Circuit Court for Montgomery County
Case No. 134220

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2992

September Term, 2018

PHILIP KANG

v.

STATE OF MARYLAND

Wright,
Shaw Geter,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 17, 2019

Phillip Kang, appellant, was arrested and charged, in the Circuit Court for Montgomery County, with possession of a regulated firearm by a prohibited person and wearing, carrying, or transporting a handgun in a vehicle. Prior to trial, Kang filed a motion to suppress the handgun, and after holding a hearing, the suppression court denied Kang's motion. Following a bench trial, Kang was convicted on both counts. The court sentenced Kang to a term of ten years' imprisonment, with all but five years suspended, on the conviction of possession of a regulated firearm, and a concurrent term of one-year imprisonment on the conviction of wearing, carrying, or transporting a handgun. In this appeal, Kang presents four questions for our review:

1. Did both the suppression court and the trial court err in failing to order disclosure in full of a recorded anonymous tip received by police or, alternatively, in failing to preclude the State from exploiting it?

2. Did the trial court err in accepting a police officer as an expert witness in the absence of full compliance with the applicable rules of discovery?

3. Did the trial court err in permitting a lay witness to testify to subject matter requiring specialized knowledge, training, or experience, and therefore requiring the testimony of an expert?

4. Did the suppression court err in denying Kang's motion to suppress the handgun?

For reasons to follow, we answer all questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

On June 18, 2018, several police officers were conducting surveillance in the area of Quince Orchard Road and Firstfield Road in Gaithersburg, Maryland, when one of the officers observed Kang get out of a vehicle and place what appeared to be a handgun in the vehicle's trunk. Shortly thereafter, Kang was placed in custody, and a search of the trunk revealed a handgun.

Suppression Hearing

As noted, Kang filed a pretrial motion to suppress the handgun. At the hearing on that motion, Gaithersburg Police Officer Mark McGinnis testified that he began investigating Kang in June of 2018 after the police received an anonymous tip indicating "that Mr. Kang was in possession of a firearm" and that "he was brandishing the firearm and threatening people with the firearm." Officer McGinnis testified that, after receiving the tip, one of his coworkers procured "a picture of [Kang] from the MVA photo on his license," which was then distributed to various law enforcement personnel, including Officer McGinnis. Officer McGinnis' coworker also discovered that Kang had a vehicle registered in his name, and that "he was involved in a shooting" and "took a plea to second-degree attempted murder." That information was also relayed to Officer McGinnis.

Officer McGinnis testified that, on June 18, 2018, he and a number of other officers were conducting surveillance near the Motel 6 on Quince Orchard Road. According to Officer McGinnis, "an unrelated male," not Kang, was the focus of the

surveillance. Officer McGinnis testified that, as he was conducting that surveillance, he happened to see Kang driving his vehicle past Officer McGinnis' location and then parking the vehicle in a nearby parking lot. Upon seeing Kang, Officer McGinnis "radioed" to the other officers on the scene that he "had Phillip Kang." Those officers then responded to Officer McGinnis' location "to set up in the area to help with the surveillance."

Officer McGinnis testified that one of the other responding officers, Larby Dakkouni, "relayed on the radio" that Kang, who at the time was sitting in the driver's seat of his parked car, was "constantly looking around." Officer Dakkouni then relayed that Kang had gotten out of his vehicle, walked to the vehicle's trunk, placed what Officer Dakkouni believed to be a firearm in the trunk, and then got back in his vehicle. Shortly thereafter, Officer McGinnis and the other officers initiated a "felony stop" of Kang's vehicle. Officer McGinnis testified that, after Kang was removed from the vehicle, the officer searched the vehicle's trunk and found a backpack, inside of which was a handgun.

