

Circuit Court for Baltimore City  
Case No. 116307011

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 468

September Term, 2018

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DASHONN GIPSON

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: March 4, 2019

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

A jury sitting in the Circuit Court for Baltimore City convicted Dashonn Gipson, the appellant, of first-degree murder, use of a handgun in the commission of a crime of violence, and possession of a handgun by a prohibited person, in the shooting death of Tiffany Lowery. He appeals from his convictions, arguing that the trial court erred by permitting two State’s witnesses to offer inadmissible lay opinion testimony. We address each witness’s testimony in turn.

Sarah Diaz, who was with Ms. Lowery moments before she was shot, testified for the State. She had arranged to meet Ms. Lowery at a food market at the corner of South Carey and James Streets to obtain a “tester” pill of heroin. Ms. Lowery gave Ms. Diaz the pill in the entranceway of an alley off James Street. As the women walked back toward the corner store, a man called Ms. Lowery’s name. Ms. Diaz observed a group of four men approaching Ms. Lowery. As Ms. Diaz walked away with her back to Ms. Lowery and the men, she heard gun shots. She did not see who shot Ms. Lowery.

Video surveillance footage from multiple cameras at the food market captured the beginning of the shooting. Ms. Diaz was shown still shots of the video and identified Mr. Gipson, whom she knew as “Shonn,” and two other men as being in the group. The prosecutor then played a portion of the video showing the shooting. The prosecutor asked: “do you see who’s holding the gun?” Ms. Diaz answered, “Yes, Shonn.” After she answered, defense counsel objected and the court overruled the objection.

We agree with the State that defense counsel’s objection came too late. *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.”) Because, in Mr. Gipson’s view, the prosecutor’s question called ““for an inadmissible answer,”” it was incumbent upon defense counsel to ““object immediately”” when the question was asked. *Bruce v. State*, 328 Md. 594, 627 (1992) (quoting 5 L. McLain, *Maryland Evidence* § 103.3, at 17 (1987)). Defense counsel may not wait to determine ““whether the answer is favorable before deciding whether to object.”” *Id.*

Even if not waived, we would perceive no abuse of discretion in the admission of Ms. Diaz’s testimony. Ms. Diaz knew Mr. Gipson, having purchased drugs from him in the past, and, significantly, had personally observed his appearance on the day of the shooting. Her lay opinion testimony that Mr. Gipson was the person depicted in the video holding the gun was “rationally based on [her] own perception” and was helpful to the jury because of her familiarity with him. *See* Md. Rule 5-701 (limiting admissible lay opinion testimony to that which 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”); *Moreland v. State*, 207 Md. App. 563, 572 (2012) (following the “majority rule” among state courts that ““a lay witness may testify regarding the identity of a person depicted in a surveillance photograph [or video] if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury”” (quoting *Robinson v. Colorado*, 927 P.2d 381, 382 (Colo. 1996))).

Mr. Gipson also challenges testimony given by Detective Gary Niedermeier, the lead investigator on the case. Detective Niedermeier testified that he had watched the video surveillance footage capturing the shooting. The prosecutor showed him a series of still shots taken from the video. Defense counsel objected when he began describing each photograph. She argued that the “video speaks for itself” and that Detective Niedermeier should not be permitted to “narrat[e]” it or give his opinion as to “who he believes [the] shooters are.” The court ruled that Detective Niedermeier could identify persons in the video and the video stills that he recognized, but should not say what they were “doing.”

On redirect examination, the following exchange occurred:

[PROSECUTOR]: And based on your review of the video were you ever able to determine how the group of people, um, arrived just prior to, um, the shooting?<sup>1</sup>

DETECTIVE NEIDERMEIER: Yes.

[PROSECUTOR]: And can you show us on that map where those folks arrived from?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

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<sup>1</sup> The direction from which the group arrived and departed was relevant because a beer can with Mr. Gipson’s fingerprint on it was found on Carey Street, south of the location of the shooting. In the video, the man that Ms. Diaz identified as Mr. Gipson could be seen drinking from a can. Thus, the prosecutor was attempting to show that the can could have been discarded by Mr. Gipson as he arrived at or left the scene of the shooting.

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DETECTIVE NEIDERMEIER: So the group that comes up to the corner *just prior to shooting by the defendant* –

[DEFENSE COUNSEL]: Objection.

THE COURT: Just answer the question, Detective.

[DETECTIVE NEIDERMEIER]: – comes from the south, South Carey Street northbound up to the corner. Then following that they retreat the same way (indicating).

(Emphasis added.) Mr. Gipson argues that Detective Neidermeier should not have been permitted to testify as to the path followed by the group because he had not personally observed their actions, and that he should not have been permitted to testify that the shooting was perpetrated “by the defendant.”

On the first point, we agree with the State that this contention of error was waived. Later in the redirect examination of Detective Neidermeier, he was asked “what direction . . . did [the group of men in the video] come from?” He replied: “They came northbound up Carey Street.” He then was asked in what direction they went after the shooting. He replied: “They retreated back southbound down Carey Street.” Defense counsel did not lodge any objection during this colloquy. By not objecting to the same testimony when it was repeated by Detective Neidermeier, Mr. Gipson waived his earlier challenge to its admissibility. *See, e.g., Williams v. State*, 231 Md. App. 156, 194-95 (2016), *cert. dismissed as improvidently granted*, 452 Md. 47 (2017) (failure to object when evidence earlier deemed objectionable comes before the jury for a second time amounts to a waiver of the earlier objection); *Clark v. State*, 97 Md. App. 381, 394 (1993) (considering the

“numerous times defense counsel failed to object when the State elicited [certain] testimony,” his one objection to that testimony was waived). Even if not waived, we would hold that the court did not abuse its broad discretion by permitting Detective Neidermeier to testify based upon his familiarity with the surveillance video *and* the layout of the crime scene as to the path followed by the group of men.

Mr. Gipson’s objection to Detective Neidermeier describing the direction the group was traveling “just prior to shooting by the defendant” was implicitly sustained by the trial court when it responded by interrupting the detective and admonishing him to “[j]ust answer the question.” (Emphasis added.) Mr. Gipson did not seek further relief and, having received all that he asked for, has left us nothing to review. *See Hyman v. State*, 158 Md. App. 618, 631 (2004) (where defendant objected to testimony, but did not ask the court to strike the statement, seek a curative instruction, or move for a mistrial, he “effectively waived all other potential review on appeal”). In any event, any error in the admission of Detective Neidermeier’s remark was harmless. It was clear from Detective Neidermeier’s testimony about his investigation of the shooting that he came to believe that Mr. Gipson was the shooter and his offhand comment to that effect was not likely to influence the jurors, especially since Mr. Gipson already had been identified as the shooter by Ms. Diaz.

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