

Circuit Court for Worcester County
Case No. C-23-CR-24-000017

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1811

September Term, 2024

WILLIAM BENJAMIN OSSAKOW

v.

STATE OF MARYLAND

Leahy,
Zic,
Geller, Jeffrey M.
(Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: July 9, 2026

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

William Benjamin Ossakow, appellant, was convicted of four counts of willful interception of oral communications pursuant to § 10-402(a)(1) of the Courts and Judicial Proceedings (“CJP”) Article (1974, 2020 Repl. Vol.) of the Maryland Code. Following a one-day jury trial, the Circuit Court for Worcester County sentenced Mr. Ossakow to four concurrent sentences of three years’ incarceration, with all but four days suspended and credit for four days served, four \$2,000 fines, and two years’ supervised probation. He now appeals.

QUESTIONS PRESENTED

Mr. Ossakow presents three questions for our review, which we have rephrased as follows:¹

¹ Mr. Ossakow phrased the questions as follows:

1. Whether the evidence was legally insufficient to support a conviction for willful interception of an oral communication under Courts and Judicial Proceedings §[]10-402(a)(1), where the State failed to prove that Mr. Ossakow acted with any intent or purpose to record or acquire the contents of an oral communication, and the evidence showed that he purchased the device in 2019 believing it recorded video only, left it in his unoccupied condominium where other people moved the device around, never accessed or used any recordings, did not understand the language spoken in the recordings, and the recording occurred three years later in 2022[.]
2. Did the trial [court] err when it both overruled Mr. Ossakow’s objections to the irrelevant and unfairly prejudicial video evidence and denied his motion for a new trial?
3. Did the trial court err when it denied Mr. Ossakow’s motion for a new trial, where the prosecutor repeatedly

(continued)

1. Was there sufficient evidence to convict Mr. Ossakow under CJP § 10-402(a)(1)?
2. Did the circuit court err in admitting certain testimony about videos and images accompanying the admitted audio evidence?
3. Did the circuit court err in denying Mr. Ossakow’s motion for a new trial?

For the following reasons, we affirm.

BACKGROUND

The facts giving rise to the underlying criminal proceedings are largely not in dispute. Mr. Ossakow owns a condominium in Ocean City, Maryland.² He has previously allowed his employees and their families to use his condominium at no cost. In July 2019, Mr. Ossakow purchased a surveillance device from an online retailer. He then placed the device in the condominium’s primary bedroom, on top of a clothes dresser.

In September 2023, Ms. A.,³ then an employee of Mr. Ossakow, along with her family, vacationed at the condominium. During this stay, Ms. A. noticed the surveillance device sitting on top of the clothes dresser. She and her husband notified the Ocean City Police Department (“OCPD”), and responding officers confirmed that the device

misstated the “willful interception” element of the offense during the closing argument?

² At the time of trial, Mr. Ossakow resided in Virginia.

³ For privacy, we use anonymized initials to refer to Mr. Ossakow’s employees and their family members.

contained a video camera. Ms. A. took the device with her when she and her family returned to their home in Virginia.

On September 19, 2023, Detective David Whitmer of the OCPD retrieved the device from Ms. A.’s home. Detective Whitmer subsequently located a secure digital (“SD”) card in the device, requested a warrant for the card’s contents, and submitted it for further forensic analysis. The forensic analysis revealed that the SD card contained hundreds of files, four of which were audio recordings of Ms. B. (also one of Mr. Ossakow’s employees) and her family. It was later discovered that Ms. B. and her family had stayed at the Ocean City condominium in August 2022.

In January 2024, the State filed a 68-count indictment against Mr. Ossakow, charging him with 34 counts of criminal camera surveillance pursuant to § 3-903(c) of the Criminal Law (“CR”) Article (2002, 2021 Repl. Vol.) of the Maryland Code, and 34 counts of felony wiretapping in violation of CJP § 10-402(a)(1). Shortly before trial, the circuit court dismissed as untimely all 34 counts under CR § 3-903(c). The State then entered a *nolle prosequi* to all but four counts of felony wiretapping. These four remaining counts corresponded to the four audio-only recordings of Ms. B. and her family in August 2022.

