Circuit Court for Montgomery County
Case No. C-15-CR-23-000688

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2136

September Term, 2023

MIGUEL A. CRUZ

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: November 14, 2025

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

At Miguel Cruz's trial for attempted theft of an automobile, Detective David Wells, an auto theft detective on call the night of the alleged theft, testified about how an advanced diagnostics key programmer recovered at the crime scene operates and how it interacts with a blank key fob to pair with a vehicle. The Circuit Court for Montgomery County sustained and overruled some of Mr. Cruz's objections during Detective Wells's testimony, which he made on grounds of relevance, improper lay testimony, and lack of foundation. Mr. Cruz appeals the court's admission of Detective Wells's testimony. We reverse and remand for further proceedings.

I. BACKGROUND

Marquis Hayes was in his apartment at Country Place Apartments in Burtonsville on May 29, 2023, when he heard glass breaking outside shortly after 3:00 A.M. Mr. Hayes decided to investigate, looked outside, and saw two individuals dressed in "all black hovering around [his] vehicle," prompting him to call 911. Mr. Hayes then retrieved his gun. He told the 911 dispatcher his address and phone number and said that his vehicle was "currently being broken into." The 911 operator advised Mr. Hayes to stay inside and not to use the gun, but he refused. As he was on the phone, he went outside to confront the individuals.

Mr. Hayes saw two men—one he described as slender and the other heavyset—dressed in all black and wearing ski masks, standing next to the broken window of his Dodge Durango. The slender individual was Jawan Baker, and the heavyset individual was Mr. Cruz. Mr. Hayes also saw a key fob, which strengthened his belief that the men were

attempting to steal his vehicle. He approached the two men, pointed his gun, and told them to get on the ground. Mr. Baker ran off but Mr. Cruz complied. The slender individual returned shortly with a gun in his hand. Mr. Hayes thought he saw the man raise his gun at him, so he shot at him.

Officers Thomas Whalen, Drew Hilinski, and Christopher Chirigos of the Montgomery County Police Department ("MCPD") arrived on the scene shortly after. Officer Whalen testified that he found a window punch, a tool used in the automotive industry to override push-to-start vehicles, a box used to bypass key fobs, and a key fob. Officer Hilinski testified that the box used to bypass key fobs contained an advanced diagnostic key programmer. Officer Whalen handcuffed Mr. Cruz, who by then had been identified as the suspect.

The State charged Mr. Cruz with several offenses, including attempted motor vehicle theft and possession of burglary tools. Detective Wells was the lead detective on the case and had worked in MCPD's Auto Crimes Enforcement Section for approximately sixteen years. At Mr. Cruz's trial, Detective Wells testified about the window punch, the key programmer, and the key fob. He testified as well about how the latter two interact. This testimony prompted objections that portions of his testimony were irrelevant, required expert testimony, and that the Detective had not laid a foundation to provide that testimony. The court sustained the objections relating to expert testimony initially, then allowed Detective Wells to continue testifying. We will detail the testimony, objections, and rulings in the Discussion below.

A jury found Mr. Cruz guilty of attempted motor vehicle theft and possession of a burglar's tools. He was sentenced to five years, with all but the time served suspended, for attempted motor vehicle theft and to time served for possession of burglary tools. He noted a timely appeal.

II. DISCUSSION

Mr. Cruz raises one issue on appeal[1] that breaks down into two questions: (1) did he preserve his challenge to the court's ruling that Detective Wells could testify as a lay witness about the key programmer's and key fob's functionality, and, if so, (2) did the circuit court abuse its discretion by allowing that testimony. We hold that Mr. Cruz preserved his challenge to Detective Wells's testimony as requiring expert testimony and that the court erred in allowing the Detective to offer that testimony without being qualified as an expert.

A. The Expert Testimony Issue Is Preserved.

The State argues that Mr. Cruz objected at trial only on the grounds that Detective Wells offered expert testimony when he testified about how a locksmith would use an advanced diagnostic key programmer and key fob. The court sustained these objections. The only objection the court overruled related to the key fob, and Mr. Cruz's grounds for

[1] Mr. Cruz phrased his Question Presented in his brief as follows: "Did the trial court err in allowing a lay witness to give prejudicial expert testimony?"

