. Latham testified that appellant stayed with her to make funeral arrangements. She also stated that appellant did not drive, that someone always gave him a ride, and that his friend, Framika Johnson, drove him to and from her home on December 27 and 28, 2015.

We shall include additional facts as necessary in our discussion of the questions presented.

DISCUSSION

I.

Appellant argues that the trial court erred in admitting evidence about Officer Smith's traffic stop of the car he was driving on December 17, 2015, two weeks prior to the shooting, because that evidence was irrelevant. Even if that evidence was relevant, appellant asserts that its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and potential for misleading the jury. Appellant further argues that, for the same reasons, the court abused its discretion in denying his motion for new trial on this issue.

A. Standard of Review

We review a trial court's decision to admit or exclude relevant evidence for an abuse of discretion. *State v. Simms*, 420 Md. 705, 724 (2011); *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011). We generally afford a trial court wide discretion in

making this determination. *Simms*, 420 Md. at 724 (and cases cited therein). To be admissible, however, the evidence must be relevant. Md. Rule 5-402. Consequently, a trial court's evidentiary ruling encompasses both a legal and a discretionary determination, which in turn implicates two separate standards of review: (1) a *de novo* standard, which we apply to the trial court's legal conclusion that the evidence was relevant; and (2) an abuse of discretion standard, which we apply to the trial court's determination that the probative value of the evidence is outweighed by any substantial prejudice. *Simms*, 420 Md. at 725.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401; *see also Snyder v. State*, 361 Md. 580, 591 (2000) (explaining that the trial court must be satisfied that the admission of "the proffered item . . . increases or decreases the probability of the existence of a material fact"). In other words, evidence is relevant if it is both material and probative. "Evidence is material if it bears on a fact of consequence to an issue in the case." *Smith v. State*, 218 Md. App. 689, 704 (2014) (and cases cited therein). "Probative value relates to the strength of the connection between the evidence and the issue . . . to establish the proposition that it is offered to prove." *Id.* (citations and quotations omitted). Generally, evidence that is relevant is admissible and evidence that is not relevant is not admissible. Md. Rule 5-402.

Even if the trial court finds that the evidence is relevant, it must determine whether "its probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury . . . .” Md. Rule 5-403. In *Smith*, we explained:

> Evidence is prejudicial when it tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission. 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. In order to admit evidence of a highly incendiary nature, the evidence must greatly aid the jury's understanding of why the defendant was the person who committed the particular crime charged.

218 Md. App. at 705 (internal quotations and citations omitted). “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) (citing *Martin v. State*, 364 Md. 692, 705 (2001)).

B. Evidence at Trial

At trial, the State introduced evidence that on December 17, 2015, appellant, who was driving a maroon 2002 Acura TL, was stopped by Officer Smith in Baltimore County. At the time of the stop, Officer Smith recorded the VIN from the Acura. During the course of the traffic stop, a white van pulled over and parked a short distance away. When questioned by Officer Smith, appellant stated that the people in the van were “with” him. On January 19, 2016, a maroon Acura with the same VIN as the Acura stopped by Officer Smith was found by police in Baltimore City. The front and back license plates on the Acura did not match each other or the temporary tag that was on the vehicle when it was

stopped by Officer Smith. Records from the Motor Vehicle Administration failed to connect either the VIN or the license plates to appellant.

Surveillance video from the time of the shooting showed a four-door sedan and a white van pull up in front of Obama's. In the video, the sedan appeared to be silver in color. Appellant argues that there was not an adequate basis from which the jury could conclude that the Acura TL stopped by Officer Smith and later seized by police was the same car that the shooter got into immediately after the shooting. Appellant points out that the car in the surveillance video did not appear to be maroon or even dark in color, that there was no evidence that the car in the video was a 2002 Acura TL, and that, although the car in the video and the car seized by police each had a sunroof and rear fin, many other vehicles share those features. As for the white van, appellant points out that there was no evidence of the specific make or model of that vehicle. Moreover, even if there was some similarity between the car in the surveillance video and the car stopped by Officer Smith, appellant asserts that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury because "the jury was bound to confuse similarity with identity and convict [him] simply because he was driving a 2002 maroon Acura TL." We disagree.