Officer Dakkouni's testimony was consistent with that of Officer McGinnis. Specifically, Officer Dakkouni testified that he was in the area of Quince Orchard Road and Firstfield Road on June 18, 2018, and that, while there, he observed Kang sitting in the driver's seat of a vehicle that was parked in the lot of a nearby gas station. Officer Dakkouni testified that, at the time, Kang was "constantly checking his phone" and "constantly looking around as if he was looking for someone or something." After "a

couple of minutes," Kang opened his vehicle's trunk, stepped out of the vehicle, and walked toward the rear of the vehicle. According to Officer Dakkouni, Kang "was walking, like, if something was hindering his stride." Officer Dakkouni testified that Kang, upon reaching the open trunk, "lifted up his shirt," reached toward his waistband, and "quickly retrieved a black object," which he then placed inside the trunk. Kang then closed the trunk and got back in his vehicle. Based on those observations, Officer Dakkouni believed that Kang had "retrieved the handgun and placed it in the trunk." Officer Dakkouni testified that, after he provided that information to the other officers, he and the other officers conducted a "felony traffic stop on Kang's vehicle." Officer Dakkouni confirmed that a search of the vehicle's trunk revealed a backpack containing a handgun.

Gaithersburg Police Sergeant Robert Delgado testified that he was involved in the stop of Kang's vehicle on June 18, 2018. Officer Delgado testified that as he "approached to clear the vehicle," he noticed that "the vehicle smelled of the odor of marijuana." Officer Delgado testified that he observed the smell of marijuana prior to the search of the vehicle's trunk, which was closed at the time.

Following the hearing, the suppression court issued a written order and memorandum opinion denying Kang's motion to suppress. In that opinion, the circuit court found "that the police had probable cause to stop and subsequently arrest [Kang] based on the information they possessed about [Kang] and their observations." The court

also found that the police had "probable cause to believe that the trunk of [Kang's] car contained [a] handgun." The court noted:

> Before stopping [Kang], the officers were aware that [Kang's] criminal history included a conviction that prohibited him from possessing a handgun. They were also aware that [Kang] was known to brandish a handgun. The Court finds credible the testimony of Officer Dakkouni that on the night in issue, he observed [Kang] acting in a manner that indicated that he had a gun in his pants – his gait while walking to the trunk of his car, the removal of the object from his waist band, and [Kang's] constant looking around.

Recording of Anonymous Tip

During the suppression hearing, when Officer McGinnis testified that he first became "familiar" with Kang after receiving the anonymous tip, defense counsel objected and informed the circuit court that he wanted to "*voir dire*" the officer regarding the tip. During that *voir dire*, Officer McGinnis revealed that the tip had been received via telephone and that the substance of the tip had been recorded. At that point, the following colloquy ensued:

> [DEFENSE]: Your Honor, if I may, I have a, a new issue now. I've never heard this tape. I've never been provided this information. In fact, the, the only information I have is that there were – I'm actually a little surprised that this officer heard it. So, I'm sort of left in the lurch. I'm going to make a demand for that. I'm happy to leave that. I want to continue today. I assume that it's fairly short. But I think that I have the right to hear that.
>
> THE COURT: Do we have it available?
>
> [STATE]: I, I was not provided the, the information as it pertains to the tip. I don't – I think for these purposes, the officer's independent recollection of what happened

that day, the elements of this case, whether or not he possessed a firearm, whether or not he was convicted of a second-degree attempted murder, it, it has no bearing on whether or not that tip led to that. Because in this instance, what I will proffer to the Court is that completely independent of that tip, the officers see him. It's not as a, it's not as a result of that tip that the officers are following him. He just happens to see him after obtaining that information.

[DEFENSE]: Well, then, then that makes this whole discussion of the tip irrelevant and I would move to strike it. Other – also, it doesn't –

THE COURT: Strike your *voir dire*?

[DEFENSE]: Yeah. I – no, I understand. You know, it – the question was from the State. How did you come in the – the statement was it was a tip. Now [the State is] saying – I understand – the tip really isn't relevant because it wasn't the basis for the stop. Okay. But if there's going to be testimony about the tip, I should get the tip so that I can, can test the officer's recollection about that in terms of his testimony.

THE COURT: All right. But you also said that you don't want to continue this hearing in order to get the tape.

