Circuit Court for Montgomery County
Case No. 133109C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2218

September Term, 2018

EDWARD LAWRENCE HANCOCK

v.

STATE OF MARYLAND

Wright,
Shaw Geter,
Wells,

JJ.

Opinion by Shaw Geter, J.

File: July 10, 2019

Edward Lawrence Hancock, appellant, was tried in the Circuit Court for Montgomery County for carjacking and robbery in connection with the robbery of Jaqueline Mendez-Santos' car. The core of Hancock's defense was that the State had the wrong man, and therefore it focused on the question of identity. Prior to trial, Hancock moved to suppress Mendez-Santos' pretrial identification of him based on a photographic array, claiming the array was unduly suggestive and unreliable. The circuit court denied Hancock's motion. At the conclusion of trial, a jury acquitted Hancock of carjacking and convicted him of robbery. Hancock was then sentenced to 25 years imprisonment without parole. Hancock appeals and presents the following questions for our review:

1. Did the court err in denying Hancock's motion to suppress a pretrial identification as impermissively suggestive and unreliable when Hancock's photograph was the only photo in the array with a "full beard"—the key descriptor Mendez-Santos had given of her assailant?

2. Did the court err in admitting, over objection, a hearsay statement that bolstered and expanded on Mendez-Santos' description of her assailant, a central issue to Hancock's defense?

3. Did the court err in admitting, over objection, a video with little probative value, but which allowed the jury to see Hancock in handcuffs?

4. Did the State unfairly prejudice Hancock when it trivialized its burden of proof in closing argument?

For reasons to follow, we affirm the judgment of the circuit court.

BACKGROUND

On the evening of October 12, 2016, at approximately 7:00 p.m., Jaqueline Mendez-Santos parked her red Toyota Corolla near her Silver Spring apartment and began walking towards the apartment with her two children. Hearing footsteps behind her, Mendez-

Santos turned around and saw a man approaching. The man "calm[ly]" and "firmly" told her to give him her car keys. After Mendez-Santos complied, he pulled on the strap of her nylon purse, which snapped and sent the man tumbling to the ground. After returning to his feet, the man ran back towards Mendez-Santos' car and another man jumped from the bushes and started to run in the same direction.

Although Mendez-Santos did not get a good look at the second man, she testified that her assailant "had a full beard, short with some gray hair in [it]," and his hair was "short, really short." She also stated that he was "taller than [her]"—she is 5'4"—and "black."

Six days later, an automated camera in Washington, D.C. captured an image of Mendez-Santos' car in Northeast D.C., and Lorelei Hillgren, a D.C. police officer, tracked the car to a nearby gas station. Officer Hillgren saw two occupants in the car—a black male driver with a beard and a female passenger. She activated her patrol car's emergency flashers and instructed the driver to exit the vehicle. She then placed him in handcuffs and arrested him. The driver of the car was Edward Hancock, appellant, a man in his 40's.

1. *The Photographic Array.*

Later that same day, Detective Melanie Macuch of the Montgomery County Police Department was informed that Mendez-Santos' car had been found and Hancock had been arrested. She reviewed the law enforcement database and DMV records for an image of Hancock in addition to photographs of other men that she deemed similar enough to be included in a photographic array. Detective Macuch then called Mendez-Santos and told her that the police had "found the man who stole [her] car," and that the man was "driving

the car" when he was arrested. Detective Macuch then requested Mendez-Santos come to the station to look at a photo array.

Mendez-Santos arrived at the station and Detective Brian Savage presented her with photographs of six individuals in numbered manila folders, including one folder with a photograph of Hancock. Detective Savage instructed her that the suspect might not appear in the array. Mendez-Santos reviewed the photo array and initially selected a photograph of a different man and declared, "This is him." She then quickly amended her statement stating, "I'm pretty sure this is him." After reviewing the array and comparing the photographs for another minute or two, she identified the photograph of Hancock as the "most similar to the face [she] remember[ed]." After the identification, Mendez-Santos said to Detective Savage, "I hope I don't get anybody in trouble," to which he responded, "No, no, no, no. It's not like that. It's not like you see in the movies or anything like that . . . there's no falsely accused here."