The State phrased its Question Presented as follows: "If considered, did the trial court properly permit Detective Wells to identify a key programmer tool and a blank key fob, and give brief, nontechnical explanations of their operation, without being qualified as an expert witness?"

objecting there were for speculation, not expert testimony. Thus, the State submits, to preserve this issue for this Court's review, Mr. Cruz needed to object when Detective Wells testified about the functionality of the tools as opposed to how a locksmith employed their functionality. Mr. Cruz responds that because the court already had overruled his objection as to expert nature of the testimony when the Detective first mentioned locksmiths, the issue was preserved and requiring him to object shortly after the court overruled his previous objection would have been futile. We hold that the issue was preserved.

This Court will not review an issue "unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). Generally, "the admissibility of evidence admitted without objection cannot be reviewed on appeal." *Hall v. State*, 119 Md. App. 377, 389 (1998). Objections allow the proponent of a question to ask a different question or rephrase it to remove objectionable defects and enable the trial judge to remedy the issue on the spot. *Id.* This avoids sandbagging on the one hand and unnecessary appeals on the other. *Id.*

"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." Md. Rule 4-323(a). A general objection is sufficient to preserve all grounds for appellate review that may exist at the time of the objection. *von Lusch v. State*, 279 Md. 255, 262–63 (1977). But where the objecting party states specific grounds, the party "normally is deemed to have waived any objection to the evidence on a ground not stated." *Id.* at 263; *Klauenberg v. State*, 355 Md. 528, 541 (1999) ("It is well-settled that when specific grounds are given

at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal."). Waiver in this context may take the form of a party objecting and the court requesting the grounds for the objection; that party then is bound on appeal to their response and waives the grounds not raised. *von Lusch*, 279 Md. at 263. In the case where the court doesn't request the grounds for objecting but the objecting party goes ahead and states them, that party also will "be bound by those grounds and will ordinarily be deemed to have waived other grounds not mentioned." *Id.*

The State called Detective Wells to offer opinions on the key programmer and key fob found by the responding officers and Mr. Cruz lodged a series of objections to his testimony, primarily that his opinions constituted expert testimony he had not been qualified to offer:

> [STATE]: I'm showing you what's previously been admitted into evidence as State's Exhibit 11. . . . Would you open up that box for me?
>
> [DETECTIVE WELLS]: Yes.
>
> [STATE]: What's in that box Detective Wells?
>
> [DETECTIVE WELLS]: This is an advanced diagnostics key programmer.
>
> [STATE]: And what is an advanced diagnostic Pro—I'm sorry, programmer?
>
> [DETECTIVE WELLS]: Yes.
>
> [STATE]: Key programmer, what is that?
>
> [DETECTIVE WELLS]: So, this device is used by

locksmiths[2]—

[DEFENSE COUNSEL]: *Objection*, Your Honor. I think this requires *expert testimony*. And I also don't know that it's *relevant* considering it's not the item that's to be admitted.

THE COURT: Can you both approach for a minute?

(Bench conference follows:)

THE COURT: Response to relevance and whether or not it needs expert?

[STATE]: It certainly [is] relevant to the totality of the circumstances and what he was doing there. And auto theft is extremely relevant to that. In terms of expert testimony, it's he's testifying [as] a fact witness, Your Honor, to what he knows, his experience as [a] police officer.

[DEFENSE COUNSEL]: Lay the foundation for what happened and acknowledge what he said. I understand that (unintelligible) but that doesn't mean that he has—

THE COURT: So, I'll ask you to lay some more foundation with him.

[STATE]: Sure.

THE COURT: But *I do agree that it's relevant* and that he can testify to it if you lay the proper foundation.

[STATE]: Sure, thank you.

THE COURT: Thank you.

(Bench conference concluded.)

THE COURT: He's going to ask you an additional question. *I sustain the objection*, so hold on one minute for that next question.

[DETECTIVE WELLS]: Thank you, Your Honor.

THE COURT: You're welcome.