[DEFENSE]: That's right. If the State doesn't have it, then I don't know how they can provide it to me.

THE COURT: Right.

[DEFENSE]: So, if I don't get it – I mean, this, this is sort of where I am. I don't get it in discovery. The officer's testifying that he heard it. But [the State] says it's not relevant because it's not based on the tip that they stopped him. So then, none of this is relevant and instead of dealing with my, my *voir dire* where we could argue about the tip, if it's not relevant, I would move to, - I, I would object on the basis of relevance.

THE COURT: Okay. I'm not going to strike anything. If you want to continue *voir diring* him, fine. If not, then [the State] can continue questioning him.

[DEFENSE]: Your Honor, I'm going to make a demand, if I may for the record, just a demand to – that the tip be provided. I – that information, I have not received it. And obviously, [the State] doesn't have it. So I would ask to preclude the testimony about the tip if it hasn't been provided to either myself or the State.

THE COURT: Okay. Well, we don't know what he was going to testify with respect to the tip because you said you wanted to *voir dire* him.

[DEFENSE]: Yes.

THE COURT: So, it may be that you brought out things that [the State is] not going to bring out.

[DEFENSE]: Well, I haven't brought anything out that's substance of the tip yet, but I'll, I'll withdraw – I don't need to do any more *voir dire*. I do have some argument on it.

THE COURT: Okay.

The State then continued with the remainder of its case-in-chief. At the conclusion of the suppression hearing, but before the suppression court issued its ruling, defense counsel re-raised the issue regarding the anonymous tip:

[DEFENSE]: Your Honor, if I may? I, I made this, this motion earlier as it relates to the evidence concerning the tip. I will talk – if the Court – well. My motion is to preclude any, any testimony regarding this tip. I was not provided with a copy of this tip. Apparently there is one. I know the State says they don't have it, but the police say that they do. And I think it's the – it was the State's obligation to provide that to me. The only

> reference I have to this tip was in the charging document. And I – Your Honor, that's fine. But as to the recording, it would affect my ability to test the officers' recollection, including statements that they made under oath relative to that issue. Now – and so, I'm making that motion. To preclude any, any testimony regarding the tip.
>
> THE COURT: All right. The motion is denied.

At the beginning of Kang's bench trial, defense counsel moved to dismiss the charges based on "a discovery violation," namely, the State's failure to disclose the recording of the tip. Defense counsel also moved, in the alternative, "to preclude the State and all of its witnesses from making any reference to any tip." Finally, defense counsel moved to have the recording provided to the defense because it could be used to challenge "the officers' ability to recall" and because "there may be a motivation as to why this person provided this false information."

The State responded that it was not obligated to provide the recording to the defense because the tip was not exculpatory and did not serve as the basis for the officers' finding of probable cause. The State further argued that, even if it were obligated to disclose the recording, its failure to do so was of no consequence because the State did not intend to elicit any testimony about the tip. Lastly, the State maintained that, because the "tipster" could be identified in the recording, there were "concerns of retaliation."

Ultimately, the circuit court denied defense counsel's motion to dismiss, finding that there was "independent probable cause" that was "legally unconnected to the anonymous tip." The court also ruled that the State was not required to disclose the

recording, citing the State's "representations that the person may be identified or identifiable."

Trial Court's Acceptance of State's Expert Witness

During Kang's bench trial, the State called Montgomery County Police Detective Grant Lee as a witness and asked the circuit court to accept Detective Lee as an expert in "forensic firearms examination." Defense counsel objected:

> [DEFENSE]: Your Honor, I'm going to object. The State has provided me in terms of an expert opinion a one-page document. They have not noted Mr. Lee as a specific expert in an area nor have they provided his CV concerning his background. I haven't been provided, the only thing I got was a one-page document which I assume the State is going to seek to admit. For all those reasons I would ask that he not be admitted as an expert in this case in that the State hasn't provided that information to me.
>
> THE COURT: And the information you are saying is the CV?
>
> [DEFENSE]: Yes, Your Honor.
>
> THE COURT: Okay. Based on that objection the Court is going to overrule it but do you want an opportunity for *voir dire*?
>
> [DEFENSE]: No.
>
> THE COURT: Okay.