Before trial, Hancock moved to suppress Mendez-Santos' pretrial identification, arguing that the photo array was impermissibly suggestive, and that the identification was unreliable. After hearing testimony from Mendez-Santos and Detective Macuch, the trial court denied the motion, ruling that the procedure was not impermissibly suggestive. The court found that although the individual photographs in the array were "slightly different," including the perspective and distance from which they were taken, the individuals in the photographs were "all black men" and "all ha[d] facial hair." The court concluded the photographs "bear at least superficial resemblance to each other . . . [s]o in no way are the photographs suggestive or is one any different than the other five." Having found the

procedure of the photo array not impermissibly suggestive, the trial court did not reach the question as to whether Mendez-Santos' identification was reliable.

2. *Trial.*

During trial, Hancock maintained that he was misidentified and not the individual who robbed Mendez-Santos. The defense conceded without argument that Hancock was arrested in Mendez-Santos' car, but argued that this fact did not prove his guilt in the carjacking and robbery six days before.

The State called as a witness Mendez-Santos, who testified to the facts of the robbery and her recollection of the man who robbed her, describing the man as a "black male," with a "full beard, short beard with some black and gray hair, really short hair," and "taller than [her]." She also testified about the pretrial identification, the video of which was introduced as evidence and played for the jury. She then identified Hancock in court as the man who robbed her on October 12, 2016.

Officer Alan Heko, who responded to Mendez-Santos' 911 call on the night of the robbery, testified and was asked to repeat the description that Mendez-Santos had given him of her assailant. Defense counsel objected to the question, but was overruled. Officer Heko testified that Mendez-Santos described the assailant as "5'8", 200 pounds, black male, wearing a blue hoodie and black sweatpants," having a "beard with some gray in it."

Officer Lorelei Hillgren testified regarding the details of Hancock's arrest, and the State introduced two body camera videos over defense counsel's objection. The first video showed Officer Hillgren approaching a Toyota Corolla at the gas station and telling the driver to exit the vehicle. The second video, slightly less than a minute long, showed

Hancock standing next to a police car with his hands cuffed behind his back. Hancock was motionless for most of the video, standing with his head down and his arms secured behind him with yellow handcuffs.

Finally, Detective Macuch described for the jury her process in assembling the photographic array. She testified that she had discarded the folders used in the photographic array and stated that Mendez-Santos' signature did not appear on any of them, which she conceded was "not good procedure."

The court then instructed the jury, and the parties proceeded to closing arguments. In its closing argument, the State began explaining in lay terms the elements of the lesser included offense of theft. Defense counsel objected to the State "deviating from what the [c]ourt ha[d] read as the standard instruction . . . in way of examples." The trial court overruled the objection, stating that it was the State's argument, and "it [was] [the State's] way of explaining the law." The State then continued its closing argument and described the reasonable doubt standard:

> Now, the standard that the Judge has read to you is called beyond a reasonable doubt. And the words used to describe beyond a reasonable doubt are somewhat confusing. It is like a doubt beyond reason. But one thing is for sure, is that this is a serious case. You need to give it the attention it deserves. And you need to unanimously find whatever verdict you arrive to beyond a reasonable doubt.
>
> However, do not be confused by how many times a day you make this decision without even thinking about [it]. Every day multiple times a day you make decisions about an important issue in your life beyond a reasonable doubt. Every time you order food or a drink from a person who is a stranger to you, you are entrusting your life into their hands. You are entrusting your life into their hands. You are entrusting that they are not going to poison you. You don't know that these are like ISIS or Al-Qaeda or something.