The Trial

At trial, the parties submitted the following stipulation concerning the existence of video recordings:

Both the State and the Defense agree that the audio recording in the [primary] bedroom is of a private conversation between [Ms. B. and her husband] at [Mr. Ossakow’s condominium]

from the dates of August 13, 2022[,] to August 20, 2022[,] in Ocean City, Worcester County, Maryland. You will hear that the device has both audio and video. You will only hear audio from the device. The device did record video but video is not for your consideration.

The circuit court accepted this stipulation, explaining:

So that dispenses with [Mr. Ossakow’s] motion in limine[to exclude the video recordings.] Okay? So the motion in limine is essentially granted pursuant to or in accordance with the stipulation. But just so we’re clear, the stipulation contemplates that . . . the State is not precluded, nor are any of the witnesses, of testifying or eliciting . . . the fact that there was a device that had video and audio. We’re just proceeding on the audio.

During trial, witnesses testified about certain aspects of the video recordings.

Detective Whitmer testified that he identified the speakers in the audio recordings by referencing “the associated video” and that he “was able to watch [the speakers] as they spoke” and “identif[ied] their faces based on their known driver’s license pictures.”

Defense counsel did not object to this testimony. Corporal Emily Helterbran, who performed a forensic extraction on the SD card, testified that she extracted approximately 700 files from the SD card. Defense counsel’s objection to Corporal Helterbran’s testimony was overruled.

On recross-examination of Detective Whitmer, defense counsel asked whether police “were more concerned about video[.]” Detective Whitmer answered, “[t]he videos were disturbing, yes.” Defense counsel did not contemporaneously object or move to strike this answer.

At the close of the State’s case-in-chief, defense counsel moved for judgment of acquittal on all four counts, arguing that the State failed to prove that Mr. Ossakow willfully intercepted an oral communication because there was no evidence presented that he listened to any audio. The trial court denied the motion, reasoning that “the test is [not] whether . . . he endeavored to ever listen to [the audio recordings] or in fact listened to them. The elements are[] . . . that there was a communication that he willfully intercepted and that the parties to the communication did not give prior consent to the interception.”

During the defense’s case-in-chief, Mr. Ossakow testified. He explained in part that he purchased and placed the device on the dresser, assumed the device did not work, placed the device in a drawer at some point after initially placing it on the dresser, and that he “do[es not] know anything about technology” and did not listen to any of the recordings. At the close of evidence, Defense counsel renewed the motion for acquittal, and the court again denied it.

The State argued the following in its closing:

This next element of the crime is that [Mr. Ossakow] willfully intercepted, endeavored to intercept, or procured any other person to intercept this oral communication. The fact that [Mr. Ossakow] purchased, set out and purchased this device on [an account with an online retailer], gets us there.

And this jury instruction explains what willfully means. You will see that it will say willfully means an intentional, purposeful conduct. It does not require bad motive or knowing that the act is unlawful.

So if Mr. Ossakow wants to say that he didn’t know what he was doing, it doesn’t matter. . . . [I]t does not excuse his act. It does not excuse the fact that he set out to purchase this

device and then put that device out in his unit where he knew people other than himself and his family would be staying.

So going back to that second element [of CJP § 10-402(a)(1)]: [Mr. Ossakow] willfully intercepted or endeavored to intercept. *I submit to you that he endeavored to intercept the communication by the very purchasing of this unit, the unit and the SD card.* Because he knew that he wouldn't be able to intercept anything without that SD card. Without that SD card, we wouldn't have had it recorded. It would have just been something that he would have been able to listen to if he were listening live. So that is . . . very important. So [Mr. Ossakow] endeavored to intercept it by strictly purchasing it.

He willfully intercepted it, the communication by [Ms. B.] and [her husband]. That very instant that [Mr. Ossakow] set th[e] [device] down on that dresser in that bedroom he willfully placed this device in a room where people have an expectation of privacy and believed that the conversations that they were having were private. *Right there that element is met by him choosing to place it right there on that dresser, knowing. It was an intentional act.* [Mr. Ossakow] said that to you. I asked him, . . . did you place it on the dresser? He said, yeah, I placed it on the dresser.

It doesn't matter that he decided to place it on the dresser to try to catch someone sleeping in his bed because that's another important piece of this crime, that the State has to prove that the parties to the communication did not give consent. And it doesn't mean that [Mr. Ossakow] had to intend to intercept the oral communications of a specific person. The mere fact that he intercepted any communication of any person without their consent is enough. . . . All that is required is that the State proves that he chose to set this here, he chose, he knew, he intended to get an audio recording of oral communication of some person, of a human, and I submit to you that the State has proved that here today.