The trial court then permitted Detective Lee to testify as an expert witness. During that testimony, Detective Lee testified that the gun recovered from the trunk of Kang's vehicle was "functional." Also during Detective Lee's testimony, the State

introduced a "test fire certificate showing operability and functionality of the firearm." The court admitted the document without any objection from Kang regarding prior disclosure of the certificate.[1]

Lay Witness Testimony

Officer Dakkouni also testified for the State. During that testimony, Officer Dakkouni stated, as he did at the suppression hearing, that he observed Kang place "a black object" in the trunk of his vehicle prior to his arrest. When asked what he "understood" the item to be, Officer Dakkouni responded that he "believed that it was a handgun." The following colloquy ensued:

[DEFENSE]:	Objection.
THE COURT:	Okay.
[DEFENSE]:	Calls for speculation.
THE COURT:	I'm going to sustain the objection in terms of what sounds like a belief and not an observation.
[STATE]:	What are the factors that you considered –
THE COURT:	If the State wants to come back on that you may.
[STATE]:	What are the factors that you considered in determining that it was a handgun?
[WITNESS]:	Well, the area. The Motel 6 is known to have a lot of –

[1] Although defense counsel did object when the certificate was admitted, that objection was based on defense counsel's belief that the State had not "satisfactorily demonstrated a chain of custody" as to the handgun.

[DEFENSE]: Objection.

THE COURT: Overruled.

[STATE]: You may continue.

THE COURT: It goes to weight, not the admissibility.

[WITNESS]: The Motel 6 is a high crime area. There's a lot of drugs, a lot of guns, a lot of weapons, a lot of robberies, burglaries and such. At the time that they [sic] also there was surveillance, [we're a] surveillance team we're trained to monitor and watch people and we know how after watching people for such a long time I can tell when somebody is holding something in a waistband or not.

[DEFENSE]: Objection.

THE COURT: Okay. Sustained. You can get some detail on it if you wish.

[STATE]: Yes, Your Honor.

THE COURT: But the conclusion and in essence the opinion is sustained.

[STATE]: As it pertains to this defendant, Phillip Kang, what are the things that you saw him doing that led you to believe that he was in possession of a handgun?

[DEFENSE]: Objection. Calls for a legal conclusion.

THE COURT: Overruled.

[WITNESS]: The looking around, the constant using of his cell phone. The head and swivel observation as if he was anticipating police or looking for police.

[STATE]: As it pertained to his walk was there anything that you viewed?

[WITNESS]: Yes. When he was walking towards the trunk his walk was staggered. It was not a normal flow. It appeared something was blocking his normal stride.

* * *

[STATE]: This might be a stupid question but do you own a gun?

[WITNESS]: Yes, two.

[STATE]: When you, how many times have you seen guns in your time as an officer outside of your gun? Hundreds, thousands?

[WITNESS]: Hundreds.

[STATE]: All right. Did any of the motions of him taking that item out, did that affect you in one way or the other?

[WITNESS]: It was the same –

[DEFENSE]: Objection, leading.

THE COURT: Sustained.

[STATE]: Is there anything about the way, is there anything about his conduct or the way he moved that –

[DEFENSE]: Objection, he's already answered.

THE COURT: Overruled, overruled.

[STATE]: - that caught your eye?

[WITNESS]: Yes, specifically the way he tilted his arm while retrieving the object. This is the same way I do when I retrieved my gun to put it in the safe and you have this side as you put the gun in the safe for example.

[STATE]: All right. Based on all of your observations, what, if anything, did you do next?

[WITNESS]: I relayed my observations to the team and that I believed he had just put a handgun in the trunk area of his vehicle.

DISCUSSION

I.