> But you are using your context clues. You are reading the room, so to speak. You have been present. You see other people ordering beverages, they are not falling over dead. You are using your judgment and your common sense and your everyday experiences to make decisions about your own life, your significant other's life, your children's life. You make these decisions beyond a reasonable doubt multiple times a day.
>
> So, while it is very important that you pay special attention to your deliberations and go through the verdict sheet with due diligence and true to the evidence, don't overinflate the standard of proof that you must decide. You have to ask yourself, does all the evidence show us beyond a reasonable doubt that this man was responsible for the carjacking and robbery of that victim? If your answer is yes, then you find the defendant guilty and go on with your life. It is not an overly complex question. It is not overly complex. It is complex, but it is not overly complex.

Defense counsel never renewed its objection, or otherwise objected, to the State's argument relating to the burden of proof.

The jury ultimately acquitted Hancock of carjacking and convicted him of robbery. As a result of the robbery conviction, Hancock was given a mandatory 25-year sentence without the possibility of parole. This appeal followed.

DISCUSSION

I. Whether the court erred in denying the motion to suppress.

Both Maryland law and the Due Process Clause of the U.S. Constitution protect citizens "against the introduction of . . . unreliable pretrial identifications obtained through unnecessarily suggestive procedures." *Jones v. State*, 395 Md. 97, 108 (2006) (quoting *Moore v. Illinois*, 434 U.S. 220, 227 (1977)). Hancock claims the circuit court's failure to suppress Mendez-Santos' pretrial identification violated this right because the identification "was based on an impermissibly suggestive photo array . . . which the totality of the circumstances indicates was unreliable."

In reviewing a trial court's disposition of a motion to suppress, "we look only to the record of the suppression hearing and do not consider the evidence admitted at trial." *Wallace v. State*, 219 Md. App. 234, 243 (2014) (quoting *James v. State*, 191 Md. App. 233, 251 (2010)). "We accept the findings of fact and credibility determinations of the circuit court unless they are clearly erroneous, and we examine the evidence and inferences reasonably drawn from the evidence in the light most favorable to the party prevailing before the circuit court," in this case, the State. *Id.* (citing *McFarlin v. State*, 409 Md. 391, 403 (2009)). "However, we consider whether a constitutional right has been violated independently, under a *de novo* standard of review, applying the law to the facts." *Small v. State*, 235 Md. App. 648, 668 (2018) (citing *State v. Andrews*, 227 Md. App. 350, 371 (2016)), *aff'd*, No. 19, slip op. (Md. Jun. 24, 2019).

"[C]onvictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Jones*, 395 Md. App. at 109 (quoting *Simmons v. United States*, 390 U.S. 377, 384 (1968)). "[T]he scope of identification procedures constituting 'impermissible suggestiveness' is extremely narrow[.]" *Jenkins v. State*, 146 Md. App. 83, 126 (2002) (quoting *Conyers v. State*, 115 Md. App. 114, 121 (1997)), *rev'd on other grounds*, 375 Md. 284 (2003). Judge Moylan, in *Conyers v. State*, stated:

> To do something impermissibly suggestive is not to pressure or to browbeat a witness to make an identification but only to feed the witness clues as to which identification to make. THE SIN IS TO CONTAMINATE THE

> TEST BY SLIPPING THE ANSWER TO THE TESTEE. All other improprieties are beside the point.

Id. at 121 (emphasis in original).

In Maryland, "the inquiry for due process challenges to extra-judicial identifications is a two step inquiry." *Jones*, 395 Md. App. at 109. "The inquiry, in essence, seeks to determine whether the challenged identification procedure was so suggestive that the identification was unreliable." *Small v. State*, __ Md. __, No. 19, Sept. Term, 2018 (Filed Jun. 24, 2019) (slip op. at 11). First, we determine "whether the identification procedure was impermissibly suggestive." *Jones*, 395 Md. App. at 109 (citing *Jones v. State*, 310 Md. 569, 577 (1987), *judgment vacated on other grounds*, 486 U.S. 1050 (1988)). "If the answer is 'no,' the inquiry ends and both the extra-judicial identification and the in-court identification are admissible at trial." *Id.* However, if the procedure was impermissibly suggestive, we must then evaluate "whether, under the totality of the circumstances, the identification was reliable." *Id.* "[U]nless and until the defendant establishes that the identification procedure was in some way suggestive, the reliability of the witness' identification is not relevant for due process purposes." *Id.* at 110.

