

Circuit Court for Baltimore City
Case No.: 117241027

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1204

September Term, 2019

SAMUEL LEE COOPER, III

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Wells,

JJ.

Opinion by Graeff, J.

Filed: February 2, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Samuel Lee Cooper, III, was convicted by a jury in the Circuit Court for Baltimore City of first-degree murder, use of a handgun in the commission of a crime of violence, carrying and/or transporting a handgun on his person, conspiracy to commit first-degree murder, and illegal possession of a handgun after conviction of a disqualifying crime. The court sentenced appellant to two consecutive terms of life, plus 35 years.

On appeal, appellant presents two questions for this Court’s review, which we have rephrased slightly, as follows:

1. Did the circuit court err in admitting evidence of appellant’s alleged participation in other crimes?
2. Did the circuit court err in allowing a police officer to testify that words used in appellant’s recorded jail call referred to a gun?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Motions Hearing

At a pre-trial hearing on a motion filed by the State to admit evidence of other acts, the State noted that this case involved the July 1, 2017, murder of Lewis Young at a BP gas station in Baltimore City, at approximately 1:15 a.m. The State proffered that the evidence included video surveillance images taken at the time of the murder, which depicted the victim’s Mercedes Benz parked at a gas pump as a silver/gray Volkswagen

(“VW”) Passat pulled into the station.¹ Two armed individuals got out of the VW Passat, and the passenger, wearing a white covering over most of his head, pointed a handgun at the driver of the Mercedes. The driver of the VW Passat went to the passenger side of the Mercedes and began firing a handgun at the individual seated in the front seat. This passenger, the homicide victim, Mr. Young, attempted to get out of the Mercedes as he was shot, but he eventually fell to the ground nearby. The occupants from the VW Passat then returned to their vehicle and immediately fled the scene.

The State sought to admit evidence that, on June 23, 2017, one week before the murder, a VW Passat was stolen during a carjacking at another BP gas station in Baltimore, at approximately 12:44 a.m. The owner of the VW Passat, Byron Weaver, reported that he was carjacked by two males wearing masks and hoodies, and one of them displayed a semi-automatic handgun. Mr. Weaver’s VW Passat was recovered on July 1, 2017, after it had been set on fire, approximately 11 hours after Mr. Young was fatally shot. Mr. Weaver subsequently stated that the vehicle shown in the July 1 surveillance video from the night of the murder was his VW Passat. The State argued that the June 23, 2017, carjacking of Mr. Weaver’s VW Passat was especially relevant to establish appellant’s identity as involved in the murder on July 1, 2017. It noted that DNA evidence recovered from the VW Passat’s gas cap matched appellant.

¹ Appellant agreed that the evidence regarding other acts could be introduced by way of a proffer at the motions hearing. *See Harris v. State*, 324 Md. 490, 496 (1991) (proffers of evidence may be used to determine whether evidence of other crimes is clear and convincing); *Cross v. State*, 282 Md. 468, 478 n.7 (1978) (Proffers are the “preferred method” for submitting evidence of other crimes to the court during trial.).

The State also sought to admit evidence of a carjacking involving Rodney Goode at approximately 4:59 a.m. on July 9, 2017. Mr. Goode was approached at a BP gas station by armed suspects, who stole Mr. Goode's 2014 silver Honda Accord at gunpoint.

Two days later, on July 11, 2017, the police apprehended appellant based on suspicion that he was involved in the sale of narcotics. Police officers noted the presence of a silver Honda Accord parked nearby. It was unoccupied and the engine was running. A radio check revealed that this was the Accord stolen two days earlier. After a search of appellant's person incident to arrest, the police found a key that unlocked the doors to the Accord.²

Pertinent to the relevance of the evidence to show appellant's identity as the shooter in the murder, the State proffered that, on July 12, 2017, while appellant was incarcerated, he spoke to his girlfriend, Erica Truesdale, on a recorded telephone call from jail. During that conversation, Ms. Truesdale told appellant: "You[re] lucky because I have everything." They then discussed an item or items referred to as a "shorty" and a "blick." Detectives believed that they were discussing a handgun.³

On July 14, 2017, police executed a search warrant at Ms. Truesdale's home. They subsequently took her into custody, and she advised that the items the police were looking for were in the back seat of her Honda Accord. The police obtained a search warrant for the car and seized a bag containing a box sitting on the floor of the back seat. Inside that

² Mr. Goode would later testify at trial that his Accord "was a push start," meaning that a key in the ignition was not necessary.