Whether the vehicle in the surveillance video was the maroon Acura stopped by Officer Smith was a question for the jury and there was ample evidence from which the jury could have concluded that they were, in fact, the same. In addition to the surveillance video from Obama's, the State also offered video footage from a City Watch camera. Although the record reflects general agreement that the images and definition of the video

from Obama's was not high quality, there was evidence from City Watch video recordings, and from still photographs, to support a conclusion that the vehicle at the scene of the crime was, in fact, maroon in color. In addition, Detective Delgado testified that although he was initially looking for a silver or blue vehicle, after a conversation with Pinnick, he began "to look for a different color car." From that evidence, the jury could infer that the sedan occupied by the shooter was neither silver nor blue as it appeared to be in the surveillance video from Obama's. In addition, the jury was free to compare the surveillance videos to photographs of the Acura eventually recovered by police that had the same VIN as the Acura stopped by Officer Smith. From that evidence, the jury could conclude that the vehicle in the surveillance videos had the same shape and external features, such as a sunroof and rear fin containing a brake light, as the vehicle recovered by police. The jury could also consider Coleman's testimony that placed appellant at the scene of the shooting. Lastly, the jury was free to weigh the evidence that appellant was accompanied by a white van at the time he was stopped by Officer Smith and that a white van was present, and left at the same time, as the vehicle occupied by the shooter.

All of this evidence had a tendency to show that appellant was driving the Acura that was stopped by Officer Smith, that the same Acura was driven by the shooter, and that appellant was the shooter. Accordingly, the evidence was relevant. Contrary to appellant's contention, the probative value of that evidence was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The jury had before it ample evidence including Coleman's testimony placing appellant at the scene of the shooting and the similarity of the vehicle in the videos and the Acura stopped by Officer

Smith and recovered by police. There is no reason to believe that the jury was "bound" to confuse the similarity of the vehicles with identity and convict appellant simply because he was driving a 2002 maroon Acura TL.

C. Denial of Motion for New Trial

Appellant also contends that, for the same reasons the court erred in admitting evidence of the Acura and white van associated with the traffic stop by Officer Smith, the trial court abused its discretion in denying his motion for new trial based on the admission of that evidence. Appellant's contention is without merit.

Pursuant to Maryland Rule 4-331(a), a court may order a new trial "in the interest of justice" on a motion filed by the defendant within ten days after a verdict is entered. The standard of review of the denial of a motion for new trial is abuse of discretion. *Jackson v. State*, 164 Md. App. 679, 700 (2005). An abuse of discretion occurs where "'no reasonable person would take the view adopted by the [trial] court'" or "'when the court acts without reference to any guiding rules or principles.'" *Kusi v. State*, 438 Md. 362, 386 (2014) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005)). "Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal." *Fontaine v. State*, 134 Md. App. 275, 288 (2000) (internal quotations and citations omitted).

Just prior to sentencing, the trial court heard argument on appellant's motion for new trial. Appellant argued, *inter alia*, that allowing the State to bring in evidence about Officer Smith's traffic stop of appellant while he was driving an Acura TL allowed "the jury to make an improper connection between the defendant and the vehicles in question

without there having been any definite evidence linking either of those two cars to any cars that [the defendant] had had contact with in the past." Although appellant acknowledged that Coleman testified that she saw appellant exit Obama's with a gun just prior to the shooting, he asserts that her credibility was "brought into question" by her inconsistent testimony and her acknowledged use of narcotics on the night of the shooting.