"Suggestiveness can arise during the presentation of a photo array when the manner itself of presenting the array to the witness or the makeup of the array indicates which photograph the witness should identify." *Smiley v. State*, 442 Md. 168, 180 (2015). Hancock contends that the array was suggestive because 1) his beard was the "most prominent by far" compared to the other individuals featured in the array as the others had considerably less hair than a "full beard," 2) his beard was the only beard to show gray

hair, 3) his picture was more conspicuous by virtue of its framing, and 4) the police suggested to Mendez-Santos before the identification that her assailant would be pictured in the array.

After examining the photo array, we conclude it was not suggestive of Hancock's picture more than that of the other individuals featured. All six photographs depict African-American men of the same approximate age and complexion. All of the men have very short hair and, with one possible exception, have full beards. Additionally, Hancock, in the exhibit given to Mendez-Santos for her identification, has virtually no white hair in his beard. Hancock, by his own admission, identifies these differences as "subtle."

While the picture of Hancock shows his head positioned differently and is a close up of his face, the photographs of the others included in the array were not uniformly taken from the same distance and show different portions of their respective necks and chests. We cannot conclude under such circumstances that his picture was suggestive to Mendez-Santos, or any other witness. Indeed, Mendez-Santos even testified she did not notice that any photograph featured in the array looked different than the others. *See Jenkins v. State*, 146 Md. App. 83, 128 (2002), *rev'd on other grounds*, 375 Md. 284, (2003) (noting that witness' failure to perceive suggestive feature of photo array indicated feature was not impermissibly suggestive). Further, we have held that a photo array "to be fair need not be composed of clones." *Bailey v. State*, 303 Md. 650, 663 (1985).

Hancock is correct in his assertion that "[t]he chance of misidentification is . . . heightened if the police indicate to the witness that they have other evidence that one of the persons pictured committed the crime." *Jones*, 395 at 108 (quoting *Simmons v. United*

States, 390 U.S. 377, 383–84 (1984)). However, we do not agree with Hancock's suggestion that the photo array was impermissibly suggestive due to Mendez-Santos being informed by Detective Savage that "they found the man who stole [her] car."

In *Wallace v. State*, the defendant claimed an extrajudicial identification by a victim who selected a photograph from an array was impermissibly suggestive because a detective, before displaying the photo array, informed the witness that the police had "found the person that did it," and that this made the witness believe that the photo array contained an image of the suspect. 219 Md. App. 234 (2014). We held that the identification was not impermissibly suggestive because the detective "left it to [the witness] to select the photograph of the person who robbed him" and "did not in any way suggest which photograph or photographs were of the suspect or give any indication why the person in the photograph was suspected of having committed the robbery." *Id.* at 246; *see also Gatewood v. State*, 158 Md. App. 458, 477 (2004) (holding extrajudicial photographic identification of defendant was not impermissibly suggestive, even though police detective told the witness that he knew who the suspect was).

Like in *Wallace*, Mendez-Santos was left to select the photograph of the individual who she believed robbed her. There is no evidence that either Detective Savage or Detective Macuch suggested that she pick a specific individual or otherwise influenced her identification of Hancock. Mendez-Santos even testified that when she was given the photo array, she was unsure whether the individual who robbed her was going to be among the photographs shown to her.

We also are not persuaded by Hancock's claim that the photo array was impermissibly suggestive because of Detective Savage's comment to Mendez-Santos, after her identification of Hancock, that "there's no falsely accused here." That comment came after Mendez-Santos' identification of Hancock. As such, it could not have possibly influenced her identification of Hancock.