³ The meaning of these terms is the subject of appellant's second question presented.

box, the police found a .40 caliber handgun. The gun matched the cartridge casings found at the July 1, 2017, murder scene. Also found in the box was the title to Mr. Goode's stolen Honda Accord. Photographs of the gun and the title to Mr. Goode's car were admitted into evidence without objection. At the conclusion of the State's proffers, it argued that evidence of the July 9, 2017, carjacking of Mr. Goode's Honda Accord was especially relevant because it connected appellant to the murder weapon.

The defense argued that neither of the car thefts were necessary to establish identity. In support, counsel stated that the State already had "the strongest possible identity evidence in this case which is DNA" evidence. Counsel conceded that the evidence, including DNA and fingerprints, connected appellant to the June 23 and July 9 thefts. Appellant's counsel concluded by arguing that any probative value of those other acts was outweighed by the danger of unfair prejudice. She asserted that the evidence would lead the jury to conclude that appellant was "a suspect in all these other incidents, uncharged suspect. He must be a bad guy and he must have done this, this homicide as well."

The court ruled the evidence was admissible. It found that the evidence of the June 23 carjacking of Mr. Weaver's VW Passat was relevant to establish identity, was proven by clear and convincing evidence, and its probative value outweighed "the tendency of the evidence to prejudice the Defendant unfairly." The court ruled similarly with respect to the July 9 carjacking of Mr. Goode's Honda Accord, which the court found included appellant's July 11 arrest in close proximity to the Accord, as well as the discovery of the handgun and the title to the Accord in the back of Ms. Truesdale's vehicle. The court

further found that the probative value of this evidence outweighed any undue prejudice that may result from its admission.

II.

Trial

At trial, Cyrus Levi and Matthew Brown testified that, on July 1, 2017, they were with Mr. Young. They drove to a BP gas station in Mr. Brown's 2002 Mercedes Benz to get gas. Mr. Brown was driving, Mr. Young was in the front passenger seat, and Mr. Levi was in the back seat. As Mr. Brown was pumping gas, a VW Passat pulled up, and two masked men got out and approached. Mr. Brown heard gunfire, told the other passengers to get out of the car, and then fled the scene.

As Mr. Young tried to get out of the front passenger seat, he was shot multiple times. He subsequently died from multiple gunshot wounds. The medical examiner ruled his death a homicide.

After the shooters fled the scene, Mr. Levi, who had been hiding in the back seat, moved to the driver's seat and drove away. Meanwhile, Mr. Brown, who had been watching nearby, ran. He subsequently learned that something had happened to Mr. Young.

Surveillance video and still photographs from the night of the shooting were recovered from the BP gas station, admitted into evidence, and displayed to the jury. The video captured images of two armed men emerging from a nearby VW Passat and approaching the Mercedes, with one of the men firing gunshots at the passenger. Several of the surveillance photographs captured the shooting as it occurred in real time.

As indicated, and discussed in more detail, *infra*, the VW Passat used in the shooting was stolen from Mr. Weaver on June 23, 2017, a week earlier, at approximately midnight, during an armed carjacking at another BP gas station in Baltimore. That vehicle was found on fire later on the day of the murder, after news of the homicide had been released to the media.

The jury also heard evidence related to a different car theft that occurred after Mr. Young's murder. On July 9, 2017, a 2014 Honda Accord was stolen from Rodney Goode. Mr. Goode testified that he was wiping down his tires outside at a BP gas station when a black sedan pulled up, and two armed individuals got out, approached him, and took his car at gunpoint.

Mr. Goode's Honda Accord was recovered two days later, on July 11, 2017, when appellant was arrested in connection with an unrelated narcotics investigation. The vehicle was found, with the engine running, a short distance from the scene of appellant's arrest, and appellant had the key to the vehicle on his person.