Kang first contends that both the suppression court and the circuit court committed reversible error in their handling of the State's failure to disclose the recording of the anonymous tip. Kang avers that the courts erred because "disclosure of the full content of the tip was constitutionally required as a matter of due process of law." Kang also avers that the courts erred because "it was fundamentally unfair to permit the State to exploit evidence that it had failed to disclose."

The State responds that Kang was not entitled to discovery of the recording, either constitutionally or under the applicable rules of discovery, and that, as a result, the courts did not err in refusing to order disclosure. The State further contends that it did not exploit the evidence, as the State did not rely on the anonymous tip to establish probable cause or as evidence of Kang's guilt.

"Maryland has long recognized the privilege of the State to protect the identity of informants." *Elliott v. State*, 417 Md. 413, 444 (2010). That privilege "is designed to encourage citizens to communicate their knowledge of criminal activity to law enforcement officials by preserving their anonymity and thus has as its purpose 'the furtherance and protection of the public interest in effective law enforcement.'" *Edwards*

v. State, 350 Md. 433, 440 (1998) (quoting *Roviaro v. United States*, 353 U.S. 53, 59 (1957)).

Nevertheless, "'while the State's interest in maintaining the anonymity of its informers is manifestly important, that interest is necessarily circumscribed by the defendant's interest in a fair trial.'" *Elliott*, 417 Md. at 444-45 (quoting *Brooks v. State*, 320 Md. 516, 522 (1990)). Thus, "'where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.'" *Id.* at 445 (quoting *Roviaro*, 353 U.S. at 60).

When faced with the decision whether to order disclosure of an informer's identity and/or the contents of his communication, "judges must perform a balancing test, weighing 'the public interest in protecting the flow of information against the individual's right to prepare his defense.'" *Id.* (quoting *Roviaro*, 353 U.S. at 62). That balance "'must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors.'" *Edwards*, 350 Md. at 441 (quoting *Roviaro*, 353 U.S. at 62). In any evaluation, "'the key element is the materiality of the informer's testimony to the determination of the accused's guilt or innocence.'" *Elliott*, 417 Md. at 445 (quoting *Warrick v. State*, 326 Md. 696, 701 (1992)). In that regard, the Court of Appeals has drawn a distinction between an informant who participated in the criminal activity and one who merely gives information to the police, noting that "the privilege

ordinarily applies where the informer is a mere 'tipster,' who supplies a lead to law enforcement officers but is not present at the crime, while disclosure is usually required when the informer is a participant in the actual crime." *Edwards*, 350 Md. at 443 (citations and quotations omitted).

"Further, in cases where the materiality of the informant's identity arises in the context of an alleged Fourth Amendment violation, [the Court of Appeals] and the United States Supreme Court have emphasized the importance of ensuring a fair determination of probable cause." *Elliott*, 417 Md. at 446. Specifically, the Court of Appeals has noted that, where a court's determination of probable cause "depends principally on the reliability of an informant or the veracity of an affiant's assertions of what an informant said or did, the balance may have to be struck in favor of disclosure." *Edwards*, 350 Md. at 445. Thus, in cases where "the probable cause for a defendant's arrest depends wholly, or in part, on information received from a non-participating informer . . . the trial court should require [disclosure] . . . so that the informant may be summoned and interrogated . . . to determine whether or not the officer had probable cause to make the arrest." *Drouin v. State*, 222 Md. 271, 286 (1960), *quoted in Edwards*, 350 Md. at 445-46.

"In reviewing a trial court's determination not to compel disclosure, 'we look to see whether the court applied correct legal principles and, if so, whether its ruling constituted a fair exercise of its discretion.'" *Elliott*, 417 Md. at 444 (quoting *Edwards*, 350 Md. at 442). "The burden is on the defendant to show 'a substantial reason

indicating that the identity of the informer is material to his defense or the fair determination of the case.'" *Id.* (quoting *Brooks*, 320 Md. at 528 n.3).

