Circuit Court for Prince George's County
Case No.: C-16-CR-24-001431

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2090

September Term, 2024

JAMIE SMITH

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 2, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Appellant Jamie Smith was a card dealer at the MGM National Harbor when she was accused of allowing several gamblers to cheat at her blackjack table and thus steal money from the casino. After a jury trial in the Circuit Court for Prince George's County, Smith was convicted of theft of $25,000 to $100,000. The court later sentenced her to ten years' incarceration, all but time served suspended, and ordered five years of probation and restitution of $37,675. On appeal, Smith argues that the trial court erred in admitting impermissible lay opinion testimony.[1] The State agrees. So do we.

The admissibility of expert testimony is generally within the sound discretion of the trial court. *Freeman v. State*, 487 Md. 420, 429 (2024). But even within matters of discretion, the "court must exercise its discretion in accordance with correct legal standards." *Id.* (cleaned up). We review *de novo* a trial court's determination involving the threshold question of whether an opinion requires expert qualification under Maryland Rule 5-702. *See id.* at 439–40.

The Maryland Rules "divide[] the universe of opinion testimony into two categories": lay opinion and expert opinion. *Ragland v. State*, 385 Md. 706, 717 (2005). A "lay witness" may give testimony in the form of opinions or inferences, but that testimony "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." Md. Rule 5-701. Expert testimony, on the other hand, is "based on specialized knowledge, skill, experience, training, or education . . . [and] need

[1] Smith raises a second issue about discovery. Because we conclude that the testimony issue independently requires reversal, we do not address the discovery issue.

not be confined to matters actually perceived by the witness." *Ragland,* 385 Md. at 717. But before a witness may give expert testimony, the trial court must 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." Md. Rule 5-702.

Critically, it is not just the conclusion that makes an opinion "expert testimony," but the reliance on expertise. This requires a two-factor analysis, in which the court considers (1) the basis for the opinion and (2) the opinion itself. *See Ragland*, 385 Md. at 726. In *Ragland*, for example, the Supreme Court of Maryland explained that a pair of police officers' testimony that they had observed a drug transaction was inadmissible as lay testimony because their conclusions relied on their expressed training and experience. *Id.* ("The connection between the officers' training and experience on the one hand, and their opinions on the other, was made explicit by the prosecutor's questioning."). The Court reversed not because of the officers' conclusion that they had observed a drug transaction, but because that conclusion was tied to their training and experience, placing it within the scope of Rule 5-702. *Id.* at 726–27. So too here.

At trial, the State called Joshua Whitmore, a security officer at MGM. Due to a discovery failure, the State conceded it could not "use him as an expert" and agreed that it "w[ould] not elicit expert opinion from him." The State than questioned Whitmore

extensively about his responsibilities and relevant training as a security officer monitoring for cheating in blackjack at MGM.[2] For example:

> [STATE]: [A]re you familiar as a part of your position as a surveillance operator, with the rules of play for specifically the game of [blackjack]? . . .
>
> [DEFENSE]: Objection.
>
> [COURT]: I said overruled.
>
> [STATE]: How are you familiar with those rules?
>
> [WHITMORE]: From day 1 we are trained by our supervisors on the rules of Black Jack and every other table game.
>
> [STATE]: Okay. And why do you need to be familiar with the rules of specifically Black Jack?
>
> [WHITMORE]: To identify anything that falls outside of those basic rules that end up causing a loss to MGM.
>
> [STATE]: Now, could you do your job as a surveillance operator if you weren't familiar with the rules of the game?
>
> [WHITMORE]: No.

The State then connected Whitmore's training—looking for "cheating"—to its presentation at trial:

> [STATE]: Mr. Whitmore, is there a reason for a dealer to remove a card from the shoe[3] if one has not been requested?

[2] This issue permeated most of Whitmore's testimony. Smith objected many times throughout but not to everything. The State has declined to raise a preservation argument on appeal.

[3] Whitmore explained that the shoe is "what contains the deck of cards"—the cards that are not yet in play. He also defined several other terms, including hit, stand, surrender, double, and insurance wager.

[WHITMORE]: No. There would be no reason for them to draw another card towards a patron if not received any signal.

[STATE]: Okay. When you are trained to look for these irregularities, I think you testified as to errors or cheating, are you also trained in the rules as they apply to the betting?

[WHITMORE]: Yes.

[STATE]: Why would you be trained in the rules of betting?

[WHITMORE]: Basically when it comes to betting and I assume that you mean by how much that they can -- the minimum and maximum they can bet on a table?

[STATE]: So just rules on betting in general. When betting has to end and when betting is permitted, what they are permitted to do?

[WHITMORE]: So basically the wager has to be on the table before the dealer starts the game.

[STATE]: Before we get to that, are you trained on the rules of betting?

[WHITMORE]: Yes.

[STATE]: Why would you be trained on the rules of betting?

[WHITMORE]: Because it would [be] considered part of the table game procedure. Something that we would have to be knowledgeable in.

[STATE]: Could you do your job as a surveillance operator if you did not understand the rules of betting?

[WHITMORE]: No.

[STATE]: Why not?

[WHITMORE]: Because we wouldn't be able to tell when a bet was legit without having you know, card knowledge or anything that would gain them an advantage.

Whitmore's testimony makes clear that his opinions were based on his training for his job at the casino. In other words, he was establishing his credibility in the eyes of the jury by explaining the training he had received before concluding that what he observed at Smith's blackjack table was out-of-the-ordinary. Whitmore repeatedly interpreted the many slight signals, decisions, and interactions that he saw on the surveillance video of Smith's table played at trial, and offered those interpretations for the jury as "correct" based on his training and experience:

> [STATE]: At this point, has any player on the table indicated they want another card?
>
> [WHITMORE]: The patron in spot 1 has signaled for a hit after the card value has been shown. The dealer is also tapping her finger on the card.
>
> [STATE]: What just happened?
>
> [WHITMORE]: She dealt him a double before he had signaled for a double or placed his additional wager.
>
> [STATE]: What do you mean placed his additional wager?
>
> [WHITMORE]: So as going back to what a double is, basically you are putting down the same amount of what you are originally wagering for one more card and you get -- if you win, you get paid both of those wagers, one to one.

To be sure, interpreting behavior observable on a video is not inherently "expert" testimony. But where, as here, a witness has testified that they are able to reach their conclusion because of their training and specialized experience, it carries the weight of expert testimony and must be treated as such. *See Freeman*, 487 Md. at 432. Whitmore testified specifically about the importance of his training, and about how it related to his

role as a security officer at MGM before offering his conclusions regarding Smith's actions. Although a trained expert may offer testimony about something related to their field without delivering expert testimony, they cannot cloak themselves in the aura of expertise and then offer that conclusion without satisfying the demands of Rule 5-702. *Cf. id.* at 438. Because that was not done here, the trial court erred in admitting Whitmore's testimony, and we shall reverse its judgment.[4]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

[4] Also pending before the Court is Smith's "Motion for Summary Reversal and to Expedite Issuance of the Mandate." Given our holding here, we shall deny as moot the request for summary reversal but grant the request to expedite the mandate. Upon entry of this Opinion, the Clerk shall issue the mandate forthwith.