Appellant's girlfriend, Ms. Truesdale, testified that she was in a relationship with appellant, and he was the father of her child. She agreed that photographs admitted into evidence were of her Honda Accord. She recalled receiving a bag containing a box from some person identified only as "Good Neighbor," but she testified that she did not know what was inside that box.

Ms. Truesdale confirmed that she had a phone conversation with appellant while he was in jail. The jury then heard a recording of a conversation between Ms. Truesdale and appellant, recorded by the jail on July 12, 2017. During that call, after appellant told

Truesdale that he was “sorry,” she stated: “Your [sic] lucky because I got everything” and “I’ve got everything else.” The transcript of the recording provides:

MR. COOPER: “What you mean you got everything else?”

MS. TRUESDALE: (Indiscernible).

MR. COOPER: “Huh?”

MS. TRUESDALE: “Sam, everything else.”

MR. COOPER: “I’m not getting what you saying, Bae.”

MS. TRUESDALE: “I got — I went back around there and got everything else.”

MR. COOPER: “Like what?”

MS. TRUESDALE: “What else you have?”

MR. COOPER: “You talking about that little white bag?”

MS. TRUESDALE: “That and your whatchamacellem’, and the shorty.”

MR. COOPER: “Oh. Who had that?”

MS. TRUESDALE: “Good Neighbor.”

Ms. Truesdale added that “Neighbor gave me the title,” confirming that it was title to the car. After a discussion regarding the circumstances of his arrest, appellant asked: “So somebody definitely got the blick out of there?” Ms. Truesdale replied: “Yeah, I got it.”

On July 14, 2017, police executed a search warrant at 1529 Poplar Grove, the home linked to appellant through his girlfriend, Erica Truesdale. Police recovered several items of interest, including a black Under Armour sock matching one found at the crime scene.

Ms. Truesdale's vehicle also was searched pursuant to a warrant. The police found a loaded Taurus semi-automatic .40 caliber handgun located in a box inside on the floor of the rear seat of Ms. Truesdale's vehicle. The police also found the title for Mr. Goode's Honda.

Victor Meinhardt, the State's firearms expert, testified that he examined a bullet that was removed from Mr. Young during the autopsy. This bullet, a .40 caliber Smith and Wesson, matched other cartridge casings found at the murder scene. Mr. Meinhardt concluded that this bullet was fired from the .40 caliber Taurus semi-automatic pistol that was found in Ms. Truesdale's vehicle. He also opined that the .40 caliber Smith and Wesson cartridge casings recovered from the crime scene were fired from this same handgun.⁴

The State also presented DNA evidence connecting appellant to the homicide. Appellant's DNA profile matched several items of evidence collected from the crime scene, including a black sock and a pair of green gloves. Appellant's DNA also was found on the exterior rear quarter panel on the passenger side of the Mercedes, and on the gas cap recovered from the VW Passat.⁵

⁴ The handgun was not tested for the presence of DNA.

⁵ Analyst Hurley stated that a match between appellant and

the genotype is 6.75 million times more probable than a coincidental match to an unrelated individual in the Caucasian American population, 61.2 thousand times more probable than a coincidental match to an unrelated individual in the African American population and 4.62 million times more probable than a coincidental match to an unrelated individual in the Hispanic American population.

Baltimore City Detective Juan Diaz, an 18-year veteran of the police department, assigned to the Homicide Unit for 15 years, testified that he interviewed Ms. Truesdale on July 14, 2017, after police recovered the gun from the back seat of her vehicle. Detective Diaz testified that the terms “shorty” and “blick” were street terms for a gun.

We will include additional details, as necessary, in the discussion that follows.

DISCUSSION

I.

Other Crimes Evidence

Appellant contends that the court erred by admitting evidence of two car thefts, one that took place nine days prior to the murder and another that took place eight days after the murder. Appellant argues that these other crimes were unrelated to the crimes charged, they did not “elucidate” appellant’s identity, they were not shown by clear and convincing evidence, and their probative value was substantially outweighed by the danger of unfair prejudice.

The State contends that the court properly admitted this evidence. It asserts that the evidence was sufficient to satisfy the requirements to admit other crimes evidence.