[2] In the trial transcript, the transcriber had Detective Wells as asking "Key programmer, what is that?" and the State as answering "So, this device is used by locksmiths —[.]" We read this to mean that it was actually the State that asked the question and the Detective that responded, not the other way around.

(emphasis added). This was the first objection ("Objection #1"). Although Mr. Cruz stated that the court "overruled the defense's objections with respect to relevancy and as inadmissible expert testimony," that's not quite right. In fact, the court agreed that the testimony was relevant—so it overruled a relevance objection—but also ruled that the Detective could offer that relevant testimony only *if* the State first laid the proper factual foundation, which at that point it hadn't. So the court placed a condition on the testimony potentially coming in: it instructed the State "to lay some more foundation with [Detective Wells]."

Put another way, the court ruled at that point that without the requisite factual foundation, Detective Wells's testimony was veering into expert testimony. And because he was not disclosed or offered as an expert, the court agreed with Mr. Cruz that permitting the Detective to offer expert testimony about how locksmiths used the key programmer would be improper:

> [STATE]: Detective Wells, in your line of work as a police officer have you had an opportunity to operate one of those devices?
>
> [DETECTIVE WELLS]: Yes.
>
> [STATE]: Could you explain for the members of the jury how that device operates?
>
> [DETECTIVE WELLS]: So, this device operates by, this particular device is run by a company out of out of the U.K. and U.S. that is a Bluetooth-enabled device that has provided a token system that you have to purchase.
>
> This token system has access to about 5,000 different vehicles. Those vehicles, there is a key code assigned to every car, so, as far as the frequency in which your key FOB operates. Okay?
>
> And for Dodges, for example, they have five key slots. So, they

> will allow your car to have five programmed key FOBs to your car that allow your push start to work. So, if you lose a key, you call a locksmith, for example. They will bring this device there. They connected[sic] to your car, the car then—
>
> [DEFENSE COUNSEL]: Your Honor, I would *object to the hypothetical*. I think that's for *expert testimony*.
>
> THE COURT: I will *sustain the objection* on the hypothetical. He can testify about what he knows and what he does[,] not what a locksmith does.

(emphasis added). This was the second objection ("Objection #2"). Again, the court agreed with Mr. Cruz that the Detective could only testify about what he knows and does as an investigator of auto theft crimes. Because the court sustained Mr. Cruz's objection, the court agreed that discussing what a locksmith does was expert testimony and that there was no foundation for the Detective to offer expert testimony in this trial.

> [STATE]: Okay. . . . Did you get that Detective? So, I think hypothetical—but just in terms of your understanding your knowledge and experience with that particular [device,] how it functions.
>
> [DETECTIVE WELLS]: And that's the proper explanation. It's I've been trained in that and how to operate it. So, it explains the actual mechanism and how the device works.
>
> [STATE]: And so if you could explain that to members of the jury, please.
>
> [DETECTIVE WELLS]: So, being that there's five key slots for the car, when you plug in this device, it communicates with the manufacturer's advanced diagnostic. They send the key code to this device. You have your blank key FOB while you're in the vehicle. And it will program that key FOB to one of the key slots in your car.
>
> [STATE]: Let me stop you right there, Detective Wells. So, in order to use that device, do you need a blank key FOB, or can you use it otherwise?
>
> [DETECTIVE WELLS]: You can use a new, blank key FOB.

> [STATE]: Okay. I want to show you State's Exhibit 14. . . . Could you open up that bag and somebody was in there? What is that?
>
> [DETECTIVE WELLS]: This is a key FOB from, that's labelled G. When they're uncut, it means it's not cut for any particular vehicle. So, this, this is, I have no way to tell you 100 percent if it's been programmed, but it—
>
> [DEFENSE COUNSEL]: *Objection. He has no way to tell us. I would object to any further information about that item.*
>
> [DETECTIVE WELLS]: Well—
>
> [THE COURT]: I'll *overrule* you may continue your answer.

(emphasis added). This was the third objection ("Objection #3"). And despite the fact that the court previously had ruled that the Detective lacked foundation, was not qualified to offer expert testimony, had offered no additional foundation and "ha[d] no way to tell us" how the fobs operated, the court nevertheless overruled the third objection and allowed the Detective to testify about how the fobs operated.