Here, we hold that the circuit court applied correct legal principles and exercised sound discretion in refusing to compel disclosure. The informant in this case was a mere "tipster" and did not participate in the criminal activity or have any direct knowledge of Kang's guilt or innocence with respect to the crimes charged. Importantly, neither the identity of the informant nor the substance of the information provided was material to Kang's defense or a fair determination of the case. Although the informant's tip did spark the police's investigation into Kang, it was the police's independent investigation that led to the discovery of Kang's photograph, the make and model of his vehicle, and the fact that he had previously been convicted of second-degree attempted murder. Armed with that independent information, several police officers then recognized Kang while they were conducting unrelated surveillance at a later date. Upon noticing Kang, one of the officers, Officer Dakkouni, observed Kang, a known felon, place what appeared to be a handgun in the trunk of his automobile. It was that observation, and not the information provided by the informant, that provided the officers with probable cause to arrest Kang and subsequently search his vehicle.

To be sure, the suppression court, in making its determination of probable cause, did mention that the police were aware that Kang "was known to brandish a handgun." Although it appears that that assertion by the circuit court was likely derived from the informant's tip, we cannot say that the court abused its discretion in not requiring

disclosure. *See Edwards*, 350 Md. at 445 ("[W]hen the informant's role was limited to supplying information used by the police to establish probable cause, whether to require disclosure rests largely within the discretion of the judge who hears the motion to suppress."). As noted, the court's determination of probable cause did not depend "principally on the reliability of [the] informant or the veracity of an affiant's assertions of what [the] informant said or did." *Edwards*, 350 Md. at 445. Rather, the court's determination of probable cause was based principally on Officer Dakkouni's observations and the fact that Kang was a convicted felon, all of which was garnered independently of the informant's tip. For those reasons, Kang's claim that the State was permitted to "exploit" the tip during the suppression hearing is without merit.

Finally, disclosure of the informant's identity or the substance of the tip would have had no discernible impact on Kang's defense at trial, as no evidence or testimony concerning the tip was admitted at trial or considered by the circuit court in determining Kang's guilt. Thus, Kang's claim that "the tip proved to be quite important" at trial is also without merit.

II.

Kang next contends that the circuit court erred in accepting Detective Grant Lee as an expert witness. Kang claims that, pursuant to Md. Rule 4-263(d)(8),[2] the State was

[2] Md. Rule 4-263(b)(8) states that the State must disclose to the defense:

> (8) *Reports or Statements of Experts.* As to each expert consulted by the State's Attorney in connection with the action:

required to disclose "more than a generalized statement of the expert's conclusions, which is all that defense counsel received." Kang claims that he should have also received, but did not, "a summary of the grounds" and "the underlying basis for the expert's findings and opinions." According to Kang, "only with that information can opposing counsel properly prepare to cross-examine the expert, or decide whether to consult or call to testify an expert of his or her own."

The State counters, and we agree, that Kang's arguments are unpreserved. Md. Rule 8-131. The only issue Kang raised at trial regarding Detective Lee's qualification as an expert was that the defense had not received a copy of the detective's CV. When the circuit court overruled the objection, it asked defense counsel if he wanted to *voir dire* the witness, and defense counsel declined. At no point did Kang raise any argument concerning the State's failure to disclose "a summary of the grounds" or "the underlying basis for the expert's findings and opinions." Thus, those arguments were not preserved for our review. Md. Rule 8-131(a).

> (A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;
>
> (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
>
> (C) the substance of any oral report and conclusion by the expert[.]

Even if preserved, Kang's arguments are without merit. To begin with, we are unclear as to what, exactly, Kang is claiming the State failed to disclose. When lodging his objection regarding Detective Lee's CV, defense counsel indicated that the State did disclose a "one-page document" that he "assum[ed] the State [was] going to seek to admit." Presumably, that one-page document was State's Exhibit 4, a test fire certificate prepared by Detective Lee, which was the only document presented by the State during Detective Lee's testimony and was admitted by the circuit court without objection. That document stated, quite simply, that Detective Lee had fired the handgun recovered from Kang's trunk and determined the handgun to be operable. Thus, assuming that State's Exhibit 4 was the "generalized statement" to which Kang now refers, we fail to see how further disclosure of the "summary of the grounds" or "underlying basis for the expert's findings and opinions" would have aided the defense in any way.