Maryland Rule 5-404 (b) provides:

Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

Pursuant to this rule, evidence of other crimes or bad acts is admissible if the evidence has “special relevance, i.e. is substantially relevant to some contested issue in the case and is not offered simply to prove criminal character.” *Hurst v. State*, 400 Md. 397, 407–08 (2007) (quoting *Harris v. State*, 324 Md. 490, 500 (1991)). This requirement ensures that the evidence is not used “simply to prove criminal character.” *Id.*

To determine the admissibility of such evidence, the court must engage in a three-step analysis. *State v. Westpoint*, 404 Md. 455, 489 (2008) (quoting *Wynn v. State*, 351 Md. 307, 317 (1998)). First, the evidence must fall within one of the exceptions listed in Rule 5-404(b), or otherwise have special relevance to some contested issue in the case. *Thompson v. State*, 181 Md. App. 74, 84 (2008) (citing *Faulkner v. State*, 314 Md. 630, 634–35 (1989)), *aff’d*, 412 Md. 497 (2010). The determination whether evidence has special relevance “is a legal determination and does not involve any exercise of discretion.” *Westpoint*, 404 Md. at 489 (quoting *Wynn*, 351 Md. at 317). *Accord Wilder v. State*, 191 Md. App. 319, 335 (“With respect to the admission of ‘bad acts’ or ‘other crimes’ evidence, [however,] we have plenary review over the legal determination of whether the challenged evidence meets a ‘special relevance’ exception.”), *cert. denied*, 415 Md. 43 (2010).

Second, if the contested evidence has special relevance, the court must find that the accused’s involvement in the other crimes or acts is established by clear and convincing evidence. *Faulkner*, 314 Md. at 634. This Court reviews the circuit court’s decision in this regard “to determine whether the evidence was sufficient to support the trial judge’s finding.” *Id.* at 635. In conducting this review on appeal, “we look ‘only at the legal question of whether there was some competent evidence which, if believed, could persuade

the fact finder as to the existence of the fact in issue.” *Henry v. State*, 184 Md. App. 146, 168–69 (2009) (quoting *Emory v. State*, 101 Md. App. 585, 622 (1994)), *aff’d*, 419 Md. 588 (2011).

Third, the court must weigh the necessity for and probative value of the other crimes evidence against any undue prejudice likely to result from its admission. *Henry*, 184 Md. App. at 169. The party offering the evidence has “the burden of demonstrating that the probative value substantially outweighs the potential for unfair prejudice.” *Harris*, 324 Md. at 500–01. The trial court’s conclusion to admit or deny evidence based on the weighing of probative value versus prejudice will be reviewed under an abuse of discretion standard. *Faulkner*, 314 Md. at 641 (“A decision to admit other crimes evidence which is clearly incorrect ‘on this question of balancing probative value against danger of prejudice will be corrected on appeal as an abuse of discretion.’”) (quoting *Brafman v. State*, 38 Md. App. 465, 476 (1978)).

A.

Ruling Below

In the circuit court’s ruling that the evidence regarding the June 23 theft was admissible, the court stated:

With regards to Case A, the Court finds that it does fall within one of the Ross exceptions and that would be identification. The Defendant’s involvement in this other crime, or wrong, or bad act is established by clear and convincing evidence.

The Court also finds that the necessity that is the probative value of this other crime or bad act, when carefully weighed against any undue prejudice does find that the necessity is more weighted. The need for the evidence - for this evidence, outweighs the tendency of the evidence to

prejudice the Defendant unfairly. It will assist in aiding the fact finder in determining the identity of the person who did, indeed[,] commit the murder of Young.

The court then addressed the admissibility of evidence of the July 9 theft of Rodney Goode's Honda Accord. It stated:

That incident, which led to the title of that car being recovered from a Ms. Truesdale who had been identified or referred to as the Defendant's girlfriend, which also the title to that stolen Honda Accord was right next to the handgun, which later was determined to be the weapon that fired the shell casings that were found at the murder scene.

The necessity for and the probative value of this other crimes, or wrong doing, or act, after being carefully weighed by this Court, outweighs any undue prejudice that may result from its admission.

The parties agreed to refer to those cases as "acts," as opposed to "crimes."

B.

Special Relevance - Identity

The State contends that evidence of both thefts had special relevance to prove appellant's involvement in the murder, and as such, his identity as the shooter. The State notes that defense counsel argued that the State failed to show that appellant was involved in the shootings, and the contested evidence tied appellant to the murder. We agree.