* * *

[W]hat matters is that [Mr. Ossakow's] actions were willful, that it was intentional and purposeful, that he chose to insert that SD card, to sit this [device] down in that bedroom, when

he knew that he was having people stay there, employees. He knew that he didn't get their consent.

* * *

[T]he State has shown that each of these three elements is met. . . . Was there oral communication? Yes, there was. *Did [Mr. Ossakow] willfully intercept it? Yes, he did. He placed [the device] there. He chose to sit it down.* And was there a consent by the parties? No, there was not.

* * *

[T]he State doesn't even have to prove that Mr. Ossakow was ever even going to do anything with these audios. It's the mere fact that he captured them. That is the crime, the mere fact that he captured them without the consent.

(Emphases added.)

Defense counsel did not object to any portion of the prosecutor's closing argument. The court instructed the jury that the State was required to prove all elements beyond a reasonable doubt and specified that one element was "that [Mr. Ossakow] willfully intercepted" an oral communication. The jury instructions defined "willful" as meaning "intentional and purposeful conduct[] . . . not requir[ing] a bad motive or [knowledge] that the act is unlawful. It does not include, however, inadvertence or simple negligence." Ultimately, the jury found Mr. Ossakow guilty of all four counts of felony wiretapping in violation of CJP § 10-402(a).

Mr. Ossakow timely filed an omnibus motion for a new trial, arguing in relevant part that: (1) the State did not prove "willful" interception as required by CJP § 10-402(a); (2) during closing, the State incorrectly told the jury that Mr. Ossakow "is guilty because he is strictly liable because there is captured audio"; and (3) Mr. Ossakow

“was basically convicted on the innuendo of video,” or “not admissible evidence.” The circuit court denied this motion, reasoning:

I think what the premise of the argument [for a new trial] is, is that the jury was not able to differentiate between the fact that there may have been a video and the application of the law to the facts which . . . they determined to be true based on the verdict, which was that there was an intentional wiretapping or capturing of this conversation by way of the device, irrespective of whether or not there may have been -- perhaps they were bothered by that, but I don't think that there's any type of demonstration or any type of reasonable inference that can be drawn by the [c]ourt that they could not apply . . . the instructions as it relates to the four offenses, so the one offense, four different counts, and determine whether or not the facts supported a conclusion that the State had met [its] burden beyond a reasonable doubt as to those elements.

* * *

And I don't believe that you've met your burden of proof, [defense counsel], as it relates to the motion for a new trial. The State has made colorable arguments -- credible and persuasive arguments, I should say, in [its] motion and then here again today. The [c]ourt finds [the State's arguments] to be more persuasive, accepts and adopts them, and denies the motion for a new trial.

The court then sentenced Mr. Ossakow to concurrent sentences of three years' incarceration for each count, all but four days suspended (thereby crediting the four days served), and imposed fines of \$2,000 fines per count, as well as two years of probation. Mr. Ossakow timely appealed. We supplement with additional facts as necessary for the discussion.

DISCUSSION

I. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT MR. OSSAKOW’S CONVICTIONS UNDER THE MARYLAND WIRETAP ACT.

A. Parties’ Arguments

Mr. Ossakow first contends that the evidence was legally insufficient to sustain his convictions because the State failed to prove he acted with the requisite willful intent to intercept oral communications. In support, Mr. Ossakow reproduces evidence presented at trial, including: his purchase of the device in 2019; testimony that Mr. Ossakow “believe[ed] it to be a video-only device”; testimony that he placed the device in the “bedroom to confirm unauthorized entry into the room”; testimony that “[h]e never used the device to access any recordings, audio, or video”; testimony that “[h]e never learned how to retrieve recordings or operate the device’s recording functions”; testimony that “[t]he device was retained for its Bluetooth speaker function, not for surveillance purposes”; testimony that Mr. Ossakow last stayed in the condominium several months before the audio was intercepted, and that “other people [had] stayed there before Ms. [B.] and her family in August 2022”; and testimony that Mr. Ossakow does not speak or understand Spanish, which is the language spoken in the August 2022 audio recordings.

