

Circuit Court for Charles County
Case No. C-08-JV-20-000007

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 144

September Term, 2021

IN RE: S.H.

Graeff,
Friedman,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 28, 2022

*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 January 7, 2020, the State filed a delinquency petition alleging that S.H., appellant, committed burglary in the first degree, burglary in the second degree, burglary in the third degree, and theft of \$100 to \$1,500.¹ On February 25, 2021, following delays related to the COVID-19 pandemic, among other things, the Circuit Court for Charles County found appellant involved on the burglary charges, but not involved on the theft count. The court placed appellant on supervised probation.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in denying appellant's motion to dismiss under the speedy trial provisions of Maryland Rule 11-114 and the United States Constitution?
2. Did the circuit court err in ruling that introduction of a cellphone recording of a video did not violate the best evidence rule?

For the reasons set forth below, we shall affirm in part and vacate in part the judgment of the circuit court and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In 2019, Steven Boyd lived alone at his home in Indian Head, Maryland. Mr. Boyd paid appellant, who lived nearby, and his friend to perform yardwork and other maintenance jobs for him. He never allowed the boys in his house, even to use the restroom.

¹ At the time of appellant's arrest, he was 17 years old.

In the summer of 2019, Mr. Boyd discovered that some of his gasoline containers and tools were missing. He set up motion-detecting cameras in an attempt to catch the suspected thief, but he was unable to catch anyone. He showed the boys where he put the cameras so they would not damage the power lines while using the lawn mower. These cameras, though, did not stop the thefts, and the cameras were often damaged and moved from their spots, or the antennas were broken off and power cords cut. He found one of the cameras chewed up inside his goat pen; he believed that someone had taken the camera off and threw it into the goat pen.

Mr. Boyd also experienced break-ins of his house, and he noticed that “cash envelopes” on his desk and small electronics, like his television remote, were missing. He placed surveillance cameras in his house. At first, these cameras were motion-activated, but he eventually set them to record continuously.

On October 1, 2019, Mr. Boyd checked the surveillance camera after returning home from traveling for one week, saw a figure in his house, and contacted the Charles County Sheriff’s Office. He told Detective Hunter Moehler that power tools worth \$1,000 were missing. Detective Moehler did not watch the week’s worth of surveillance footage from when Mr. Boyd was away, but instead, Mr. Boyd “scrolled through to the portions where he had reviewed it previously.” Detective Moehler recorded the surveillance video with his cellphone.

At trial, Mr. Boyd testified that he identified the figure in the video as appellant because of his posture, “especially . . . from his hips, down,” as well as his haircut. He told

Detective Moehler that he suspected appellant because he “caught him around his residence a few times before.”

Appellant’s mother testified that the figure in the video did not have appellant’s tattoos, which appellant showed to the court. Appellant got the tattoos from a friend, without his mother’s permission. Although she was unsure whether he had one of the tattoos he had at trial prior to October 1, 2019, she did identify certain tattoos that she said he had prior to October 2019.²

The court found, beyond a reasonable doubt, that the person captured on the video was appellant. As indicated, it found appellant involved with respect to the burglary counts. It found appellant not involved in the theft count because the video did not capture appellant taking any property.

This appeal followed.

DISCUSSION

I.

Speedy Trial

Appellant contends that the delay in his trial violated both his constitutional right to a speedy trial and the timing requirements of Maryland Rule 11-114. As set forth in more detail, *infra*, the State disagrees.

² Those tattoos included a rose near appellant’s right thumb, a tattoo of appellant’s name on his left forearm, a cross near his left wrist, and a tattoo on appellant’s left arm reading “[f]ear not, for I am with you.”

A.

Proceedings Below

On January 7, 2020, the State filed the delinquency petition, and on January 13, 2020, appellant was served with the petition. Appellant filed a motion for a speedy trial on January 24, 2020.