Mr. Weaver testified that, on June 23, 2017, at approximately 12:44 a.m., his VW Passat was stolen from him at a BP gas station. A Louis Vuitton backpack was in the car at the time. The State admitted video surveillance and photographs of the theft, as well as the video surveillance of the July 1, 2017, murder of Mr. Young, where shooters emerged from a VW Passat. Mr. Weaver's VW Passat was found later that day in flames. Appellant's DNA was present on the gas cap to the VW Passat, but Mr. Weaver testified

that he did not know appellant. The circuit court properly found that this evidence had special relevance because it connected appellant to the murder.

We also are persuaded that the evidence of the carjacking of Mr. Goode's vehicle was relevant to the issue of identity. A week after the murder, appellant was arrested in close proximity to Mr. Goode's stolen vehicle, with the keys to the vehicle on his person, which rendered him in constructive possession of Mr. Goode's Honda and its contents. *See In re: Antoinette H.*, 200 Md. App. 341, 350 (2011) (“[E]xclusive possession of recently stolen goods, absent a satisfactory explanation, permits the drawing of an *inference of fact* strong enough to sustain a conviction *that the possessor was the thief . . .* or, under appropriate circumstances, *that the possessor was a receiver of stolen goods.*”) (quoting *Brewer v. Mele*, 267 Md. 437, 449 (1972)). The title to Mr. Goode's vehicle, as well as the murder weapon, was found in the back seat of his girlfriend's car. Under these circumstances, we conclude that the circuit court properly found that the July 9 carjacking was relevant to establish appellant's identity as involved in the murder.

We disagree with appellant's suggestion that the State's primary purpose in eliciting this evidence was merely to counter a potential defense that Mr. Weaver and Mr. Goode were involved in Mr. Young's homicide. Appellant argues that “[t]he State was not permitted to proactively offer this evidence to combat a phantom defense of its own creation; to the contrary it could not offer this evidence until it became relevant to rebutting a contested issue generated by [Appellant].”

As indicated, the evidence of the thefts of the other two cars was relevant to tie appellant to the murder, given that his DNA was found on the VW Passat, which appeared

to be the vehicle involved in the murder, a Louis Vuitton backpack was found at the scene of the shooting, and the title to Mr. Goode's car was found in appellant's girlfriend's car, in a box with the weapon used in the murder. The necessity to explain the connection of these other vehicles was made clear by the defense strategy. In opening statement, defense counsel asked the jury, *inter alia*, to question the DNA evidence found on the pertinent items, as well as the recovery of the gun and other ballistics evidence. Counsel asked the jury to consider: "How was the evidence obtained? How did the police get a hold of this evidence? Where does it come from? Is the evidence what the police, the detectives, and officers, and the State are saying it is? Is it as strong as they're saying it is? Are there issues with the quality of the evidence," and "are there any other questions about each piece of evidence that concerns you in this case." In closing argument, defense counsel questioned whether the DNA evidence was conclusive, noting that many of the samples were but mixtures and that there were "other combinations that were more probable than" appellant. Counsel noted that the handgun was not tested for appellant's DNA and observed that the video appeared to show multiple shooters.

Appellant's identity was an issue in this case. The circuit court properly found that

the other car thefts were relevant to connect appellant to the July 1, 2017, murder.

C.

Clear and Convincing Evidence

Appellant contends that, even if relevant, the State failed to prove that appellant participated in the car thefts by clear and convincing evidence. With respect to the June 23 theft, he asserts that: (1) the only evidence that he was involved was his DNA on the gas cap; and (2) the State failed to show that the stolen vehicle was the one used in the murder. With respect to the July 9 theft, appellant argues that the State failed to show any evidence that appellant was involved in the theft of that vehicle. He asserts that his only connection to the act was that he “was in the vicinity of this vehicle with its key,” and title to the vehicle was found in his girlfriend’s car.

The State contends that it never sought to prove appellant’s criminal agency in those thefts. Instead, the “facts” that it needed to establish, and did establish, by clear and convincing evidence, were that the cars were stolen. We agree.

