

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1259

September Term, 2016

IN RE T.M.

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: May 19, 2017

* 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.

T.M., a juvenile, was charged with burglary, possessing stolen property, and related offenses. At an adjudicatory hearing in the Circuit Court for Montgomery County, sitting as a juvenile court, the State introduced over objection a video that showed T participating in the offenses. The court found T involved in burglary in the fourth degree and possessing stolen property. On appeal, T contends that the circuit court erred in admitting the video without proper authentication. We disagree and affirm.

I. BACKGROUND

On April 19, 2016, Patrol Officer Howard Simon, Jr., of the Montgomery County Police Department, responded to a call regarding a burglary at the Canterbury Apartments in Germantown. When he arrived, employees escorted him to the fitness center, where the Officer found multiple items on the floor, including clothing, money, a backpack, and trash. Inside the backpack, the Officer found identification that belonged to T.

The Officer took photographs of the scene, spoke to employees, and viewed video footage from a surveillance camera located inside the gym. The video, date stamped April 19, 2016 and beginning at 3:32 AM, showed a male wearing pink and black shorts and a pink hat enter the gym, sit on a treadmill, and take clothing items out of a bag. Seconds later, an individual wearing a blue jacket appeared and sat on a treadmill next to the male in the pink hat, and the two continued to pull items out of the bag. About thirty minutes later, a male wearing a white shirt, followed by a woman wearing all black, and later identified as T, appeared and joined the others in rummaging through the items from the bag. The four individuals remained in the gym until 4:34 AM.

T was arrested and charged with burglary and related offenses. During her adjudicatory hearing, the State offered testimony about the fitness center camera from Cachet Carter, a leasing specialist for the apartment complex. Ms. Carter explained that the fitness center can be accessed only by using a code given to residents and employees, and that a security camera had been installed on the ceiling in a corner of the room. She explained that the video system was kept inside the property manager's office and that the camera recorded every day, although it was not common practice for employees to view the footage that often. When asked if she was trained to use the video surveillance system, Ms. Carter said she wasn't, but that she knew how to retrieve and watch video footage. She didn't know how long each video was retained before being recorded over, but recalled that on three different occasions, she had viewed video footage that was at least three days old.

Ms. Carter explained that videos are marked with a date and time stamp, and that on the day of the incident, she watched that day's video by rewinding it and viewing it on the video surveillance system. She also viewed the video prior to the adjudicatory hearing, in the presence of the State's Attorney, after it had been downloaded onto a disc, and she testified that it was the same video that she had seen on the video surveillance system on April 19, 2016. Officer Simon testified as well that the video he watched from the surveillance system on the day of the incident was the same video that the State played in court.

The defense objected to the video being admitted into evidence, arguing that it had not been properly authenticated under the “silent witness” theory. The State responded that the video could be admitted as a business record. The court admitted the video and after the State’s Attorney played it, T’s counsel cross-examined Ms. Carter about her knowledge of the surveillance equipment and the process of transferring data from the system onto a disc:

[DEFENSE COUNSEL:] Now, you yourself did not create the video, correct?

[MS. CARTER:] Correct.

[DEFENSE COUNSEL:] And so you did not transfer any data from the surveillance system you have at Canterbury Apartments onto a disc?

[MS. CARTER:] No, I did not.

[DEFENSE COUNSEL:] You yourself don’t have personal knowledge of what kind of surveillance equipment is actually in use at Canterbury Apartments?

[MS. CARTER:] No, I don’t.

[DEFENSE COUNSEL:] So you don’t know what kind of, I guess, recording system that operates the software system you have that records?

[MS. Carter:] No, I don’t.

[DEFENSE COUNSEL:] When you came to work, or -well, you weren’t working. When you arrived at the office on April 19th, you yourself did not check any of the surveillance equipment, did you, to make sure it was working properly?

[MS. CARTER:] Oh, no.

[DEFENSE COUNSEL:] Okay. Do you know when the surveillance equipment at Canterbury was last serviced by a technician?

[MS. CARTER:] No, I don't.

[DEFENSE COUNSEL:] Okay. After the video that you've seen was created, do you know who the video was given to?

* * *

[DEFENSE COUNSEL:] Did you yourself ever provide a copy of this video to the police?

[MS. CARTER:] No.

[DEFENSE COUNSEL:] Did you yourself ever provide a copy of this video to the State's Attorney's Office?

[MS. CARTER:] No.

