

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1215

September Term, 2015

RICARDO ANTHONY DAVIS

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 26, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On July 17, 2015, appellant, Ricardo Anthony Davis, was convicted by a jury in the Circuit Court for Charles County, of attempted voluntary manslaughter and second-degree assault.¹ The court imposed a sentence of 10 years on the manslaughter conviction, suspending all but 6 years.² Appellant presents the following question on appeal:

Did the trial court err in finding that the State sufficiently authenticated an iPhone video recording prior to admitting it into evidence?

For the reasons discussed below we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of December 7, 2012, friends Raymond Cline and Thomas Campbell went to the World of Wings Café and Wingery (the “restaurant”) in Waldorf to see a band perform. Appellant and his friend, Victor Jones, were also there. The restaurant, which took on a nightclub atmosphere at night, was “pretty full,” with approximately 180-200 people inside the building.

At approximately 1:00 a.m. on December 8, 2012, appellant and Mr. Jones got into a verbal argument with Mr. Campbell and Mr. Cline.³ Mr. Campbell and Mr. Jones both testified that they tried to diffuse the situation, but Mr. Cline attempted to punch Mr. Jones

¹ This was appellant’s second trial in this case. He originally was tried in July 2013, and on appeal, this Court affirmed in part, reversed in part, and remanded for further proceedings. *Davis v. State*, No. 1716, Sept. Term, 2013 (filed Dec. 12, 2014).

² The second-degree assault conviction was merged for sentencing purposes into the conviction of attempted voluntary manslaughter. Appellant also was sentenced to a concurrent term of three years on second-degree escape, the sole conviction that survived from the first trial.

³ Appellant, Mr. Campbell, Mr. Jones, and Mr. Cline all testified to different versions of how the argument started or who initially was involved.

three times in the face, connecting on one of those attempts. Mr. Campbell then pushed either appellant or Mr. Jones in an attempt to separate the parties, and Mr. Campbell and Mr. Cline walked to the front entrance of the restaurant. When Mr. Campbell reached the front entrance, he discovered that he was “covered with blood,” and he had been stabbed in the neck. Mr. Cline also had been stabbed in the back of the neck and was bleeding. Responding officers testified that there was “an extremely large amount of blood on the sidewalk” in front of the restaurant.

Corporal Calvin Roberts, a member of the Charles County Sheriff’s Office, was working secondary employment at the restaurant. He was standing outside of the building at approximately 1:00 a.m. when he saw Mr. Campbell and Mr. Cline exit the restaurant with “obvious signs of a traumatic injury.” After they exited the restaurant, he observed them in a verbal confrontation with appellant, who was at the threshold of the door. He placed appellant in handcuffs and sat him on the ground. Turning his attention to Mr. Campbell, he noticed that Mr. Campbell was holding his neck wound with his hand, but blood was spraying through his fingers and splattering onto the restaurant’s windows. Fearing Mr. Campbell was in “grave danger,” Corporal Roberts instructed Mr. Campbell to apply direct pressure to his wound. While Corporal Robert’s attention was diverted, appellant started running away from the restaurant. Appellant was apprehended by an off-duty police officer approximately forty yards from the restaurant.

Both Mr. Campbell and Mr. Cline were transported to the hospital for treatment. Mr. Campbell’s neck wound required 18 staples and 25 stitches to close. Mr. Cline’s head wound required 16 staples and 26 stiches to close.

Appellant was interrogated by detectives from the Charles County Sheriff's Office for several hours later that morning. Although he initially denied involvement, he ultimately admitted to stabbing the victims with a black folding knife. Appellant described the victims as "drunk and disorderly," and he explained that he acted in "self-defense" after Mr. Jones was assaulted. Appellant further stated that he followed the victims toward the front of the restaurant and dropped the knife there when he saw the "commotion" outside. A black folding knife was found under a floor mat at the front of the restaurant.

Detective Christopher Shankster responded shortly after the incident, and a restaurant employee showed him the restaurant's video surveillance system, which had captured the altercation. Detective Shankster used his iPhone to take a video of the restaurant's surveillance video of the incident, and he later directed other officers to collect the full video from the surveillance system. Officers returned to the restaurant later that day and collected videos from the restaurant's surveillance system. Over 507 video clips from the restaurant's twelve surveillance cameras were downloaded from the surveillance system. When those videos were later reviewed, it was discovered that the video clip that Detective Shankster had recorded on his iPhone, and which showed the incident, was not retrieved. The police were never able to obtain the video clip, leaving Detective Shankster's iPhone video the only recording of the incident.⁴ After the trial court denied appellant's motion in limine to exclude the iPhone video, the video was played at trial.