Here, Mr. Weaver and Mr. Goode testified that their vehicles were stolen at BP gas stations in the early morning. The court specifically found that the State proved the theft of Mr. Weaver’s car by clear and convincing evidence. This conclusion is supported by the testimony of Mr. Weaver.

Although the court did not make such a specific finding with respect to the theft of Mr. Goode’s vehicle, it clearly was aware of the requirement, and we can presume, by the ruling admitting the evidence, that the court made such a finding with respect to that theft as well. *See Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (“There is a

‘strong presumption that judges properly perform their duties,’ and that ‘trial judges are not obliged to spell out in words every thought and step of logic.’”) (quoting *Beales v. State*, 329 Md. 263, 273 (1993)). The evidence, including Mr. Goode’s testimony, was sufficient to support a determination that there was clear and convincing evidence of the July 9 car theft. There also was clear and convincing evidence that appellant was involved in that theft.

D.

Balancing Probative Value versus Unfair Prejudice

With respect to the last factor, appellant contends that the court erred in determining that the probative value of the two car thefts outweighed any unfair prejudice. With respect to the June 23 theft, he asserts that the State had sufficient evidence of his identity in the murder based on the presence of his DNA on the vehicle and items recovered from the scene of the murder, and proof of the theft was not necessary to its case. With respect to the July 9 carjacking, he similarly asserts that the State had sufficient evidence to show a connection between appellant and the Honda Accord, including that appellant had the keys to the vehicle and his girlfriend had the title. He argues that the evidence that the vehicle had been stolen at gunpoint did not “add to that connection.” Appellant asserts that the prejudice from introducing evidence of the thefts far outweighed any probative value.

The State contends that the evidence of the other thefts was highly probative to show appellant’s identity. And because the evidence was not offered to show that appellant was

involved in the theft of either vehicle, but only to show that the cars were stolen, the danger of unfair prejudice was minimal.⁶

As indicated, we review a decision on this prong of the analysis for an abuse of discretion. “Reversal should be reserved for those rare and bizarre exercises of discretion that are, in the judgment of the appellate court, not only wrong but flagrantly and outrageously so.” *Oesby v. State*, 142 Md. App. 144, 167–68, *cert. denied*, 369 Md. 181 (2002).

Here, as indicated, the evidence of the June 23 and July 9 carjackings were probative to establish appellant’s connection to the shooting. The fact that appellant was connected to the stolen VW Passat placed him at the scene of the murder, and the facts connecting him to the stolen Honda Accord connected him to the murder weapon. No doubt this evidence was prejudicial, but we are not persuaded that it was unfair. We cannot conclude that the trial court abused its discretion in determining that the probative value of this evidence outweighed any unfair prejudice. The circuit court did not err or abuse its discretion in admitting evidence of the other acts connecting appellant to the murder.

II.

Detective Diaz’s Testimony

Appellant’s next contention is that the trial court erred by allowing Detective Diaz to testify, without being qualified as an expert, regarding “street terms” for firearms.

⁶ To the extent that appellant asserts that the evidence that the vehicles were stolen at gunpoint was prejudicial, the State contends that this argument was not raised below, and therefore, it is not preserved for this Court’s review. Given our resolution of this matter, we need not address the issue of preservation.

Specifically, he asserts that it was reversible error to allow the detective to testify that “shorty” and “blick” are “street terms used for a gun.”

The State contends that “the trial court correctly permitted a police officer to testify that the use of two slang terms in [appellant’s] recorded jail call referred to a handgun.” It asserts that “Detective Diaz could testify to information known to him, as a lay witness, even if he was a law enforcement officer.” It asserts that, to the extent that defense counsel elicited damaging testimony, this Court should decline to consider this testimony.

During Detective Diaz’s direct examination, he was asked whether he had ever heard anyone use the term “shorty.” Defense counsel objected, and a bench conference ensued. Defense counsel argued that Detective Diaz was not qualified as an expert, and his general testimony at that point, i.e., that he had 15 years’ experience as a homicide detective, was insufficient for that purpose. Defense counsel also objected that there was no factual basis for Detective Diaz to offer an opinion on the meaning of the term in question. The State responded:

Your Honor, the State is not attempting to have Detective Diaz qualified as an expert nor are we asking for an expert opinion. We’re asking him if he’s heard a term to describe a weapon. This does not call for an expertise. It is a term, terminology, that he’s heard on the street, and the only reason I asked him during his 18 years, is because that’s how he gains knowledge of the terms he hears on the street. It doesn’t require an opinion. It doesn’t require analysis of any fact. It is not an expertise.