An adjudicatory hearing began on February 26, 2020. Mr. Boyd testified about his relationship with appellant and the missing items. When Detective Moehler was discussing how he developed appellant as a suspect, he testified about a conversation that he had with appellant, which he testified was recorded by his microphone and camera. The prosecutor advised that he was not aware of the video. The prosecutor estimated that it would take approximately five to six business days to get the recording. Everyone agreed to continue the case to March 11, 2020, although counsel for appellant told the court that she had at least two lengthy adjudications scheduled for that day. The court remarked that it would “get to what we are able to get to.”

On March 11, 2020, appellant’s case was not called until 3:23 p.m. The parties did not attempt to begin the adjudication, but instead, they discussed rescheduling. Based on schedules, the parties agreed to a new date of March 30, 2020.

On March 13, 2020, Chief Judge Barbera issued an administrative order, effective immediately, that closed courts to the public, due to the COVID-19 emergency, until April 3, 2020, and on March 25, 2020, Chief Judge Barbera extended the length of closure until

May 1, 2020.³ On March 27, 2020, the court held a phone-conference with counsel and provided two alternatives for a hearing, either May 13, 2020, or June 10, 2020. The State’s Attorney said that her “preference was to do it sooner rather than later,” but she had jury trials scheduled for May 2020, so she preferred June 10, 2020. At that point, the court found “good cause to reschedule the second half of this case” to June 10, citing the orders from Chief Judge Barbera.

On May 1, 2020, Chief Judge Barbera extended the court closures through June 5, 2020. On May 12, 2020, the parties received a notice to appear for trial on July 8, 2020. On June 3, 2020, Chief Judge Barbera ordered that courts would begin a progressive, phased return to full operations. On June 5, 2020, courts would begin Phase II, which expanded the matters that could be heard remotely and on-site, “including matters that were postponed or deferred during restricted operations, as well as matters that must be prioritized.” On July 20, 2020, courts were to proceed to Phase III, during which courts were to hold a broader range of matters, including “certain non-jury trials.” Regarding juvenile delinquency proceedings, courts would be open to, among other things, “all matters that are contested and/or requiring testimony” and matters for adjudication. On July 14, 2020, the court sent the parties another notice advising that the adjudication was rescheduled again, this time to October 14, 2020.

³ The Maryland Judiciary has provided a timeline of events for the COVID-19 pandemic. *See* Maryland Judiciary COVID-19 Timeline of Events, <https://mdcourts.gov/sites/default/files/import/coronavirus/marylandjudiciarycovid19timeline.pdf> [<https://perma.cc/2TW5-F4AC>] (last visited July 26, 2022).

On October 13, 2020, appellant filed a motion to dismiss for excessive delay. He cited the delay of the February 26, 2020 adjudicatory hearing due to missing discovery, and the March 11, 2020 continuance, during which he and his mother waited for two and a half hours for the adjudication to be continued. Appellant then listed the continuances due to the pandemic, including the continuance to June 10, July 8, July 14, and October 14, 2020. Appellant argued that the “disjointed nature and undue delay in the adjudication . . . well exceed[ed] the scope of what was necessary due to the pandemic.”

Appellant argued that Md. Rule 11-114 required the adjudicatory hearing to be held within 60 days and allowed extensions only for showings of extraordinary cause. He argued that, even discounting the delays due to the pandemic, the case violated the timeline for a juvenile proceeding. The delays were due to the State’s failure to provide evidence, and the court’s overscheduling on March 11, both of which did not constitute extraordinary cause. Moreover, the court did not make a finding of extraordinary cause, but rather, it made a finding of “good cause” to reschedule on March 11 because of over-scheduling. Then, “[i]nstead of continuing the adjudication in a timely manner,” the court set the next hearing date for March 30, which was officially “14 days outside of the 60 day time limitation in Rule 11-114.” Appellant also argued that the court failed to complete the hearing with a reasonable degree of continuity, which he asserted, citing *In re Ryan S.*, 369 Md. 26, 45 (2002), requires that a juvenile adjudicatory hearing continue, ““insofar as possible, on a day to day basis until completed.””

Regarding the delays related to COVID-19, appellant noted that, after the court reopened for juvenile adjudicatory hearings, appellant's adjudication was continued for nearly three months, without explanation and despite other juvenile adjudicatory hearings being scheduled. He argued that the court prioritized other matters over appellant's case.