In denying appellant's motion for new trial, the court pointed out that the jury had an opportunity to review the video recordings and still photographs of the persons entering and exiting Obama's and the firing a gun. They also viewed video recordings that showed two vehicles driving away from the scene of the shooting. In addition, the jury had the opportunity to consider Coleman's testimony and it was up to the jury to determine her credibility. The trial court's determination was eminently reasonable and we find no abuse of discretion in its decision to deny appellant's motion for new trial.

II.

Appellant contends that the circuit court erred in permitting Detective Delgado and Officer Smith to narrate what they saw on the recording of a surveillance video that was admitted in evidence. Specifically, he argues that Officer Smith should not have been permitted to testify that the car he stopped on December 17, 2015 "matched" the vehicle in the surveillance video obtained from Obama's or that the white van in the surveillance video was the same white van he saw during the stop made on December 17th. He also argues that Detective Delgado should not have been permitted to testify, with regard to the surveillance video, that "[w]e're looking at an Acura TL." These contentions are without merit.

A. Officer Smith's Testimony

Preliminarily, we note that the trial court did not permit Officer Smith to testify in precisely the manner asserted by appellant. The court made clear that Officer Smith could testify that the vehicle he observed in the surveillance video appeared to be similar to the vehicle he pulled over for a traffic violation on December 17, 2015, but he could not testify that it was the same car. The State questioned Officer Smith, in part, as follows:

> [PROSECUTOR]: Officer Smith, did you make any observations – did you observe any cars on this video?
>
> [OFC. SMITH]: Yes, I did.
>
> [PROSECUTOR]: And what can you tell the ladies and gentlemen about the car you observed on the video as it relates, if at all, to the car that you stopped on December 17th?
>
> [OFC. SMITH]: The vehicle matched the same type of car. The same, like an Acura TL.
>
> [DEFENSE COUNSEL]: Objection. Objection.
>
> THE COURT: Your objection is noted. . . . I'm going to allow him to testify. The Court's ruling is that there is no basis for him to say with definite conclusion as to it being the same car. However, I'm allowing him to testify and I'm allowing cross examination. For whatever it's worth under the circumstances the cross examination will yield.

On cross-examination, Officer Smith clarified that his investigation did not reveal any connection between the Acura TL he stopped on December 17th and appellant. With respect to the similarity between the Acura TL he stopped on December 17th and the car observed in the surveillance video, Officer Smith was cross-examined as follows:

[DEFENSE COUNSEL]: On December 17th you said you stopped a car. You give a physical description of it. You said it was an Acura TL, right?

[OFC. SMITH]: Yes.

Q. And you said it was 2-door, right?

A. Yes, I did.

Q. Okay. Then you were later shown a video, and you were shown the video and you saw another vehicle that looks similar to that Acura TL?

A. Yes.

Q. Except how many doors are on that car that you saw in the video?

A. I'm not sure.

* * *

Q. When you looked at the video, were you able to see a license plate on the car in the video?

A. I couldn't tell. I could not tell.

* * *

Q. Let me ask you this: Did you check the VIN number on that car that was in the video at the Obama Grocery?

A. I did not.

Q. Of course not. So just how certain are you that it's the same vehicle?

A. I am not.

Q. Of course you're not.

A. It just looks like it. Yes, it does.

As for the white van, Officer Smith was questioned on direct examination as follows:

> THE COURT: Anything further from you?
>
> [PROSECUTOR]: Yes, Your Honor. Officer Smith, other than the car that we're referencing, did you observe any other vehicles in that surveillance video?
>
> [OFC. SMITH]: Yes, I did.
>
> [PROSECUTOR]: And what, if anything, can you tell the ladies and gentlemen about that vehicle based on your observations?
>
> [OFC. SMITH]: It's a white van that came in and circled around.

Officer Smith did not give any testimony on direct examination comparing the van that appeared in the video to the white van he observed during the traffic stop of appellant. As Officer Smith did not testify that the car he stopped on December 17, 2015 was the same vehicle in the surveillance video obtained from Obama's or that the white van in the surveillance video was the same white van he saw during the December 17th traffic stop, there is no factual basis for appellant's contentions.