The court agreed with the State, noting that defense counsel’s objection was “well-preserved, but respectfully overruled.” Detective Diaz then testified as follows:

[THE STATE:] Detective, what’s a “shorty”?

[DIAZ]: It’s a term, street term, for a gun.

[THE STATE]: What's a "blick"?

[DIAZ]: A street term for a gun.

The following then ensued on cross-examination:

[DEFENSE COUNSEL]: Just, Detective Diaz, let me just come to the very last point and then we can work backwards from there. Let's take the word "shorty". What else does "shorty" mean on the streets?

[DIAZ]: It could mean a short person.

[DEFENSE COUNSEL]: Okay.

[DIAZ]: Or it could be a person, but in this case, clearly, it was a gun.

[DEFENSE COUNSEL]: What do you mean "clearly it was a gun"? You don't know that for a fact, do you?

[DIAZ]: When you look into the conversation between Mr. Cooper and the – Ms. Truesdale, based on my investigation, based on my experience, I believe they were talking about a gun.

[DEFENSE COUNSEL]: But you're not an expert in the terminology for – that's used to apply to guns, correct?

[DIAZ]: I'm sorry. Say that again.

[DEFENSE COUNSEL]: You're not an expert in urban slang, for example?

[DIAZ]: I believe that – I'm no expert, but I believe my years of experience working the street and homicide investigations, I've heard all those terms and so many more when they describe a gun.

[DEFENSE COUNSEL]: And taking the term "blick," are you an expert in urban slang as what "blick" could mean?

[DIAZ]: In terms of my investigation, in terms of the street term, a blick is a gun.

[DEFENSE COUNSEL]: You believe it's a gun, but given your experience on the streets, have you not also heard that blick can refer to an African American of dark complexion?

[DIAZ]: It could be, but, again, you know, we – they – based on the investigation from the cases and based on this particular conversation, I know for a fact that they were talking about that – a weapon.

[DEFENSE COUNSEL]: You say you know for a fact, but it's just your interpretation; is it not?

[DIAZ]: You can take it like that, counsel, but, you know, based on my experience and based on that conversation, I know they were talking about a weapon.

At this point, the court stopped the testimony and asked the parties to approach the bench. The following then transpired:

THE COURT: So I had, in my ruling, found that I would not believe that the answer to [the Prosecutor's] question required any opinion. Now, in an interesting turn of events, the detective has expressed an opinion that he knows for a fact that it's a gun. So I'm going to ask first, [Prosecutor], whether you have any suggestions as far as, you know – [Defense Counsel], are you asking for a curative instruction? Do you want me to strike the last answer that he gave?

[DEFENSE COUNSEL]: Yes.

[THE STATE]: She opened the door by –

THE COURT: He said he knows for a fact it's a gun.

[THE STATE]: Your Honor, the State would argue that Defense counsel opened the door here. Her open-ended question about, "Well, you're not sure, are you?" It opened the door to any possible answer that he may have legitimately – any way he may legitimately answer that question.

THE COURT: Respectfully, I do disagree. Frankly, the detective has offered an opinion now, not being qualified as an expert and, frankly, I think it was fair cross based on his direct. So if you are requesting, [Defense Counsel], for me to give a curative instruction that the jury is to disregard the comments made by the detective regarding his being sure that the item they were discussing was a handgun, I will do it.

[DEFENSE COUNSEL]: Yes, I am.

THE COURT: All right.

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

THE COURT: Ladies and gentlemen, I am going to instruct you at this point to disregard what Detective Diaz just said regarding his being sure that the item discussed in this case was a gun. You are not to consider that answer in arriving at your verdict.