The State argues in response that “the bulk of [Mr.] Ossakow’s argument depends on his testimony denying intent, which the jury was not required to believe.” Thus, the State maintains, when “[v]iewed in the proper light, the evidence was sufficient for a juror to reasonably infer that [Mr.] Ossakow intended to intercept communications when

he placed the camera in 2019, and that his intent continued in 2022 when the camera recorded [Ms. B. and] her family.”

B. Standard of Review

In assessing a legal sufficiency of the evidence challenge, after viewing the evidence and reasonable inferences drawn from the evidence in the light most favorable to the State, Maryland appellate courts ask whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Tracy v. State*, 423 Md. 1, 11 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). See *Smith v. State*, 415 Md. 174, 185-86 (2010) (recognizing that Maryland appellate courts review “not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in a light most favorable to the State”) (citation omitted). “Even in a case resting solely on circumstantial evidence, . . . if two reasonable inferences could be drawn, . . . the choice of which of these inferences to draw is exclusively that of the fact[]finder [] and not that of a court assessing the legal sufficiency of the evidence.” *Ross v. State*, 232 Md. App. 72, 98 (2017). Put simply, “[i]t is not our role to retry the case, . . . re-weigh the credibility of witnesses[,] or attempt to resolve any conflicts in the evidence.” *Smith*, 415 Md. at 185 (citation omitted).

Importantly, “appellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal.” *Starr v. State*, 405 Md. 293, 302 (2008) (quotation omitted). “A criminal defendant who moves for judgment of acquittal is required by [Maryland] Rule 4-324(a) to ‘state with particularity all reasons why the motion should be granted[,]’ and is not

entitled to appellate review of reasons stated for the first time on appeal.” *Id.* at 302 (quoting Md. Rule 4-324(a)) (citations omitted).

C. Legal Framework

In relevant part, Maryland’s Wiretap Act (“Act”) renders it unlawful for any person to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication[.]” CJP § 10-402(a)(1). The Act defines “intercept” as “the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.” CJP § 10-401(10). Such interception may be lawful, however, when “all of the parties to the communication have given prior consent to the interception. . . .” CJP § 10-402(c)(3).

At issue here⁴ is the “willful” aspect of an unlawful interception. To obtain a conviction for the violation of CJP § 10-402(a)(1), the State must prove that the defendant acted willfully, or “intentionally-purposely.” *Deibler v. State*, 365 Md. 185, 199 (2001) (citations omitted). “[T]his moderate conception of the required mental state—purposeful conduct, requiring neither a bad motive nor knowing unlawfulness—

⁴ At oral argument before this Court, Mr. Ossakow’s counsel made an argument based on criminal agency, contending that the State “[f]ailed to show the willful interception in at least two interrelated ways. First, is agency. Because if you think about it, there’s a lot of discussion of whether there was a willful interception but of course, a willful interception had to be by Mr. Ossakow.”

Defense counsel’s motion for acquittal concerned insufficiency based only on the State’s alleged failure to prove that Mr. Ossakow had not listened to the audio recordings. Accordingly, the criminal agency argument has not been adequately preserved for appellate review, *see Starr*, 405 Md. at 302, and we decline to address the issue for the first time.

comports[] . . . with how we have defined “willful,” as the term is used in other Maryland criminal statutes.” *Id.*

What a defendant does with a recording after its interception is not the focus of the willful *mens rea* in CJP § 10-402(a)(1). Although evidence that a defendant has listened to a recording following its interception may be evidence of willful interception, it is not necessary to sustain a conviction. *Compare Perry v. State*, 357 Md. 37, 69 (1999) (noting that the defendant later accessing the recordings was “telling evidence that the conversations recorded on those tapes were not recorded inadvertently”) with *Deibler*, 365 Md. at 188-89, 201 (upholding a defendant’s conviction under the Act when there was no evidence that defendant had access to the recordings after the communications were originally intercepted). Similarly, that a defendant does not know such interception is unlawful is irrelevant to willfulness inquiry. *Deibler*, 365 Md. at 199.

D. Analysis

Viewing the evidence in the light most favorable to the State, we conclude that a rational juror could find beyond a reasonable doubt that Mr. Ossakow willfully intercepted private communications between Ms. B. and her family.