This decision seemed to function as a tacit acceptance that the State had laid a proper factual foundation for the Detective's testimony. The question is how, in the context of this line of questioning—which already had spawned two sustained objections that it called for expert testimony—the Detective's testimony about the operation of the key fob programmer could come in as lay testimony. In other words, what was the foundation that supported this testimony that didn't require the Detective to qualify as an expert witness? The court allowed the Detective to give the testimony he wanted, supported only by a "yes" answer to a leading question that it was consistent with his "experience as a police officer," then sustained an objection to the ultimate answer but left the explanatory testimony alone:

> [DETECTIVE WELLS]: —so, when you buy a car from the

> manufacturer, it's cut to your door. So, when your battery doesn't work, you can operate the door. So, when you buy a new key FOB, it's uncut. So, you take the key FOB, stand next to the device, inside the center of the car. Once this is plugged in, go around inside the car.
>
> And you can completely hit the unlock and lock buttons numerous times, so that the frequency is going from this key FOB into the vehicle of the car and it's communicating with your pro pad in order to link them to go into one of the key slots to allow the vehicle to start and program the key to the car.
>
> [STATE]: And in your experience as a police officer, is, are those two items used in order to steal cars?
>
> [DETECTIVE WELLS]: Yes.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Move to strike.
>
> THE COURT: I'll strike that answer.

On appeal, Mr. Cruz argues that the court erred in permitting Detective Wells to testify about how key fob programmers worked in general, without any specific knowledge about how one might or might not have operated in the context of this particular vehicle, so that the jury could draw a connection the State couldn't. This is precisely the testimony the State sought to elicit from the Detective about the key programmer and we agree with Mr. Cruz that his challenge is preserved for appellate review.

We see instructive contrast in *Hall v. State*, 119 Md. App. 377 (1998). The appellant, Ms. Hall, argued that the trial court had erred by admitting irrelevant evidence about a search warrant executed at her home based on reported drug activity when the issue in her case was whether she possessed cocaine and marijuana. *Id.* at 382–83. We held there that although the evidence was irrelevant, some of the errors the circuit court committed in

admitting the irrelevant evidence were not preserved. *Id.* at 383–84.

Ms. Hall had relied on a continuing objection that the circuit court had permitted when the State asked questions about a different residence. *Id.* at 390. We disagreed that the continuing objection preserved the issues relating to the specific relevance objections. *Id.* As we explained, "if the improper line of questioning is interrupted by other testimony or evidence and is thereafter resumed, counsel must state for the record that he or she renews the continuing objection." *Id.* (*citing* Lynn McLain, *Maryland Evidence: State and Federal* § 103.12 (1987)). Without such an objection, it became "impossible for an appellate court to determine whether the trial judge regarded the continuing objection as remaining in effect." *Id.* And "[u]nless it appears that the trial judge is or should be aware, when a question is asked and no objection is voiced, that counsel is relying on the continuing objection, the appellate court cannot conclude that the judge erred in not sustaining the 'continuing' objection." *Id.* We then parsed the testimony and objections and concluded that after the court had granted a continuing objection, the State shifted topics, prompting other objections, then drifted back to the line of questioning that the continuing objection covered, and then again to other topics not covered but still giving rise to different objections. *Id.* at 391. In the context of that trial, we held, the court was not on notice that the appellant resumed reliance on the continuing objection. *Id.* at 391–92.

In this case, the objections connected sufficiently to the testimony; although the topic drifted, it drifted all in the direction of the expert testimony the Detective hadn't been qualified to offer. After the court sustained Mr. Cruz's objections to the State's failure to

establish a foundation for expert testimony, it was fair for him to rely on those rulings to prevent the Detective from testifying in the manner he did. The State never sought after that to qualify the Detective as an expert—it just plowed ahead with the testimony anyway. The State's later attempt to have the Detective offer an expert conclusion led to an objection that was sustained. But the underlying substance of the stricken opinion came in anyway, even though the court had sustained Objections #1 and #2; the court had allowed the State to continue on the condition that it lay a proper factual foundation, but it never did.