Even if we were to view appellant's contentions as a challenge to Officer Smith's testimony about his observations of the vehicles in the surveillance video, we would not conclude that the trial court erred or abused its discretion in admitting that evidence. As discussed more fully, *supra*, in our discussion of the first question presented, a trial court's evidentiary ruling encompasses both a legal and a discretionary determination, which in turn implicates two separate standards of review: (1) a *de novo* standard, which we apply

to the trial court's legal conclusion that the evidence was relevant; and (2) an abuse of discretion standard, which we apply to the trial court's determination that the probative value of the evidence is outweighed by any substantial prejudice. *Simms*, 420 Md. at 725.

Maryland Rule 5-602 requires that lay witnesses must testify based on their own personal knowledge. Lay witnesses may offer opinion testimony that is "(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." Md. Rule 5-701; *Paige v. State*, 226 Md. App. 93, 125 (2015). In the instant case, Officer Smith had personal knowledge of the maroon Acura TL and the white van that he encountered on December 17, 2015. He used the surveillance video to describe the vehicles that he personally encountered. As a result, his testimony was rationally based on his own perception and was clearly helpful in providing a description and comparison of the vehicles for the jury. The fact that Officer Smith could not state that the vehicles in the video were the same vehicles he encountered during the December 17th traffic stop, limited the probative force of his testimony and this point was made abundantly clear during defense counsel's cross-examination of him.

B. Detective Delgado's Testimony

To place in context appellant's contention about Detective Delgado's testimony, we set forth the following colloquy that occurred during Detective Delgado's direct examination by the State:

> [PROSECUTOR]: Upon reviewing the [surveillance] video, was your attention drawn to any vehicle which may have been involved in the incident?

[DET. DELGADO]: Yes. We're looking at an Acura TL and at the time, it looked blue-ish.

[DEFENSE COUNSEL: Objection. Objection.

THE COURT: Sustained. Sustained. Please disregard the last part – the last answer as unresponsive to the question as asked.

[PROSECUTOR]: And my next question was actually going to be on December 28th of 2015 while looking at the surveillance video at Obama's at this car, did you make a determination of what you believed the color to be at that time?

[DET. DELGADO]: Yes.

THE COURT: Approach.

[DEFENSE COUNSEL]: Objection.

THE COURT: Approach.

* * *

(All Counsel and the Defendant approach the bench where the following ensues:)

[DEFENSE COUNSEL]: I thought that we had already discussed this.

THE COURT: Well, the – we're playing word games at the moment, I think, but understand is that the question what did he believe the color would be after he looked at the video.

[DEFENSE COUNSEL]: I understand that's the question and I understand what his answer is going to be and I can't imagine what the answer would be based on in light of the fact that –

THE COURT: Well, it sounds like a thought of cross examination. I mean, the basic question is, is it's saying you looked at this video and you concluded that the car was red and everyone else was looking at the video can't see red.

[DEFENSE COUNSEL]: I understand, Judge, but it's still getting out in front of the jury that it's a red – and he's even saying an Acura TL. There's no indication that that was an Acura TL.

THE COURT: Well, there is no evidence that it's an Acura TL.

[DEFENSE COUNSEL]: So why is he allowed – I mean, he shouldn't be allowed to say that.

THE COURT: Well, you didn't object when he said so.

[DEFENSE COUNSEL]: Well, I objected right after when he started talking about the color and it's –

THE COURT: I understand.

[DEFENSE COUNSEL]: - so that's –

THE COURT: Under the circumstances is that the basis for his answers may be lacking and it goes to the credibility of the testimony at the moment and rather than a statement of fact as its existence, his question was is that he concluded or he believed it to be – I'm sorry, not concluded. He believed it to be an Acura and he – TL and he believed it to be red in color. That's where we are.

[PROSECUTOR]: Just so the record is clear, his answer is going to be blue or silver, not red.