First, the State entered into evidence a photo showing that Mr. Ossakow purchased the device in 2019. During his testimony, Mr. Ossakow admitted that he purchased the device and the SD card separately, that he intended to use the device to catch activity in the primary bedroom, and that he placed the device on the dresser in the primary bedroom—where Ms. A. testified that she found the device in September 2023.

Second, Detective Whitmer testified that he located an online advertisement for “an identical device” from the same retailer that Mr. Ossakow had purchased the device from in 2019.⁵ According to Detective Whitmer, the advertisement described the device “as a hidden spy camera” capable of allowing users to “watch or listen . . . to what it was recording.” This is relevant circumstantial evidence that the device was designed and marketed with audio recording capability. *See Hebron v. State*, 331 Md. 219, 226 (1993) (“Maryland has long held that there is no difference between direct and circumstantial evidence.”) (citations omitted). A rational juror could reasonably infer from this advertisement that Mr. Ossakow, who admitted to purchasing the device, was aware of its dual audio and video capabilities.

Third, Mr. Ossakow testified that he never notified any guests that a recording device was present in the primary bedroom. The jury also heard testimony that law enforcement located 700 or more files on the SD card. That the device, which was also discovered by Ms. A. in approximately the same spot as Mr. Ossakow placed it, contained an SD card with hundreds of files in addition to the four audio recordings at issue supports a reasonable inference that Mr. Ossakow intended to capture recordings of his guests’ private communications.

As for Mr. Ossakow’s testimony that he believed the device recorded only video, that he never learned to operate it, that he thought it “didn’t work,” and that he kept it for its Bluetooth speaker capabilities: the jury was not required to believe his testimony. *See*

⁵ Defense counsel did not object to this testimony.

Coleman v. State, 196 Md. App. 634, 649 (2010) (“In performing its function, the jury is free to accept the evidence it believes and reject that which it does not believe.”) (citation omitted). Moreover, that the audio recordings captured Ms. B. and her family speaking in Spanish—a language Mr. Ossakow testified that he does not speak—is of no moment. The State was not required to prove that Mr. Ossakow ever listened to or understood the recordings, and it was the jury’s role to believe (or not believe) the evidence presented. *See Perry*, 357 Md. at 69 (noting that evidence defendant had listened to the recordings evinced intent to record); *Deibler*, 365 Md. at 188-89 (sustaining convictions where there was no evidence that defendant had accessed the recordings); *see also Coleman*, 196 Md. App. at 649 (citation omitted).

Additionally, Mr. Ossakow’s reliance on *Boston v. State*, 235 Md. App. 134 (2017), is misplaced. In *Boston*, this Court held that a jail did not “willfully” intercept a third party’s portion of a phone call when the original caller added the third party to the call using a three-way calling feature. *Id.* at 150-51. We reasoned that the jail lacked “knowledge, power, and control” over the addition of the third party, and emphasized that “the absence of knowledge, power, and control on the jail’s part signifies that the interception could not be deemed willful.” *Id.* at 149-51.

Here, by contrast, the admitted evidence permitted a rational fact finder to conclude beyond a reasonable doubt that Mr. Ossakow had complete knowledge, power, and control over the placement and operation of the device. It is undisputed that Mr. Ossakow purchased the device, inserted the SD card into the device, intentionally placed the device in the bedroom—again, approximately where it was discovered by Ms. A.—

and, after placing it, left it to record—even if, as he claims, he later put the device in a drawer. Unlike the jail in *Boston*, which could not prevent an inmate’s contact from adding a third party to a call, this evidence permits a reasonable inference that Mr. Ossakow was the sole actor controlling whether and where the recording device would be used. That there was evidence indicating Mr. Ossakow was unaware the device recorded audio does not change the undisputed fact that he initially and intentionally placed the device in the approximate area in which it was found by Ms. A. Moreover, the jury was not required to believe the evidence that Mr. Ossakow was unaware of the device’s audio recording capabilities or functionality.⁶ See *Coleman*, 196 Md. App. at 649 (acknowledging that a “jury is free to accept the evidence it believes and reject that which it does not believe”) (citation omitted).