Appellant argued that the prejudice he experienced from these delays entitled him to dismissal of his charges with prejudice. Appellant's mother did not have her own transportation when the case first began and had to rely on others for transportation to the courthouse. Appellant had reached the age of 18, which limited the rehabilitative services that could have been available to him.

Appellant requested that the court dismiss the case with prejudice. He requested a hearing on his matter on October 14 and requested "that the court waive his presence for that hearing as he and his family [were] mourning the sudden loss of his 21 year old brother."

The court held a hearing on the motion on October 14, 2020. Counsel for appellant argued that appellant experienced "general prejudice that comes to a youth when their case is continued months out." He pointed to the length of the delay, the loss of memory for those who would testify, the trier of fact's recall, and the availability of rehabilitative services as appellant was now over age 18. Appellant had also lost his brother during the delay, which brought great grief to him and his family. Counsel argued that dismissal was "the only remedy that [was] appropriate in this case."

The State argued that the delays in this case, should the court find them prejudicial, warranted a mistrial, rather than a dismissal. The State also argued that “there is no precedent for the COVID-19 closures.” The court had available to it recordings of the previous proceedings to help supplement the court’s memory.

The State then addressed the missing recording that caused the continuance on February 26, 2020. The State alleged that “[n]owhere in the incident report, nowhere anywhere, did it indicate that the conversation [between Detective Moehler and appellant] had been recorded,” and the State did not have it in its possession and was not aware that it existed. The State pointed out that appellant was the one who asked for a continuance on February 26, 2020. On March 11, 2020, the date the case was to be continued, a lengthy case set for adjudication occurred. It argued that, after the COVID-19 closures, the court did the best it could getting the case scheduled.

Appellant reiterated that he was not asking for a dismissal because of delays related to the pandemic, but because, “outside of the pandemic, this case has seen excessive delays.” Outside of the months of delay due to court closures, from March 13 until July 20, when courts reopened, the case had still been delayed for months, and even though the court started holding adjudications again, it did not make appellant’s adjudication a priority. The court was required to continue appellant’s case by continuances being made on a day-by-day basis, rather than the months of delay that it did schedule.

The court began by saying that there had been a backlog of juvenile cases, and the court had to suspend its operations for a time during the pandemic. This suspension caused

a “substantial backlog of cases, which continue[d] to be the case.” Therefore, the court ruled that the “pandemic constitutes extraordinary cause.”

The court said dismissal was appropriate only if appellant demonstrated “actual prejudice.” It would look back to the testimony and the court’s notes in this case, with respect to the alleged prejudice from the court not being able to recall the proceedings. Subject to that review, the court denied the motion to dismiss.

Appellant then requested that the court delay the adjudication scheduled for that day, October 14, 2020, due to appellant’s current state of grief due to losing his brother two weeks ago, his mother’s commitments, and his inability to remember certain aspects of the case. The State argued that “a request for a continuance is a waiver of making any continuing motion to dismiss based on timing.” Appellant stated that the motion to dismiss was based on the months of delay leading up to his motion, not delay after the motion. The court granted appellant’s request to continue the case.

The court told the parties that it was going to consult with the assignment office and “figure out which dates are light, and set it on a . . . non-juvenile date, in order to get the case completed.” The hearing subsequently was set for November 16, 2020. On November 9, 2020, counsel for appellant filed a motion to convert the hearing to a remote status hearing, noting that he was unavailable on November 16, 2020, due to a previously scheduled jury trial.

On November 16, 2020, the court held the remote status hearing. At that time, the court announced that “the judge in this case is not available to do the cases. There is a

manifest necessity for a mistrial.” The court set the trial for December 7, 2020, at 1:00 p.m.⁴

On November 24, 2020, Chief Judge Barbera issued another administrative order, providing that, beginning November 30, 2020, through January 15, 2021, Maryland courts would revert to Phase II of the Judiciary’s phased reopening plan, during which courts remained open to the public only on an emergency basis.