The error came, then, when the court overruled the objection raised in response to the Detective stating that he could not tell whether the key fob was programmed. Although Mr. Cruz didn't object to the individual questions leading up to that question, he was following the court's directive in response to its earlier ruling that invited the State to attempt to lay a foundation. At that point, the court already had ruled—Mr. Cruz had objected to the line of questioning on relevance and expert grounds, the court ruled against him on relevance, then allowed the State an opportunity to lay a foundation for expert testimony about how the tools found on May 29, 2023 interacted with one another and their likely use that night to steal Mr. Hayes's vehicle. After eliciting testimony from the Detective about the tools, the State ceased its direct examination without building the foundation. We know the foundation was lacking because the court sustained (correctly) Mr. Cruz's objection to the hypothetical the State posed to the Detective, which was classic expert testimony. But the process of getting there allowed the Detective to get in everything but the conclusion, without foundational support, and unlike the testimony in *Hall*, 119

Md. App. at 391–92, this was all part of the same line of questioning. There would have been no point to Mr. Cruz objecting to the individual foundation questions that the court had just authorized, and the objections he made preserved the issue of whether the court erroneously permitted the Detective to give expert testimony as a lay witness.

B. The Circuit Court Erred By Permitting Detective Wells, A Lay Witness, To Give Expert Testimony.

On the merits, Mr. Cruz argues that the court erred by permitting the State to elicit testimony from Detective Wells about how the tools found near Mr. Cruz on May 29, 2023 were used to steal Mr. Hayes's truck. He argues that the Detective's testimony came purportedly from his specialized knowledge of the complex mechanics of how a blank key fob interacts with a key programmer. The State responds that the proliferation of car key fobs has made their understanding commonplace and that expert testimony was not needed to identify the tools here and give the jurors a brief, nontechnical explanation of how the tools work. We might agree with the State if the issue was purely about how drivers use car key fobs, but not as to key fob programmers, which are not at all common to public experience with cars.

We review a circuit court's ruling on the admissibility of evidence for abuse of discretion. *Wilder v. State*, 191 Md. App. 319, 335 (2010) (*citing Bernadyn v. State*, 390 Md. 1, 7 (2005)). On the other hand, "[e]rrors of law and purely legal questions are reviewed de novo . . ." and we afford no deference when reviewing those questions. *State v. Robertson*, 463 Md. 342, 351 (2019).

The Detective testified and was never offered or qualified as an expert, so the

question is whether the testimony he gave was the proper subject of lay opinion testimony or required him to be qualified first as an expert. Lay 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. On the other hand, "'when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average layman,' it may be introduced only through the testimony of an expert witness properly qualified under Maryland Rule 5-702." *State v. Galicia*, 479 Md. 341, 389 (2022) (*quoting Johnson v. State*, 457 Md. 513, 530 (2018)). Where a court admits expert testimony clothed in lay testimony, the court abuses its discretion. *Johnson*, 457 Md. at 530. Where officers use their specialized technical knowledge to distill information into a more digestible form, we and the Supreme Court have held that testimony about the distillation process is expert testimony. In *State v. Blackwell*, 408 Md. 677 (2009), the Supreme Court of Maryland recognized that terminology derived from a scientific test is beyond the ken of an average juror. *Id.* at 691. At issue there was whether the State needed to qualify an officer as an expert before the officer could testify about how he administered the Horizontal Gaze Nystagmus test and its results. *Id.* at 680–81. The Court held that the State needed to qualify the officer as an expert because the testimony was premised on specialized knowledge. *Id.* at 695. The test was a scientific test used with drunk driving suspects and in that case, the officer was testifying how "distinct nystagmus at maximum deviation" in the suspect's eyes indicated to the officer that the suspect was inebriated. *Id.* at 691. A juror couldn't

know about such an indicator or how to administer such a test, and the Court concluded that this testimony went beyond the officer's general knowledge and required specialized knowledge. *Id.*