Finally, Mr. Ossakow contends that the absence of any evidence that he accessed or used the recordings necessarily demonstrates a lack of intent. We disagree. The statute criminalizes the interception itself—not the subsequent use (or nonuse) of intercepted communications. Therefore, although evidence of access and use can support an inference of willfulness, as in *Perry*, 357 Md. at 69, such evidence is not required for a conviction. The act of intentionally deploying a recording device in a location where

⁶ Mr. Ossakow also argues that his conviction “would criminalize innocent behavior” by consumers who purchase smart speakers and other devices without fully understanding their recording capabilities. This concern is overstated. The Act requires “willfulness,” which excludes inadvertent or negligent interceptions. *Deibler*, 365 Md. at 199. And here, as explained in detail above, there was evidence supporting Mr. Ossakow’s intentional mental state. Thus, CJP § 10-401(a) does not render “innocent behavior” criminal.

private conversations will occur is sufficient to establish willful interception, even if the defendant never listens to or even accesses the recordings. *See Deibler*, 365 Md. at 188-89, 200 (upholding convictions where there was no evidence that the defendant had accessed the recordings).

In sum, viewing the evidence in the light most favorable to the State, we hold that a rational juror could find beyond a reasonable doubt that Mr. Ossakow willfully intercepted Ms. B.’s and her family’s oral communications. The evidence of Mr. Ossakow’s purchase of the device and the separate SD card, the discovery of the device in the same location as it was initially and intentionally placed, the advertisement for an “identical” device as a “spy camera,” and the device’s storage of hundreds of files supports an inference that Mr. Ossakow intended to intercept private communications. Mr. Ossakow’s testimony denying knowledge of the device’s audio capability and functionality was a credibility determination for the jury, who were not required to believe his testimony. Accordingly, we hold that the evidence was legally sufficient to sustain the convictions.

II. THE CIRCUIT COURT DID NOT ERR IN ADMITTING LIMITED TESTIMONY ABOUT THE VIDEO RECORDINGS.

A. Parties’ Arguments

Mr. Ossakow next argues that the circuit court erred in admitting into evidence testimony about the video recordings because such testimony was not relevant, and, in the alternative, that it was prejudicial and deprived him of a fair trial. He specifically contends that the State repeatedly violated the parties’ stipulation by eliciting testimony

about the “hundreds of video files on [the] [] SD[] card” and about the video depicting “a mother and her children in a bedroom,” which he maintains was “emotionally charged” and erroneously invited the jury to convict based on moral outrage rather than the legal elements. Mr. Ossakow further argues that even if the testimony had some probative value, this value was “vastly outweighed by its unfairly prejudicial impact.” He asserts that the references to “video” evidence “cast [him] in a highly prejudicial light—as a voyeur or moral deviant—which poisoned the jury’s perception on an issue [that CJP § 10-401(a)] does not criminalize.”

The State counters that the circuit court properly exercised its discretion in admitting limited testimony about the video portion of the recordings. The State contends that the stipulation allowed the jury to know that the device recorded both video and audio, and that the court clarified that witnesses could testify “to the fact that there was a device that had video and audio[,]” to which the defense agreed. Additionally, the State argues that the limited testimony about the video captured was relevant because: (1) Detective Whitmer used the video to identify the speakers in the audio recordings; (2) Ms. B.’s testimony that she saw herself in the video helped establish the date, location, and identity of the speakers; and (3) Corporal Helterbran’s testimony about hundreds of files on the SD card was relevant to show continued intent to record and to rebut the claim that Mr. Ossakow did not know that the device was functional.

The State further argues that the testimony about the video was not unduly prejudicial because the jury already knew from the stipulation that the camera recorded video in a bedroom, and that the only additional information revealed was Ms. B.’s

testimony that the video showed her “on the side of the bed” with her husband “in the bathroom or in the hallway.” According to the State, this additional information does not unfairly depict Mr. Ossakow as a “voyeur or moral deviant[,]” in contrast to what he claims in his brief. The State also contends that Mr. Ossakow’s challenge to Detective Whitmer’s testimony that the videos were “disturbing” is not preserved for review, but that in any event, was harmless.

B. Standard of Review

Relevant evidence is evidence that 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. We review relevancy determinations *de novo*. Md. Rule 5-402; *Akers v. State*, 490 Md. 1, 24 (2025). Relevance “is generally a low bar, but it is a legal requirement nonetheless.” *State v. Simms*, 420 Md. 705, 727 (2011).