The parties appeared remotely at the scheduled December 7, 2020 hearing date. The court stated that it was “probably safe” for it to “say good cause exists to go beyond time” because it did not “know when we will ever get this case in,” and also because “we don’t know . . . well, it is going to be mission impossible to calculate time.” Counsel for appellant acknowledged that the case had to be continued that day because of COVID-19, but he refused to waive the speedy trial issue separate from the delays due to COVID-19. The case was continued to February 10, 2021.

On February 10, 2021, the court stated that the case was “going to have to [be] reset.”⁵ The court told the parties that it would prioritize the case. The court set a new date of February 25, 2021.

⁴ Appellant advised in his brief that the judge who initially presided over the case was not re-elected in the 2020 election.

⁵ The record does not reflect why the case could not be heard that day.

On February 21, 2021, appellant renewed his motion to dismiss pursuant to Md. Rule 11-114. He also asserted that the excessive delays had violated his constitutional right to a speedy trial.

At the February 25, 2021 adjudicatory hearing, the parties began with arguments relating to the motion to dismiss. Appellant argued that the delays could not “be blamed entirely on COVID,” referencing the discovery issue and the claimed “over-scheduling.” Counsel explained that he did not believe that the initial discovery violation was purposeful, but “it still [was] the obligation of the State, and the lack of . . . willfulness in the discovery violation [did not] make the delay any less prejudicial.”

The State argued that appellant waived any argument regarding delay when he asked for a continuance at the hearing on October 14, 2020, noting that Officer Moehler was present and available to continue his testimony, but appellant requested a continuance. The State also reiterated that the appropriate remedy, should the court find a need for one, was a mistrial, not dismissal.

Counsel for appellant responded that the October 14 date was “a bad day” for appellant because he was grieving his brother’s death and was unable to “assist in his defense on that specific day.” Appellant would have been able to attend the adjudication during any of the three months prior to the October date when the courts were open. Asking for a continuance on this specific day, appellant argued, did not waive his argument that the continuances prior to this one violated his rights.

The court noted that the pandemic was a “most unusual situation.” It found that, although appellant did experience some prejudice from the delay, it was “not the type of prejudice that would warrant dismissal in this case.” The court denied the motion to dismiss.

B.

Md. Rule 11-114

Appellant contends that the circuit court erred in denying his motion to dismiss based on Md. Rule 11-114, which provides that, in a juvenile proceeding, an adjudicatory hearing shall be held within 60 days after the petition is served on the respondent, unless the court extends the deadline for extraordinary cause. The State contends that the court properly exercised its discretion in denying appellant’s motion to dismiss.

At the time of the proceedings here,⁶ Md. Rule 11-114(b)(1) provided:

An adjudicatory hearing shall be held within sixty days after the juvenile petition is served on the respondent However, upon motion made upon the record within these time limits by the petitioner or the respondent, the administrative judge of the county or a judge designated by him, for extraordinary cause shown, may extend the time within which the adjudicatory hearing may be held. The judge shall state on the record the cause which requires an extension and specify the number of days of the extension.

The Court of Appeals has made clear that a juvenile has a right to “timely and continuous adjudication” so that a determination can be made as quickly as possible as to whether the juvenile is involved in the alleged delinquent act and “to ensure that juveniles

⁶ This rule was changed in January 2022 and now is Maryland Rule 11-421.

are given the benefit of all the rehabilitation and treatment options available.” *Ryan S.*, 369 Md. at 49. The requirement that a hearing be held within 60 days does not mean that the hearing must be completed within that time, but rather, it must be initiated within 60 days and be “completed with a reasonable degree of continuity.” *Id.* at 45 (quoting *In re Vanessa C.*, 104 Md. App. 452, 459 (1995)).⁷

Here, the petition was served on appellant on January 13, 2020, and the adjudicatory hearing began on February 26, 2020, which appellant acknowledges was within the 60-day deadline. Appellant contends, however, that the rule was violated in two ways. First, he asserts that the Rule was violated on March 11, when the case was continued to March 30, 2020, without a finding of “extraordinary cause to go beyond the sixty day time limit.” Second, appellant argues that his case was not “completed with a reasonable degree of continuity.” He asserts that dismissal was the proper sanction for these rule violations.