Given that it was defense counsel's questions that elicited the testimony that the detective knew that the conversation between appellant and his girlfriend involved a gun, and the court instructed the jury to disregard that testimony, appellant does not challenge that testimony on appeal. *See State v. Rich*, 415 Md. 567, 575 (2010) (Under the "'invited error' doctrine[,] . . . a defendant who himself invites or creates error cannot obtain a benefit—mistrial or reversal—from that error.") (quoting *Klauenberg v. State*, 355 Md. 528, 544 (1999)); *Morales v. State*, 219 Md. App. 1, 12–13 (2014) (Appellant received all the relief sought by trial counsel when the court sustained an objection and struck the inadmissible testimony.).

Appellant does, however, challenge the court's admission of Detective Diaz's testimony on direct examination that "shorty" and "blick" were street terms for a gun. We confine our analysis to that issue.

Maryland 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.

Here, Detective Diaz’s testimony was not admitted as expert testimony. Rather, it was admitted as lay testimony. Rule 5-701 provides:

If the witness is not testifying as an expert, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.

“Lay opinion testimony requires no specialized knowledge or experience but instead is ‘derived from first-hand knowledge’ and is ‘rationally based.’” *Norwood v. State*, 222 Md. App. 620, 646 (quoting *Bruce v. State*, 328 Md. 594, 629 (1992)), *cert. denied*, 444 Md. 640 (2015). *See In re Ondrel M.*, 173 Md. App. 223, 243 (2007) (“No specialized knowledge or experience is required in order to be familiar with the smell of marijuana. A witness need only to have encountered the smoking of marijuana in daily life to be able to recognize the odor.”).

If testimony is based upon specialized knowledge, skill, experience, training or education, however, it may not be admitted as lay opinion testimony. *Ragland v. State*, 385 Md. 706, 725 (2005). *Accord State v. Blackwell*, 408 Md. 677, 691 (2009) (Testimony about defendant’s performance on the horizontal gaze nystagmus test, a roadside sobriety test, by a state trooper who had not been qualified as an expert, constituted expert testimony subject to the strictures of Maryland Rule 5-702.); *Coleman-Fuller v. State*, 192 Md. App. 577, 619 (2010) (error for police detective to testify to lay opinion that cell phone records placed defendant in vicinity of crime); *Wilder v. State*, 191 Md. App. 319, 364–65 (error to permit police detective to testify about plotting defendant’s location on map using cell phone records without qualifying the witness as an expert), *cert. denied*, 415 Md. 43

(2010).

Here, the testimony by Detective Diaz was admitted to put in context the terms “shorty” and “blick,” as those terms were used in the jail conversation between appellant and his girlfriend after his arrest. We conclude that Detective Diaz’s opinion that these terms are street slang for a gun was based on his specialized knowledge obtained as a homicide detective. It was, therefore, expert opinion, and in the absence of disclosure of Detective Diaz as an expert in the interpretation of the meaning of street slang terms for handguns, we conclude that the trial court erred by admitting Detective Diaz’s testimony in this regard.

That, however, is not the end of the inquiry. As the parties note, reversal of a conviction is not warranted if the error was harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013) (An error is harmless when a reviewing court is “satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.”) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)).

Here, in light of the other evidence presented, the error in allowing Detective Diaz’s testimony concerning the meaning of the terms “shorty” and “blick” was harmless. The evidence established that the murder weapon was found in appellant’s girlfriend’s car, after she told appellant that he was “lucky because I got everything.” Moreover, that Ms. Truesdale was talking about recovering a gun was shown by other testimony. Detective Diaz testified, without objection, that Ms. Truesdale talked to appellant about the gun, and “the way that weapon was recovered, it was clearly that Ms. Truesdale took possession and

then during her conversation on July the 12th with Mr. Cooper, it's clearly that that property, that recovered, that was given to her, belongs to" appellant. *See Barksdale v. Wilkowsky*, 419 Md. 649, 663 (2011) (“[A]n error in evidence is harmless if identical evidence is properly admitted.”); *see also Dove v. State*, 415 Md. 727, 744 (2010) (“[C]umulative evidence tends to prove the same point as other evidence presented during the trial or sentencing hearing.”).

Given this evidence, and the other evidence presented, we conclude that there is no reasonable possibility that the jury would have returned a different verdict if Detective Diaz's testimony regarding the meaning of the term “blick” and “shorty” had been excluded. The error in admitting this evidence was harmless beyond a reasonable doubt.

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