We hold the circuit court did not err in finding Hancock failed to meet his burden in showing the photo array was impermissibly suggestive. Accordingly, we do not reach the issue of the reliability of Mendez-Santos' pretrial identification.

II. Whether the court erred in admitting hearsay statements pertaining to the suspect's description.

Hancock argues the circuit court erred in permitting Officer Heko to testify that Mendez-Santos, in a statement made to him after the robbery, described the assailant as "5'8", 200 pounds . . . with a beard with some gray in it" and "wearing a blue hoodie and black sweatpants" because such testimony was inadmissible hearsay. The State concedes that the testimony was hearsay, but argues that reversal is not appropriate because the admission was harmless error.

Officer Heko's testimony regarding Mendez-Santos' description of her assailant was inadmissible hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Here, Mendez-Santos' out-of-court description of her assailant was being offered for the truth of the matter asserted—an accurate description of her assailant.

Pursuant to Maryland Rule 5-802.1(c), "[a] statement that is one of identification of a person made after perceiving the person" is "not excluded by the hearsay rule." However, physical descriptions—like the description repeated by Officer Heko—are not "identifications" subject to the hearsay exception in Rule 5-802.1(c). Indeed, in *Muhammad v. State*, we stated:

> A general description of a person observed by a witness is not an "identification" within the contemplation of Rule 5-802.1(c). That subsection deals with the pinpointing of a particular individual, such as picking someone out of a line-up or a photographic array. A description of a person is not an identification, as that term of art is used.

177 Md. App. 188, 292 (2007).

Because the circuit court erred in admitting Officer Heko's testimony of the description of the assailant he received from Mendez-Santos, "we employ the harmless error analysis when reviewing its violation." *Dionas v. State*, 436 Md. 97, 107 (2013) (citing *Smallwood v. State*, 320 Md. 300, 308 (1990)). The harmless error test is well established. We stated in *Dorsey v. State*:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be 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.

276 Md. 638, 659 (1976).

In applying the harmless error standard, we must do so "in a manner that does not encroach upon the jury's judgment." *Dionas*, 436 Md. at 109 (citing *Bellamy v. State*, 403 Md. 308, 332 (2008)). In performing our analysis, "we are not to find facts or weigh

evidence." *Id.* Instead, "[t]o say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Id.* (quoting *United States v. O'Keefe*, 128 F.3d 885, 894 (5th Cir. 1997)).

In *Yates v. State*, the defendant was charged with handgun related offenses arising from the shooting of a victim at a residence. 202 Md. App. 700, 702 (2011). At trial, the State, over objection, elicited hearsay testimony from a detective witness that the defendant, while fleeing the scene of the crime, told the witness, "I popped that [N . . .]." *Id*. at 706. Further testimony revealed that the defendant, in response to being asked "did you shoot him?," told another witness "I don't know if I got him, or something around that, or I think I got him." *Id.* at 707. That same witness reiterated that, when he asked the defendant if he shot the victim, the defendant stated: "I think so." *Id.* A third witness testified that when he asked appellant "what happened with the gunshots," the defendant stated that he "fired the gun." *Id.* at 710.

After noting that "[t]his Court and the Court of Appeals have found the erroneous admission of evidence to be harmless if evidence to the same effect was introduced, without objection, at another time during the trial[,]" we held the erroneously admitted hearsay testimony was harmless error. *Id.* at 709–711. We reasoned that the statements made by the other witnesses, described above, which were admitted without objection, evidenced the defendant's admission that he fired the gun that killed the victim. *Id*. Thus, the erroneously admitted hearsay "testimony, which also constituted an admission that [the

defendant] believed he shot the [victim], was cumulative to the other evidence that [the defendant] shot the [victim.]" *Id.*