The State contends that the 60-day time limit requirement articulated in Md. Rule 11-114 “refers to the initiation of the adjudicatory hearing,” which was satisfied here. It asserts that the “judicially imposed requirement that the case be completed with a reasonable degree of continuity” also was satisfied here, given that much of the delay was due to the “unprecedented public health challenges” resulting from the COVID-19

⁷ Current Md. Rule 11-421(b)(5) includes this requirement, stating that, “[o]nce commenced, an adjudicatory hearing shall be completed with a reasonable degree of continuity.” The Committee Note references *In re Ryan S.*, 369 Md. 26 (2002) and *In re Vanessa C.*, 104 Md. App. 452 (1995).

pandemic. Finally, it argues that, even if there was a violation of Rule 11-114, dismissal requires “extraordinary and egregious circumstances,” which were not present here.

The parties agree that the trial, which began on February 26, 2020, began within the requisite 60-day timeline. As the State notes, the requirement that the hearing be “held” in 60 days requires that the hearing be initiated within that time. *Vanessa C.*, 104 Md. App. at 459. It need not be completed within 60 days. *Id.* As long as it is initiated within 60 days, the requirement is that it be completed “with a reasonable degree of continuity.” *Id.* Because the requirement to commence the hearing within 60 days was satisfied, we turn to the question whether the hearing was continued with a reasonable degree of continuity.⁸

In *Ryan S.*, 369 Md. at 45, the Court of Appeals addressed the “chronic problem in the Montgomery County juvenile court” of starting hearings to technically comply with the time requirements of Md. Rule 11-114, but then continuing the hearings “to dates far beyond that which was envisioned by Rule 11-114.” In that case, the “sole basis” for the court rescheduling the case was overcrowded court dockets, and during the parties’ multiple attempts to determine scheduling, the court remarked that it was already past the required time period for adjudication, so there was “no point” in attempting to adjudicate the case quickly. *Id.* at 47. The Court held that “a deliberate policy of fragmenting a case through the device of long and repeated postponements over objection for no reason specific to the case itself will suffice to constitute a violation.” *Id.* at 48 n.16, 53.

⁸ We need not address whether there was a failure to find extraordinary cause to extend the 60-day time limit to hold a hearing because the hearing was initiated within the requisite time period.

Here, the proceedings set forth, *supra*, show that the court tried to complete the case with a reasonable degree of continuity. The parties attempted to continue the February 25, 2020 hearing for a date in March, but on March 13, 2020, two and a half weeks after the initial hearing, the courts closed to the public due to the COVID-19 emergency. The court tried to set the case again once the courts reopened, but given the backlog of cases and additional closings, the court was not able to schedule another hearing until October 14, at which time appellant requested a continuance due to the passing of his brother.

Given the unprecedented COVID-19 emergency, the record reflects that appellant's case was continued with a reasonable degree of continuity. The circuit court properly found that there was no violation of Rule 11-114.⁹

C.

Constitutional Right to a Speedy Trial

Appellant next contends that the delay violated his constitutional right to a speedy trial. The State contends that appellant waived this claim because “he did not obtain a ruling on speedy trial grounds in which the judge would have set forth factual findings necessary for this Court’s review.” In any event, it argues that the claim is without merit.

⁹ Even if there was a violation of Md. Rule 11-114, dismissal of a juvenile case for violation of this procedural rule is warranted only in “the most extraordinary and egregious circumstances.” *In re Caitlin N.*, 192 Md. App. 251, 270 (2010) (quoting *In re Keith W.*, 310 Md. 99, 109–10 (1987)). “Neither the juvenile nor society should be denied the benefits of the juvenile’s rehabilitation because of a technical violation of Rule [11-114’s] scheduling requirements.” *Id.* This case does not present “extraordinary and egregious circumstances” requiring dismissal.