Likewise, in *State v. Payne*, 440 Md. 680 (2014), a police detective testifying for the State detailed how he culled data from cellular phone records to create a Call Detail Record that connected communications from the defendants' homes. *Id.* at 685. This process entailed gathering thousands of documents and compiling them into single-page exhibits with information about the calls. *Id.* at 685–86. Our Supreme Court concluded that "additional training and experience were required to parlay the process from which [the detective] derived the communication path of each call," *id.* at 700–01, and that a layperson would not be able to decipher the "string of data" culled from the phone records. *Id.* at 701. The detective was able to do so not from his general knowledge but as a result of his specialized knowledge and experience. *Id.*

Also like these cases is *Ragland v. State*, 385 Md. 706 (2005). There, the issue was whether two police officers could testify about how they recognized an interaction they observed as a drug transaction without being qualified as experts. *Id.* at 715–16. The officers testified that they based their conclusions on their training and experience investigating drug cases. *Id.* at 725–26. The Court held that this was not lay testimony and that the officers had used their training and experience to deduce that their observation could not be explained by anything other than a drug transaction. *Id.* at 726. Ultimately, then, "'[w]hen a court considers whether testimony is beyond the "ken" of the average

lay[person], the question is not whether the average person is already knowledgeable about a given subject, but whether it is within the range of perception and understanding.'" *Freeman v. State*, 487 Md. 420, 431 (2024) (*quoting Galicia*, 479 Md. at 394); *Wilder*, 191 Md. App. at 368 (officer's testimony required specialized knowledge or training where officer used a software program to plot location data on a map and used cellular-phone record data to plot locations where appellant used his cellular-phone on that map); *see Coleman-Fuller v. State*, 192 Md. App. 577, 619 (2010) (detective testimony required specialized knowledge or training where detective used cellular-phone records to track appellant and place appellant within area where murder occurred and assess whether appellant's statements about his movements to police were consistent with detective's surveillance of appellant).

In contrast, in *Freeman*, the officer testified about the definition of a "lick." 487 Md. at 429–30. Our Supreme Court held that the officer did not need to be an expert to provide such testimony. *Id.* at 439. Although the officer's training and experience informed him on what the term meant, unlike *Blackwell* and *Payne*, the officer was not testifying about technical data being distilled into a consumable format—he provided a "nontechnical definition for a colloquial slang term." *Id.* at 436. That definition fell within the purview of an average person's understanding, as the term had become ubiquitous, and the officer derived it from his general experience, rather than any specialized training. *Id.* at 436–48.

Johnson v. State, 457 Md. 513 (2018), was similar. In that case, the police had collected data from a GPS tracking device that had captured the defendant's movements.

Id. at 521. The custodian of records testified about how the device functioned and how the data reflected the defendant's movements in relation to the scene of the crime. *Id.* at 523–26. The Supreme Court held that the custodian did not need to be qualified as an expert. *Id.* at 537. The Court reasoned that circuit courts regularly admit business records through witnesses who are not experts in the technology that produces those records. *Id.* at 532. Unlike *Payne*, the custodian in *Johnson* was simply reading location entries as they appeared from a device intended to track locations. *Id.* at 534. In contrast, the detective in *Payne* collected voluminous phone records that were not intended to track the user's locations and produced a set of exhibits that translated those records into data that the jury could understand. *Id.* at 534–35. That process required specialized knowledge, whereas the custodian in *Johnson* simply read entries that did not require specialized knowledge. *Id.* at 535.

In *In re Ondrel M.*, 173 Md. App. 233 (2007), an officer smelled marijuana coming out of the defendant's vehicle after stopping the car following a high-speed police chase. *Id.* at 227–28. At trial, that officer testified that the smell was that of a burning type of weed, not tobacco, leading him to suspect that it was indeed marijuana. *Id.* at 240. We held that the officer's capability to identify the marijuana smell was lay opinion as it was based on his previous experience encountering it and his present sense perception. *Id.* at 244. That officer had encountered the smell before, which allowed him to recognize it and base his perception on that experience. *Id.* at 244–45. The officer's mere statement that he recognized the smell based on his training and experience didn't mean necessarily that he