Finally, even if we assume that the State failed to disclose "a summary of the grounds" and "the underlying basis for the expert's findings and opinions," we cannot say that the circuit court abused its discretion in refusing to exclude Detective Lee as an expert witness. *See Raynor v. State*, 201 Md. App. 209, 227-28 (2011) (noting that, in issuing sanctions for discovery violations, "the circuit court has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction is at all necessary.") (citations and quotations omitted). Such a sanction would have been quite drastic given the circumstances. *See Thomas v. State*, 397 Md. 557, 571 (2007) ("The most accepted view of discovery sanctions is that in fashioning a sanction, the court

should impose the least severe sanction that is consistent with the purpose of the discovery rules.").

III.

Kang next contends that the circuit court erred in permitting Detective Dakkouni, a lay witness, to provide "expert testimony." Kang maintains that Detective Dakkouni's testimony "concerning the characteristics of an armed person" and his "conclusion that the not-yet-seen observed object was a gun" were "derived from specialized knowledge, training, and experience."

The State counters that Kang's contention is not preserved because he either did not object or objected on grounds not raised here. The State also contends that, even if preserved, Kang's claims are without merit because Officer Dakkouni's testimony was not offered as an expert opinion, and because Kang was not prejudiced by the testimony.

We agree with the State that Kang's argument was unpreserved. During the relevant portions of Officer Dakkouni's testimony, defense counsel lodged six objections, three of which were sustained by the circuit court. *See* Md. Rule 5-103(a) ("Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling[.]"). Of the three that the court overruled, two were lodged on grounds different than those raised here. *See State v. Jones*, 138 Md. App. 178, 218 (2001) ("[W]hen particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be

deemed to have waived any ground not stated.'") (quoting *Lauschner v. State*, 41 Md. App. 423, 436 (1979)). The final objection, for which defense counsel did not offer any grounds, was not made in response to testimony from Officer Dakkouni "concerning the characteristics of an armed person" or his "conclusion that the not-yet-seen observed object was a gun," but rather to his testimony that the Motel 6 was "known to have a lot of drugs, a lot of guns, a lot of weapons, a lot of robberies, burglaries and such." Furthermore, defense counsel did not object to the preceding question from the State, in which the State asked Detective Dakkouni: "What are the factors that you considered in determining that it was a handgun?" *See Bruce v. State*, 328 Md. 594, 626-29 (1992) (explaining that defendant failed to preserve appellate argument where he did not object immediately after the State posed an objectionable question, as the defendant "should have been able to anticipate the nature of the response and make his objection in advance of [the witness's] answer."). Accordingly, the arguments Kang now raises were not preserved for our review. Md. Rule 8-131(a).

Even if preserved, we conclude that the circuit court did not err in permitting Officer Dakkouni to testify as to the characteristics of an armed person and his conclusions regarding whether Kang had placed a handgun in the trunk of his car prior to his arrest. First, Officer Dakkouni's testimony was not offered for its truth, *i.e.* to prove that Kang was, in fact, in possession of a handgun, but rather to explain the circumstances that led to his arrest. *Fullbright v. State*, 168 Md. App. 168, 181-82 (2006) (noting that opinion evidence is, by definition, testimony from a witness that he "is of the opinion that

some fact pertinent to the case exists or does not exist, *offered as proof of the existence or nonexistence of that fact*.") (citations and quotations omitted) (emphasis added). Moreover, Officer Dakkouni's testimony that he *believed* Kang was in possession of a gun prior to his arrest was permissible lay opinion, not expert opinion, as it was rationally based on Officer Dakkouni's perceptions and helpful to a clear understanding of his testimony. *See* Md. Rule 5-701 (defining the scope of lay witness opinion testimony); *see also Bruce,* 328 Md. at 630 ("[L]ay opinions which are derived from first-hand knowledge, are rationally based, and are helpful to the trier of fact are admissible.").

IV.