THE COURT: Oh. So much happened during lunch except for the Judge having actual [sic] something to eat. Okay. Got my message?

(Bench Conference concluded . . . All Counsel and the Defendant return to the trial tables where the following ensues:)

THE COURT: The objection is noted; however –

[DEFENSE COUNSEL]: Thank you, Your Honor.

> THE COURT: -- I'm going to overrule the objection based on the questions as to what he assumed or he may have concluded. Next question.
>
> [PROSECUTOR]: Thank you, Your Honor. I think my question, Detective Delgado, was as you were at the grocery store or the deli grocery store looking at the surveillance video and you already said that it appeared to be an Acura TL –
>
> THE COURT: To him?
>
> [PROSECUTOR]: To him, yes. It appeared to you be [sic] an Acura TL, you – did it appear to you to be of a certain color to you at that time?
>
> [DET. DELGADO]: Correct.
>
> [PROSECUTOR]: What color was that?
>
> [DET. DELGADO]: Silver or blue.
>
> [PROSECUTOR]: And why did you focus in on this particular car when looking at the video?
>
> [DET. DELGADO]: Because that's where the suspect came in and left with the vehicle.

This portion of the trial testimony makes clear that the court limited Detective Delgado's testimony to the fact that the vehicle in the surveillance video appeared, to him, to be an Acura TL. Defense counsel's objection to the detective's initial statement, that "[w]e're looking at an Acura TL" was sustained and the jury was instructed to disregard his answer. Thereafter, statements by the court, the prosecutor, and the detective made clear that the vehicle appeared to Detective Delgado to be a silver or blue Acura TL. In light of the fact that the trial court sustained the defense's objection to the testimony complained of on appeal, there is no need to address further appellant's specific claim of

error with regard to Detective Delgado's testimony. *Klauenberg v. State*, 355 Md. 528, 545 (1999) (appellant who received the remedy he requested has no grounds for appellate relief).

The trial court's decision to allow Detective Delgado's testimony that the vehicle in the surveillance video appeared to him to be an Acura TL does not require reversal because the testimony was relevant. Detective Delgado testified that, based on the appearance of the vehicle in the video from Obama's, he initially believed that the shooter arrived in and departed the scene of the shooting in a silver or blue vehicle, but after interviewing Pinnick, he began "to look for a different color car." This testimony helped the jury to understand why, even though the vehicle in the video appeared to be silver or blue, the State ultimately sought to prove that the video did not portray the actual color of the vehicle and that the maroon Acura appellant drove on December 17th was similar to the vehicle in the video. The testimony was limited to Detective Delgado's personal perceptions of how the vehicle appeared to him and the trial court's decision to permit this testimony was neither erroneous nor an abuse of discretion.

III.

Appellant next contends that the trial court erred in permitting Detective Delgado to testify about his observation of appellant's "purported swagger as well as his purported attempt to change his manner of walking when Detective Delgado attempted to film it." On direct examination, Detective Delgado testified that he had contact with appellant after he was arrested. Over objection, the detective stated that he observed that appellant "had a swagger to his walk." The defense objected again when the State inquired as to whether

the detective attempted to document appellant's "swagger" arguing that the evidence was irrelevant. The court overruled the objection and Detective Delgado testified that after observing appellant walk with a swagger, he attempted to use his cell phone to record appellant walking. Detective Delgado was unable to do so, however, because appellant "changed his walk."

On appeal, appellant argues that the detective's testimony was irrelevant and, "[t]o the extent that it [was] a back-door manner of introducing Detective Delgado's lay opinion about the content of the Obama Deli video" by implying that appellant's "swagger" was the same manner of walking exhibited by the shooter in the video, it was impermissible. Appellant further maintains that the word "swagger" is vague, that there was no evidence that he knew he was being recorded, that Detective Delgado's testimony about how he changed the way he was walking cannot justify a reasonable inference that he did so for the purpose of concealment, and that the testimony was not relevant as evidence of consciousness of guilt.