Due process requires “that juveniles be afforded a speedy trial.” *In re Thomas J.*, 372 Md. 50, 70 (2002). We consider the following four factors when evaluating an accused person’s right to a speedy trial: “(1) the length of the delay; (2) the reason for the delay; (3) the assertion of the right to a speedy trial by the accused; and (4) the prejudice to the accused resulting from the delay.” *Id.* at 72 (citing *Barker v. Wingo*, 407 U.S. 514, 530–32 (1972)). Once delay is established, none of these factors, on its own, is “a necessary or sufficient condition,” but rather, these factors are related and “must be considered together with such other circumstances as may be relevant.” *Id.* at 72–73 (quoting *Divver v. State*, 356 Md. 379, 394 (1999)).

An appellate court reviews the circuit court’s conclusion regarding a defendant’s alleged violation of a constitutional right to a speedy trial without deference. *Phillips v. State*, 246 Md. App. 40, 55 (2020). In conducting that assessment, however, we defer to the motion court’s findings of fact, unless clearly erroneous. *Id.*

We begin with the State’s waiver claim. The State notes that appellant raised the speedy trial claim in his February 21, 2021 motion. It argues, however, that the court addressed solely the rule violation, and it failed to make factual findings regarding the constitutional speedy trial argument. The State contends that, by not obtaining a ruling on that argument, appellant has waived this claim.

We disagree that the issue is waived. An issue is preserved “so long as it is raised” in the court below. *Sellman v. State*, 152 Md. App. 1, 24 (2003). Appellant clearly raised the issue.

As the State notes, however, the circuit court appeared to address the motion only as it is applied to Rule 11-114. It did not conduct the *Barker* analysis, and therefore, it failed to make factual findings on each of the prongs of the requisite four-factor analysis. Accordingly, a remand to the circuit court is appropriate so it can conduct the requisite *Barker* analysis and make specific findings in that regard. *See State v. Holley*, 82 Md. App. 381, 390 (1990) (Because a factual determination by the motions judge with respect to the speedy trial issue was omitted, we remanded for further consideration.).

II.

Best Evidence

The circuit court admitted as State's Exhibit 1 a short video that Detective Moehler made by using his cellphone to record the surveillance video from Mr. Boyd's security camera, which showed an individual in Mr. Boyd's house. Appellant contends that the court violated the best evidence rule in admitting this evidence.

The State contends that the court properly exercised its discretion in admitting the cellphone recording of the surveillance video. It asserts that the video was a "duplicate" under Md. Rule 5-1003, and appellant failed to dispute the authenticity of the recording or show that it was "unfair to admit the duplicate in lieu of the original."

A.

Proceedings Below

At the adjudication hearing on February 25, 2021, the State showed a video, which Detective Moehler testified was "recovered from inside the residence of Mr. Boyd."

Detective Moehler testified that he took “the entire unit” of Mr. Boyd’s surveillance videos and “submitted it, to have the digital forensic unit downloaded.” He testified that the video shown at trial was “a fair and accurate copy of the video that was downloaded.”

Appellant objected, stating that he was not aware that the entire video had been submitted to forensics. Detective Moehler testified that the video shown at the hearing was “a cellphone video of the video.” It captured “the duration of the video that any suspect was captured.”

Detective Moehler testified that he used his cellphone to make the video because he “wanted to capture a video of it . . . from when [the police] responded there, to make sure that no video was lost.” Based on his training and experience, he was concerned that the memory of the video would erase once the security system was unplugged, so he made sure to capture the video on his cellphone. He recorded the video to his phone and then “packaged the system to be submitted to Digital Forensics for them to recover the video.” The video on his phone was not altered in any way, and he was the only one with access to it.

Appellant argued that the best evidence rule required the State to show the actual video, rather than a recording of the video. He also objected on the ground of completeness, noting that the entire video should have been submitted as an exhibit, and neither the court nor appellant had the recording.

The prosecutor advised that she had been told that the recording was the video. She argued that Detective Moehler created this video “himself there on the scene,” and it was reliable.