⁴ Detective Shankster testified at the hearing on the motion in limine that he did not discover that the pertinent video clip was missing until April 2013 because the Sheriff's Office initially lacked the correct video player to play the video clips. When he realized that the video clip of the incident was missing, he contacted the (continued . . .)

DISCUSSION

Appellant contends that the court erred in admitting the iPhone video recording. He asserts that the State did not properly authenticate the iPhone video to justify its admission as evidence.

The State contends that the court properly admitted the video “after an eye-witness testified that it was a true and accurate depiction of the altercation at issue.” In any event, it asserts that, even if the video was erroneously admitted, any error was harmless beyond a reasonable doubt.

As this Court recently explained:

Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. *Hajireen v. State*, 203 Md. App. 537, 552, *cert. denied*, 429 Md. 306 (2012). This Court reviews a trial court’s evidentiary rulings for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011). A trial court abuses its discretion only when “no reasonable person would take the view adopted by the [trial] court,” or “when the court acts ‘without reference to any guiding rules or principles.’” *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

Donati v. State, 215 Md. App. 686, 708-09, *cert. denied*, 438 Md. 143 (2014). As explained here, we conclude that the circuit court did not abuse its discretion in admitting the video into evidence.

(. . . continued) restaurant’s owner for assistance, and the owner referred him to the vendor who installed the security equipment. When he tried to contact the vendor, he was told that that individual was out of town for a significant period of time. By the time Detective Shankster spoke with the vendor, it was discovered that the surveillance video automatically had been recorded over, erasing it.

The authentication of evidence is governed by Maryland Rule 5-901(a), which provides as follows: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” One way the proponent of evidence can satisfy the authentication required is through “[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be.” Md. Rule 5-901(b)(1); *Donati*, 215 Md. App. at 712.

A videotape is “admissible in evidence and is subject to the same general rules of admissibility as a photograph.” *Washington v. State*, 406 Md. 642, 651 (2008). Photographs may be admitted under two distinct rules. *Dep’t of Public Safety v. Cole*, 342 Md. 12, 20 (1996). First, they may be admitted through a witness testifying from “first-hand knowledge that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.” *Id.* at 20-21. Second, “[t]he ‘silent witness’ theory of admissibility authenticates a photograph as a ‘mute’ or ‘silent’ independent photographic witness because the photograph speaks with its own probative effect.” *Id.* at 21. “[T]he silent witness method of authentication allows for authentication by the presentation of evidence describing a process or system that produces an accurate result.” *Washington*, 406 Md. at 652.

Here, the video was authenticated through the “first-hand knowledge” method. Mr. Campbell, the State’s first witness, and one of the victims, was questioned regarding the stabbing. The State then showed him State’s Exhibit #1, the iPhone video, and the following then occurred:

[STATE]: Okay, sir, if you could look at States Exhibit #1 and tell me when you're done. Can you see it okay?

[MR. CAMPBELL]: Yeah.

[DEFENSE COUNSEL]: Your Honor, if I may approach also in [sic] see?

THE COURT: You may.

[MR. CAMPBELL]: I know that's me there. This is the gentleman. As you can see me pretty much keeping myself and him ...

[STATE]: Okay.

[MR. CAMPBELL]: ... away from these two individuals

[STATE]: **Okay. Does State's Exhibit #1 fairly and accurately represent the incident you just described?**

[MR. CAMPBELL]: **Yes.**

[STATE]: Okay.

Your Honor, the State would move State's 1 into evidence.

[DEFENSE COUNSEL]: Objection.

THE COURT: Okay. Overruled. The video will be admitted.

(Emphasis added.).

Mr. Campbell, an eyewitness with first-hand knowledge, testified that the iPhone video fairly and accurately represented the incident. This testimony sufficiently authenticated the video, pursuant to Maryland Rule 5-901(b)(1), and therefore, the court did not abuse its discretion in admitting it into evidence.

Appellant, however, argues that the State failed to properly authenticate the video under the "silent witness" theory because it "presented no evidence to establish a

foundation not only for the video clip made by the detective using his iPhone, but for the original recording.” Appellant contends that the State was required to present “evidence regarding the type of recording equipment used by the restaurant, how the footage was focused, how reliable the images were, etc.” This argument however, neglects to recognize that the “silent witness” rule is only one of two ways in which the video could have been authenticated. Here, the video was authenticated by the testimony of Mr. Campbell that it accurately depicted the incident, and therefore, the State was not required to present evidence describing the camera system.⁵ We perceive no abuse of discretion by the circuit court in admitting the video into evidence.

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

⁵ We agree with the State that the quality of the video, and the unusual way that it was captured, went to the weight of this evidence, not its admissibility.