Our review of the record reveals that the trial judge carefully limited the scope of Detective Delgado's testimony and precluded him from offering improper lay opinion testimony comparing appellant's manner of walking to the shooter's manner of walking as seen in the surveillance video. On the second day of trial, the State advised the court of its intention to offer Detective Delgado's testimony that the manner in which appellant was walking during an interview "was consistent with the way the shooter in the video was walking." The court clearly limited Detective Delgado's testimony, stating:

> THE COURT: Now, if he asks did he make any observations of the defendant, he can say that I observed him appear to have a limp. Appear to walk with blah, blah, blah. That is an appearance to him. An interpretation of him will not be allowed since he doesn't have the ability as an expert to interpret other than what he saw and convey the actions that occurred at the time of the observation.
>
> If your question then is did – at any time did his walk appear to change. I will allow that question. And if his answer is that he appeared to change it as I watched him, I will allow that. I will not allow him to be a Sherlock Holmes, whatever is the call of the day, as to his interpretation as if he's qualified to interpret since he only knows him of a limited period.

Defense counsel responded to this statement by the court, saying "[e]xactly."

The following day, the issue was raised again and the court cautioned that Detective Delgado would "not be allowed to take the place of my jury as a finder of fact -- . . . --- period." During the detective's testimony, the trial judge again reminded counsel that it was "not going to allow him to testify as to his comparison of the two walks. I will allow him to ask the question as to what he saw and he said that he had a swagger . . . ." After Detective Delgado testified that appellant "changed his walk," the trial judge instructed the prosecutor to "move along, please."

Detective Delgado's testimony about the manner in which appellant walked at the time of his interview was relevant to the extent that it was part of the detective's physical description of the defendant. The probative value of the evidence was minimal, but the trial judge took great care to limit the detective's testimony to his own observations. *Simms*, 420 Md. at 727 (relevance is generally a low bar). Even assuming, however, that there was some prejudicial effect, reversal would not be required. In *Geiger v. State*, 235 Md. App.

102 (2017), we discussed the difference between a passing or random injection of some arguably prejudicial material into trial and a sustained and deliberate line of inquiry about a central issue, stating:

> "We are not counseling an overreaction to every passing or random injection of some arguably prejudicial material into a trial. A few smudges of prejudice here and there can be found almost universally in any trial and need to be assessed with a cool eye and realistic balance rather than with the fastidious over-sensitivity or feigned horror that sometimes characterizes defense protestations at every angry glance. We are not talking about the expected cuts and bruises of combat. What we are objecting to in this case, rather, is a sustained and deliberate line of inquiry that can have had no other purpose than to put before the jury an entire body of information that was none of the jury's business. We are not talking about a few allusive references or testimonial lapses that may technically have been improper. We are talking about the central thrust of an entire line of inquiry. There is a qualitative difference. Where we might be inclined to overlook an arguably ill-advised random skirmish, we are not disposed to overlook a sustained campaign."

Geiger, 235 Md. App. at 132 (quoting *Zemo v. State*, 101 Md. App. 303, 306 (1994)).

In the instant case, the detective's testimony about the way in which appellant walked during an interview constituted at most, "a few allusive references" or "an arguably ill-advised skirmish." Any error in admitting that testimony was harmless beyond a reasonable doubt. Coleman identified appellant as being at the scene of the shooting carrying a gun and the surveillance video captured the shooting. Thus, even assuming that there was some prejudicial effect, reversal would not be required. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (error is harmless if "a reviewing court, upon its own independent

review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.").

IV.

Appellant argues that the evidence was insufficient to sustain his convictions and that the court abused its discretion in denying his motion for new trial on the ground that the verdict was inconsistent with the evidence. We disagree with both contentions.