If evidence is relevant, we then consider whether the court abused its discretion in admitting evidence that nonetheless should have been excluded because “its probative value is substantially outweighed by the danger of unfair prejudice[.]” Md. Rule 5-403. “That danger must not simply outweigh probative value but must, as expressly directed by Rule 5-403, do so *substantially*.” *Montague v. State*, 471 Md. 657, 696 (2020) (emphasis in original) (quotation and internal marks omitted). To merit reversal based on an abuse of discretion, “[t]he inflammatory nature of the evidence must be such that the ‘shock value’ on a layperson serving as a juror would prevent the proper evaluation or

weight in context of the other evidence.” *Urbanski v. State*, 256 Md. App. 414, 434 (2022).

C. Analysis

We address the contested evidence in the order presented by Mr. Ossakow. As explained below, on the issues properly before us, we detect no error, abuse of discretion, or violation of due process.

1. Corporal Helterbran’s testimony

Mr. Ossakow first challenges Corporal Helterbran’s testimony during the following exchange:

[STATE]: And do you have a number of how many files you were able to extract from this micro SD card?

[DEFENSE]: Objection.

THE COURT: Overruled.

[STATE]: You may answer the question.

[CORPORAL HELTERBRAN]: I believe it was in the seven hundreds, but I don’t know exactly.

The quantity of files—but not necessarily, as Mr. Ossakow claims, *video* files—extracted from the SD card may suggest that Mr. Ossakow intended the device to record. This tends to prove that Mr. Ossakow “willfully” intercepted the communications, as required by CJP § 10-401(a), and, therefore, is relevant evidence.

At no point does Corporal Helterbran testify that the “hundreds” of files are *video* files, as Mr. Ossakow’s brief states. Nor does she testify that these files are audio files. Corporal Helterbran’s reference to one file being a “video[,]” which occurred slightly before the above questioning, did not outweigh, much less substantially outweigh, the

probative value of eliciting the number of total extractable files; per the parties' stipulation, the jury was already aware that at least some of the recordings contained video.

2. Ms. B.'s testimony

Mr. Ossakow next challenges Ms. B.'s identification of the voices in the audio from her review of still images taken from the video recordings:

[STATE]: And how were you able to identify that the voices that you heard were, in fact, yours and your husband's?

[MS. B.]: Because I'm right in front of the camera.

[DEFENSE]: Objection.

THE COURT: Overruled.

[STATE]: You can answer the question.

[DEFENSE]: It's stipulated to, Your Honor.

THE COURT: Overruled.

[MS. B.]: Because I'm right on the camera. The camera is right in front of me, and I'm on the side of the bed, and my husband is either in the bathroom or in the hallway both of those times. And that's how I'm talking to him, and that's how I can -- I mean, I can hear myself because I know my voice.

Although included in the joint stipulation, this testimony is relevant to the charges against Mr. Ossakow because it tends to explain how Ms. B. identified the voices in the audio, as well as how the State established the date and location of the offenses. The fact that the stipulation included this information does not somehow reduce its relevancy.

We are likewise unpersuaded that Ms. B.'s testimony was unfairly prejudicial. Mr. Ossakow's characterization of Ms. B.'s testimony as revealing that he "videotap[ed] a mother and children in a bedroom" is not in line with our interpretation of the record.

As reproduced in part above, the State inquired about the rationale for Ms. B.’s identification of the speakers in the audio recordings, and Ms. B. explained how she knew who was speaking. We are not convinced that this line of questioning invited any improper “instinct to punish[.]” in contrast to Mr. Ossakow’s reading of the record.

3. *Detective Whitmer’s testimony*

Mr. Ossakow also challenges the admission of Detective Whitmer’s characterization of the recorded videos, which were not played for the jury, as “disturbing[.]” This statement was elicited by defense counsel on cross-examination. “Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court. . . .” Md. Rule 8-131(a). Defense counsel made no contemporaneous objection to or motion to strike Detective Whitmer’s statement. Therefore, we hold that this issue is not properly before us and decline to consider it further.

For these reasons, we hold that the circuit court neither erred nor abused its discretion in admitting the testimony challenged by Mr. Ossakow, and that Mr. Ossakow was not deprived of due process by the admission of this evidence against him.

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. OSSAKOW’S MOTION FOR A NEW TRIAL.