Here, we hold, beyond a reasonable doubt, that the erroneously admitted testimony of Officer Heko in no way influenced the jury's verdict. Officer Heko testified that Mendez-Santos described her assailant as a black male, 5'8", 200 pounds, with a beard with gray hair in it, and wearing a blue hoodie and black sweatpants. To the extent that Officer Heko's testimony overlapped with Mendez-Santos' own testimony, i.e. that the assailant was a black male with a beard with some gray hair, any error in admitting such testimony was cumulative and, therefore, harmless. Also, the testimony that the assailant was 5'8" was cumulative in that Mendez-Santos testified that her assailant was "taller than [her]." As much as the specificity as to the assailant's height bolstered Mendez-Santos' credibility for the jury, it undermined it because the State, in its closing argument, conceded that Hancock was taller than 5'8". Further, Hancock was never connected to a blue hoodie or black sweatpants. Thus, this description did not reasonably bolster Mendez-Santos' credibility.

Although no evidence was presented at trial establishing Hancock's weight, we recognize that the jury could infer his weight from the video footage of Hancock being arrested. Evidence presented at trial established that a black male, with a "full beard" with some gray hair in it, robbed Mendez-Santos; Mendez-Santos identified Hancock as the individual who robbed her; and Hancock was driving Mendez-Santos' stolen car six days after the robbery. Officer Heko impermissibly describing Mendez-Santos' assailant as 200 pounds, which may or may not be consistent with Hancock's actual weight, was

"unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Dionas v. State*, 436 Md. 97, 109 (2013).

Hancock contends *McCray v. State* requires us to reverse his conviction in this case. 122 Md. App. 598 (1998). In *McCray*, the trial court, pursuant to Md. Rule 5-802.1(b), admitted a prior consistent hearsay statement of McCray's cooperating conspirator, Howell, which described how the robbery-murder occurred in a way that was consistent with her trial testimony. *Id.* at 602. The statement was admitted for the purpose of rehabilitating the witness in response to the defense's claims that the witness had a motive to lie about the circumstances of the murder robbery. We held the court erred in admitting the prior consistent statement because under Rule 5-802.1(b) such a statement may only be admitted "if it precedes the alleged fabrication, improper influence, or motive." *Id.* at 609. Howell's prior consistent statement to her mother was improperly admitted under the rule because the statement was made after her motive to lie arose, i.e. "the moment that [the] robbery murder, in which she was admittedly involved, took place." *Id.* at 609–10. In answering whether the error was harmless, we held that "[b]y allowing Ms. Burgess to testify about Howell's prior consistent statements, the State impermissibly bolstered Howell's credibility," *Id*. at 610, and "when the State's case depends virtually exclusively on the credibility of a witness . . . the bolstering of the witness's credibility by prior consistent statements cannot be harmless error." *Id*. at 610–11.

The case before us is dissimilar from *McCray* in two respects. First, Officer Heko's testimony regarding the Mendez-Santos' description of her assailant was not introduced to rehabilitate her credibility. The defense never hinted that Mendez-Santos' description of

her assailant was untrue or fabricated. Instead, they merely maintained that Hancock was not the individual who robbed her. Second, here, the State's case against Hancock did not depend solely on the credibility of Mendez-Santos and her description of her assailant. As we have stated, Hancock was found in Mendez-Santos' stolen car six days after the robbery.

III. Whether the court erred in admitting video of Hancock's arrest in which he can be seen handcuffed.

Hancock next claims the circuit court erred in admitting a video of Hancock's arrest that showed him handcuffed and illuminated by police lights because it offered little probative value and was cumulative of testimony, but "raised an inexorable risk that the jury would view [] Hancock as a criminal." The State asserts that the video was rightfully admitted because it was relevant and probative in that it showed the jury what Hancock looked like so the jury could determine for itself whether he matched the description of the assailant provided by Mendez-Santos.

Maryland Rule 5-402, governing the admissibility of relevant and irrelevant evidence, provides: "Except as provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible." "[A]lthough a trial court has 'wide discretion' in weighing the relevance of evidence, it does not have discretion to admit irrelevant evidence." *Washington Metropolitan Area Transit Authority v. Washington*, 210 Md. App. 439, 451 (2013) (citing *Id.*).