was an expert or that he was giving expert testimony, *id.*, especially since his observations were not based on any specialized training or knowledge. *Id.* at 243. An officer's perceptions don't necessarily qualify as expert opinion, nor need an officer always be qualified as an expert to testify to their perceptions. *See Warren v. State*, 164 Md. App. 153, 168 (2005) ("The rule of admissibility of lay opinion testimony is no different when, as in this case, the lay opinion is offered by a police officer"); *see id.* at 168–69 (no abuse of discretion where court permitted officers to testify that appellant appeared drunk, under the influence of alcohol, or otherwise inebriated where such opinions were rationally based on officers' perception of appellant's condition and descriptive of officers' actual observations); *see also Prince v. State*, 216 Md. App. 178, 201 (2014) ("The mere fact that a witness is a law enforcement officer does not automatically transform his testimony into expert testimony"); *see also id.* at 202 (officer did not require specialized training or scientific knowledge to testify about how he observed bullet holes from bullets appellant fired and placed trajectory rods in those holes).

In this case, Detective Wells testified to technical issues beyond the ken of non-experts or common personal or public experience. He said he was familiar with the "auto theft tools" because he had seen hundreds of them over his sixteen years with the Auto Crimes Enforcement Section of the MCPD. With regard to the key programmer, he affirmed that he had had an opportunity to operate one as part of his work as a police officer. He wasn't offering perceptions of key programmers, such as, for example, his colleague's identification of the programming device found at the scene. *See Johnson*, 457

Md. at 535 (custodian simply reading GPS entries); *In re Ondrel M.*, 173 Md. App. at 244 (the fact that the officer "based his opinion regarding the odor of marijuana on his prior training and experience as a police officer does not render the opinion, *ipso facto*, an expert opinion"). Here, Detective Wells testified from his experience investigating auto theft crimes which informed him about who uses the programmer—*i.e.*, locksmiths—and the programmer's inner workings. From that experience, he testified about the specifications and operating details of this particular programmer, that the particular device found on Mr. Cruz "is run by a company out of out of the U.K. and U.S.," as opposed to any other company, that the device was Bluetooth-enabled, and that it provided access to a token system that had access to 5,000 vehicles. From there, he testified that each of those vehicles, such as a Dodge, had a key code assigned it with five slots that allow five key fobs to enable the car to start. This mirrors the highly technical data from *Payne* that Detective Wells distilled into a format that the jury could consume and, more to the point, translate into inferences bearing on Mr. Cruz's guilt. *See* 440 Md. at 701–02.

The Detective testified explicitly that he had been "trained in that and how to operate [the programmer]." His testimony "explain[ed] the actual mechanism and how the device works." Although a juror might glean a general understanding that a key programmer might be used to program a key fob, a witness couldn't explain that exact connection and how the programmer interacts with the key fob without specialized training and experience. *See Blackwell*, 408 Md. at 691; *see also Ragland*, 385 Md. at 726. The State argues that key fobs are ubiquitous and common, but the fact that the fobs themselves are common doesn't

mean that there is any general understanding of how key fobs are programmed, how many fobs can connect to a particular vehicle, what an "uncut" key fob means, how to link a key fob to your vehicle, or how a key programmer accomplishes that linkage. *Cf. Freeman*, 487 Md. at 436 (officer providing nontechnical definition of colloquial term). The Detective knew and could testify on these matters not because of his general knowledge, but because of his specialized training.

Accordingly, the Detective's testimony should have only been admitted upon a finding that he met the requirements of Maryland Rule 5-702. *Id.* Because the State never sought to qualify the Detective as an expert and the court never made the findings necessary to qualify him, the court abused its discretion by permitting Detective Wells to provide expert testimony.[3]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. MONTGOMERY COUNTY TO PAY COSTS.

[3] We don't consider the possibility of harmless error here because the State, which has the burden to raise it, has not made that argument. *See Dorsey v. State*, 276 Md. 638, 658 (1976) ("[R]equiring the beneficiary of [a constitutional, evidentiary, or procedural] error to demonstrate, beyond a reasonable doubt, that the error did not contribute to the verdict—and is thus truly 'harmless'—is consistent with the test required in criminal cases for a resolution of guilt.").