Kang's final contention is that the suppression court erred in denying his motion to suppress the handgun. Kang claims that the police did not have probable cause to effectuate an arrest because the "object" Officer Dakkouni thought was a gun could have been something innocuous, and because the officer "did not know that it was a gun until after the trunk and backpack had been searched." Kang also claims that, even if the arrest was legal, the search of the trunk was not, as there was no "exigency" to justify the intrusion.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State,* 172 Md. App. 75, 87 (2006). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis*

v. State, 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels,* 172 Md. App. at 87. "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State,* 447 Md. 64, 70 (2016).

The Fourth Amendment to the United States Constitution protects an individual's right against unreasonable searches and seizures. *State v. Johnson,* 458 Md. 519, 533 (2018). "Reasonableness within the meaning of the Fourth Amendment generally requires the obtaining of a judicial warrant." *Id.* (citations and quotations omitted).

That said, "[a] warrantless arrest made in a public place is not unreasonable, and accordingly does not violate the Fourth Amendment, if there is probable cause to believe that the individual has committed either a felony or a misdemeanor in an officer's presence." *Donaldson v. State,* 416 Md. 467, 480 (2010). "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.'" *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citation omitted). Moreover, "an officer's subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause . . . so long as the facts and circumstances viewed objectively,

support the arrest." *McCormick v. State*, 211 Md. App. 261, 270-71 (2013) (citations and quotations omitted).

Similarly, the warrantless search of a lawfully-stopped vehicle is reasonable under the Fourth Amendment "where there is probable cause to believe the vehicle contains contraband or evidence of a crime." *Johnson*, 458 Md. at 533. As in the case of a warrantless arrest, the probable cause determination following the warrantless search of an automobile "takes into account all the relevant circumstances leading up to the search, viewed from the standpoint of an objectively reasonable police officer." *Id.* at 533-34 (citations and quotations omitted).

"Probable cause exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found," *Id.* at 535, or "that the suspect had committed or was committing a criminal offense." *Moulden v. State*, 212 Md. App. 331, 344 (2013) (citations omitted). "The probable cause standard is 'a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act.'" *Lewis v. State*, 237 Md. App. 661, 676-77 (2018) (quoting *Pringle*, 540 U.S. at 370). Probable cause "is not reducible to precise definition or quantification[,]" but rather "is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules." *Id.* (citations and quotations omitted). Although a finding of probable cause requires more than that which would merely arouse suspicion, it

nevertheless "is not a 'high bar.'" *Johnson*, 458 Md. at 535 (citations and quotations omitted).

Here, we hold that the suppression court's finding of probable cause was not erroneous. Officer Dakkouni, whom the suppression court found credible, testified that, just prior to Kang's arrest, the officer witnessed Kang place what the officer believed to be a handgun in the trunk of Kang's automobile. In testifying, Officer Dakkouni provided historical facts and other relevant circumstances, including that Kang's gait was "hindered" as he walked to the trunk, that Kang was "constantly looking around," and that Kang, upon reaching the trunk, retrieved the gun, which the officer described as a "black object," from his waistband and placed it in the trunk. And, Officer McGinnis testified that the police knew, prior to Officer Dakkouni's observations, that Kang had previously been convicted of attempted second-degree murder. Based on that evidence, the police had probable cause to believe that Kang had committed or was committing a criminal offense. *See* Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article §§ 4-203(a)(1)(i), (a)(1)(ii) and (c)(1) (proscribing as a misdemeanor the wearing, carrying, or transporting of a handgun, whether concealed or open, "on or about the person" or "in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State[.]"); Md. Code (2003, 2011 Repl. Vol.), Public Safety Article ("PS") § 5-133(c)(1)(i) ("A person may not possess a regulated firearm if the person was previously convicted of . . . a crime of violence[.]"); PS § 5-101(c) (defining

"crime of violence" to include attempted second-degree murder). For the same reasons, and because Kang's vehicle was lawfully-stopped at the time, the police had probable cause to search Kang's trunk without a warrant.

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