Finally, Mr. Ossakow argues that the circuit court abused its discretion in denying his motion for a new trial because the State “repeatedly misstated the law” concerning willfulness and “invited the jury to convict without proof of willfulness” in its closing

argument.⁷ Citing to *Isley v. State*, 129 Md. App. 611, 619 (2000), *overruled in part on other grounds*, *Merritt v. State*, 367 Md. 17, 24-25 (2001), the State posits that this challenge is not preserved because defense counsel did not object during closing argument, and that “a motion for [a] new trial is not an opportunity to object retroactively.”

This Court’s review of a denial of a motion for a new trial “may vary, depending on the nature of the trial court’s actions and the circumstances before it.” *Whitney v. State*, 158 Md. App. 519, 528 (2004). In denying Mr. Ossakow’s motion for a new trial, the circuit court here adopted the reasoning proffered by the State, which in relevant part asserted that defense counsel failed to object to the allegedly erroneous statements. Considering this, we interpret the court’s denial as an exercise of its discretion and, accordingly, review for abuse of discretion. *See* Md. Rule 4-331(a) (“On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.”).

In short, we agree with the State. “Ordinarily, an appellate court will not decide any [] issue unless it plainly appears by the record to have been raised in and decided by the trial court. . . .” Md. Rule 8-131(a). Raising errors not timely objected to at trial in a

⁷ Mr. Ossakow also challenges the court’s denial of his motion for a new trial on the ground that the court erred or abused its discretion in admitting the previously analyzed testimony. Because we concluded above that either this testimony was not improperly admitted or not properly before us, we likewise hold that the court did not abuse its discretion in denying Mr. Ossakow’s motion for a new trial in this regard for the same reasons.

motion for a new trial “and then appealing the denial of that motion is not a way of outflanking the preservation requirement.” *Isley*, 129 Md. App. at 619 (recognizing that “[a] motion for a new trial should not be an opportunity to ‘sandbag’ an opponent”) (citing and quoting *Buck v. Cam’s Broadloom Rugs, Inc.*, 328 Md. 51, 61-62 (1992)); see *Lopez-Villa v. State*, 478 Md. 1, 13 (2022) (explaining that “[t]he rules for preservation of issues have a salutary purpose of preventing unfairness and requiring that all issues be raised in and decided by the trial court”) (quotation omitted).

Additionally, *Lawson v. State*, 389 Md. 570 (2005), and *Love v. State*, 95 Md. App. 420 (1993), both of which Mr. Ossakow cites in his reply brief, do not eliminate this preservation requirement. *Lawson*, 389 Md. at 601-04, addresses the prejudicial impact of multiple impermissible statements made during closing argument—some of which *were* contemporaneously objected to, in contrast to the instant case—whereas *Love*, 95 Md. App. at 427 (quoting Md. Rule 4-331(a)), recognizes that a timely motion for a new trial allows a court to act “in the interest of justice[.]” Neither of these cases categorically holds that unpreserved arguments can be raised for the first time in a motion for a new trial.

Moreover, the statements made by the State in *Lawson* are distinguishable from those Mr. Ossakow challenges here. In *Lawson*, the State asked jurors to “put [themselves] in the shoes” of the minor victim’s mother, to consider whether “the defense gave [the jury] a motive as to why [the child victim] would be lying[.]” to imagine “[w]hat [] a monster look[s] like[.]” and to consider that “a child molester looks like anybody else[.]” among other statements. 389 Md. at 579-80 (emphasis omitted). At

least one of these statements was objected to, and none received a specific contemporaneous or curative instruction. *Id.* at 595. Here, in contrast, there were no contemporaneous objections lodged to the allegedly erroneous statements, and the statements do not involve appeals to the jury's fears or prejudices, burden-shifting, or future criminality. Thus, Mr. Ossakow's situation differs greatly from that in *Lawson*, and we are not convinced that *Lawson* supports reaching the merits of Mr. Ossakow's unpreserved objections.

We conclude that the merits of Mr. Ossakow's challenges to statements made by the State are not preserved. For the same reason, we discern no abuse of discretion in the circuit court's denial of his motion for a new trial.

CONCLUSION

We hold that the evidence was legally sufficient to sustain Mr. Ossakow's convictions under CJP § 10-401(a)(1), that the admission of the contested testimony was either not improper or not preserved for our review, and that the circuit court did not abuse its discretion in denying Mr. Ossakow's motion for a new trial.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WORCESTER COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**