At the conclusion of the hearing, the court found T involved in burglary in the fourth degree and possessing stolen property, and placed her on supervised probation. This timely appeal followed.

II. DISCUSSION

T's sole contention on appeal is that the trial court erred in admitting the video surveillance footage from the fitness center because it was not properly authenticated under *Washington v. State*, 406 Md. 642 (2008).¹ The State counters that the video was adequately authenticated. We agree with the State and affirm.

¹ In her brief, T stated the Question Presented as follows: "Did the trial court err in admitting video evidence without proper authentication?"

Authentication of evidence is governed by Md. Rule 5-901(a), which focuses on whether there is enough evidence to support the proponent’s claims about it:

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.

A video is considered a photograph for admissibility purposes, and its admissibility is subject to the same general evidentiary rules of admissibility as a photograph. *Dep’t of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 20 (1996) (citation omitted). One way in which video evidence may be admitted in Maryland is through the “silent witness” theory, which allows for authentication by “the presentation of evidence describing a process or system that produces an accurate result.” *Washington*, 406 Md. at 652 (citations omitted). “[T]he burden of proof for authentication is slight,” and the court “need not find that the evidence is necessarily what the proponent claims but only that there is sufficient evidence that the jury ultimately might do so.” *Dickens v. State*, 175 Md. App. 231, 239 (2007) (citation and emphasis omitted). We review the trial court’s finding of authenticity here for abuse of discretion. *See Gerald v. State*, 137 Md. App. 295, 305 (2001).

We reject T’s contention that the video was not properly authenticated under *Washington*. In that case, the Court of Appeals addressed whether a surveillance video that captured a shooting outside a bar and placed the defendant at the scene was properly authenticated. 406 Md. at 648-49. At trial, the bar owner testified that the video surveillance system consisted of eight cameras, six cameras located inside the bar and two cameras located outside the bar, which recorded “24 hours a day.” *Id.* at 646. When the

police notified the bar owner that they wanted to review surveillance footage from the night of the shooting, he called a “technician” to compile the footage and transfer the data to a CD that the bar owner turned over to police. An officer transferred the CD to a VHS tape, which a detective viewed and used to identify the defendant as a suspect. *Id.* The bar owner did not testify about the editing process and the technician was not called as a witness. *Id.* at 655. Critical to the Court’s analysis was the fact that “[t]he videotape recording, made from eight surveillance cameras, was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD, and then to a videotape.” *Id.* The Court of Appeals held that the State failed to “establish that the videotape and photographs represent[ed] what they purport[ed] to portray” in part because the bar owner did not know how the surveillance footage was taken from the system and compiled onto a disc in a single viewable format and the detective “saw the footage only after it had been edited by the technician.” *Id.*

This case presented a much less complicated authentication task. There was no real dispute that the surveillance video was what the State claimed it to be: Ms. Carter testified that the video camera was located in the fitness room on the ceiling in the corner of the room, that the surveillance system was located in the property manager’s office, that she viewed the video from the surveillance system on April 19, and that it was the same video that the State’s Attorney had downloaded onto a disc and played in court. Unlike *Washington*, this case did not involve any compilation or editing that might require “more [foundation] than that required for a simple videotape.” *Id.* Nor was the footage edited

before police viewed it. Officer Simon and Ms. Carter both testified that the video played at the hearing was the same video that they had viewed on April 19 from the original video surveillance system.

It is true, as T points out, that no witness testified as to the “process used to compile the images, the manner of operation of the surveillance system, the system’s reliability, the authenticity of the images, or the chain of custody of the recording,” but testimony regarding those facts, while perhaps helpful to the trier of fact, is not a condition precedent for authentication. *See Cole*, 342 Md. at 26 (declining to “adopt any rigid, fixed foundational requirements necessary to authenticate photographic evidence under the ‘silent witness’ theory.”). Those details aren’t required: to satisfy the evidentiary requirement for authentication, the proponent of the evidence need prove only that the evidence is “sufficient to support a finding that the matter in question is what its proponent claims.” *Washington*, 406 Md. at 651 (quoting Md. Rule 5-901(a)). Where, as here, the proponent makes a *prima facie* showing that a proffered piece of evidence is genuine, the item “comes in, and the ultimate question of authenticity is left to the jury.” *Gerald*, 137 Md. App. at 304 (citation omitted). In the absence of any suggestion that the video camera wasn’t working properly or that the video was altered in any way, the witnesses drew a solid connection between the original video and the one shown at the hearing, and we discern no abuse of discretion in the court’s decision to admit it into evidence.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**