We use the following two-pronged analysis to evaluate whether the trial court correctly admitted evidence:

> First, we consider whether the evidence is legally relevant, a conclusion of law which we review *de novo*. Evidence is relevant if it 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." If we conclude that the challenged evidence meets this definition, we then determine whether the court nonetheless abused its discretion by admitting relevant evidence which should have been excluded because "its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns outlined in Maryland Rule 5-403."

Id. (internal citations omitted). "The final balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge." *Oesby v. State*, 142 Md. App. 144, 167 (2002). The trial judge's determination will not be reserved unless it is "not only wrong but flagrantly and outrageously so." *Id*. at 168.

We hold the trial court did not abuse its discretion in admitting the video of Hancock's arrest. The video showed the jury Hancock's appearance six days after he was alleged to have robbed Mendez-Santos, including his height, hairstyle, and beard. Hancock's visual appearance six days after the robbery was relevant to Mendez-Santos' description of her assailant, and, if believed to be consistent with that description, probative of Hancock being the alleged assailant.

Hancock suggests that the trial court erred in admitting the video because, notwithstanding its relevance, it was unfairly prejudicial as it showed the jury images of him handcuffed. Hancock cites a litany cases to support this contention. *See Wagner v. State*, 213 Md. App. 419, 476 (2013) (holding trial court was not justified in requiring defendant to be seated and shackled when jury was in the room); *Deck v. Missouri*, 544

U.S. 622, 635 (2003) (holding trial court was not justified in ordering felony murder defendant be shackled for the rendition of the verdict while jury was in the room in absence of concern that defendant posed particular threat). However, Hancock's reliance is misplaced as each of these cases involves a defendant being shackled during a trial or sentencing hearing before a jury; not evidence of a defendant's arrest for the crime with which he is charged.

Hancock also cites as persuasive authority *State v. Carey*, where the West Virginia Supreme Court "caution[ed] trial courts in the strongest possible terms to avoid allowing jurors to see a defendant in shackles—whether in the flesh, in photographs, or by any other method." 210 W.Va. 651, 658 (2001) (ultimately finding any error harmless in light of other evidence). We, however, decline the invitation to alter Maryland's view on the issue, especially in this case where Hancock conceded that he was arrested and the images of him being handcuffed and arrested were merely cumulative of that concession.

For the foregoing reasons, we hold the trial court did not err in admitting the video of Hancock being arrested as Hancock did not establish that its relevance was substantially outweighed by unfair prejudice.

IV. Whether Hancock was unfairly prejudiced by the State's description of the beyond a reasonable doubt standard in its closing argument.

Hancock contends he was unfairly prejudiced by the State's characterization of the beyond a reasonable doubt burden of proof in its closing argument to the jury. Specifically, he takes issue with the State telling jurors to not "over inflate the standard of proof that you must decide," that the jurors made decisions beyond a reasonable doubt "every day[,]

multiple times per day . . . without thinking about" it, and further likening the reasonable doubt inquiry to ordering food in a restaurant and entrusting a stranger to safely prepare one's meal without poisoning it.

However, at trial, Hancock did not object to the State's description of the beyond a reasonable doubt burden of proof. "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; *see also McDonald v. State*, 141 Md. App. 371, 376 (2001); *Ware v. State*, 360 Md. 650, 668 (2000), *cert. denied*, 531 U.S. 1115 (2001).

Hancock argues that the issue is preserved for our consideration because he "objected to [the State] deviating from what the [c]ourt ha[d] read as the standard instructions" and doing that by way of examples that would suggest to the jury that the standard instructions the court "instructed them on are not the lines that they should be bound by." However, this objection was made before the State's description of the beyond reasonable doubt burden of proof. The objection was made to the State's deviations from the judge's instructions given to the jury on the offense of theft during the State's description of the elements of theft. We can glean from the record no objection, continuing or otherwise, made by Hancock to the State's description of the burden of proof. This issue is not properly us and we decline to exercise plain error review.

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