A. Sufficiency of the Evidence

Appellant contends that the State's case "turned on Coleman's identification" of appellant as the person who exited Obama's with a gun and that no reasonable jury could have found her identification to be credible. He asserts that Coleman was not a credible witness because of her history of drug abuse, the short time in which she had to view persons in Obama's, her interest in receiving assistance with drug treatment, her inability to identify the person with the gun in her initial statement to police, and her identification of appellant only after having been brought to the police station.

In considering whether the evidence was sufficient to sustain appellant's convictions, we must determine "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." *Roes v. State*, 236 Md. App. 569, 582 (2018) (and cases cited therein); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In applying that test, "[w]e defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]" *Neal v. State*, 191 Md. App. 297, 314 (2010) (internal quotations and citation omitted).

Viewing the evidence in the light most favorable to the State, the jury could reasonably find appellant guilty of the elements of each crime with which he was charged. Appellant's contention is merely a challenge to the weight of the evidence, and, specifically, a challenge to Coleman's credibility. We have long held that the issue of credibility is for the trier of fact to determine. All of appellant's concerns about Coleman's credibility were for the jury to assess. In the instant case, the jury clearly credited Coleman's eyewitness account and other evidence, including surveillance video of the shooting that implicated appellant in the crimes. Thus, the evidence was sufficient to sustain appellant's convictions.

B. Motion for New Trial

Appellant further contends that the trial court abused its discretion in denying his motion for a new trial. As with his challenge to the sufficiency of the evidence, appellant asserts that Coleman was not a credible witness. We reject appellant's contention.

The moving party, in this case, appellant, bears the burden of demonstrating that a new trial is necessary. *Brewer v. State*, 220 Md. App. 89, 111 (2014). The decision to grant a new trial rests in the sound discretion of the trial judge, "whose decision will not be disturbed on appeal absent an abuse of discretion." *Id*. (citing *Argyrou v. State*, 349 Md. 587, 600 (1998)). An abuse of discretion occurs when the court acts beyond the letter or reason of the law, when a decision is arbitrary or capricious, when it is "well removed from any center mark imagined by [a] reviewing court," or "beyond the fringe of what [an appellate] court [would] deem [ ] minimally acceptable." *Id.*; *North v. North*, 102 Md. App. 1, 14 (1994). In *Argyrou v. State*, 349 Md. 587, 600 (1998), the Court of Appeals

held that the breadth of the court's discretion "will expand or contract depending upon the nature of the factors being considered, and the extent to which its exercise depends upon the opportunity the trial judge had to feel the pulse of the trial, and to rely on his or her own impressions in determining questions of fairness and justice." *See also Jamison v. State*, 450 Md. 387, 412 (2016) (holding same). "[A] new trial will be appropriate when the verdict is against the evidence or against the weight of the evidence, or put simply, if the trial court is not satisfied with the evidence and its relationship to the verdict." *In re Petition for Writ of Prohibition*, 312 Md. 280, 326 (1998), *disapproved of on other grounds by State v. Manck*, 385 Md. 581 (2005)). Ultimately, however, the decision to grant a new trial is a discretionary one.

In the case at hand, the trial judge heard all the trial testimony, observed the witnesses, including Coleman, and viewed the evidence including the surveillance videos. In explaining his decision to deny appellant's motion for new trial, the judge specifically pointed to the evidence, in addition to Coleman's testimony, stating:

> [T]here were two identifying witnesses in this case at a minimum. What is not being discussed is, is what is referred to as a silent witness in this case.
>
> Is that the silent witness of a camera, photographs of the persons entering, exiting the establishment and firing the gun, . . . is that the jury had an opportunity to see the persons entering the establishment, the person exiting the establishment, the persons leaving the front of the establishment in two vehicles, but more importantly is a person with a gun in his hand firing the gun. And that the jury had an opportunity to look at that and then compare that and take it into consideration with the verbal testimony of the second witness who testified.

Based on the record before us, it is clear that the trial judge's decision to deny appellant's motion for new trial was not an abuse of discretion.

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