The court took a break for the parties to discuss the issue. After the break, appellant continued to argue that the best evidence rule, Maryland Rule 5-1002, “requires an original of a writing and recording or photograph in order to prove the content,” but the State was “trying to prove the content of the recording is the actual recording.” Appellant argued that the court could not consider whether this video fit into an exception for the best evidence rule because “we don’t know yet whether the original actually exists.”

The court ruled that the video was a duplicate under Maryland Rule 5-1003, and it was admissible. Detective Moehler was testifying as “to the authenticity of the original.” Appellant argued that the video was not a duplicate because “it [was] a video of a screen,” but the court overruled the objection.

Defense counsel subsequently renewed this argument in conjunction with a motion for judgment of acquittal when the court asked to review the video again after appellant’s mother testified regarding appellant’s tattoos. Counsel argued that “these aren’t the clearest videos, and if we had the original they would probably be clearer,” and they might show whether the person had appellant’s distinctive tattoos. Appellant argued that the video not being clear was “why we have the best evidence rule.”

The State argued that appellant’s mother testified that he hid his tattoos from her, and she did not know when or from where he got his tattoos. Moreover, teenagers would

hide tattoos from their mothers, calling into question the reliability of her testimony. In the video, the figure pulled his inner arms, where appellant’s tattoos were located, toward his body.

In denying appellant’s motion for judgment of acquittal, the court stated that appellant’s mother’s testimony about his tattoos “didn’t really elucidate much” because she was not sure when appellant got the tattoos. The court noted that the video showed that the person had a mask, but based on “the glasses, and the hair, and the build, and the gait,” Mr. Boyd, who knew appellant very well, identified appellant as the person in the video. And the court, in finding appellant involved in the delinquent acts, stated that it found, “beyond a reasonable doubt,” that the person in the video was appellant.

B.

Analysis

“A trial judge’s decision to admit or exclude evidence will not be set aside absent an abuse of discretion.” *Old Frederick Rd., LLC v. Wiseman*, 213 Md. App. 513, 526 (2013). An abuse of discretion occurs only when “no reasonable person would share the view taken by the trial judge.” *Id.* (quoting *Brown v. Daniel Reality Co.*, 409 Md. 565, 601 (2009)). *Accord Otto v. State*, 459 Md. 423, 446–47 (2018).

Md. Rule 5-1002 states: “To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.” An “original” is defined as the “recording itself or

any counterpart intended to have the same effect by a person executing or issuing it.” Md. Rule 5-1001(c).

A duplicate is admissible to the same extent as the original unless “(1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” Md. Rule 5-1003. A duplicate is defined as “a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, *or by mechanical or electronic re-recordings*, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.” Md. Rule 5-1001(d) (emphasis added).

Based on the plain language of the rule, we conclude that the cellphone camera recording of a video is an electronic re-recording pursuant to Rule 5-1001(d). Thus, as long as it “accurately reproduces the original,” it is a “duplicate” admissible under Rule 5-1003.

Here, the State showed that the duplicate accurately reproduced the original video. Detective Moehler authenticated the cellphone video, testifying that it represented what the detective saw in the original video, and it was not altered. *See United States v. Condry*, — F. Supp. 3d —, —, No. 21-CR-0322-CVE, 2021 WL 5756385, at *2 (N.D. Okla. 2021) (Cellphone video of a video is a duplicate pursuant to Fed. R. Evid. 1003.).

Because the cellphone recording of the surveillance video is a duplicate, it was admissible to the same extent as the original unless: (1) appellant raised a “genuine

question” as to the authenticity of the original, or (2) appellant showed that, under the circumstances, it would be unfair to admit the duplicate instead of the original. Md. Rule 5-1003. *Accord State v. Brown*, 129 Md. App. 517, 527 (1999). Appellant does not raise any question regarding the authenticity of the original.

Appellant argues that, under the circumstances, it would be unfair to admit the duplicate instead of the original, for two reasons. First, he argues that the quality of the video was not as clear as the original, making it difficult to see whether the person in the video had tattoos. Second, he contends that it was unfair to admit the video because it included only an excerpt of a week’s worth of surveillance.

We are not persuaded that it was unfair to admit the duplicate. With respect to the quality of the video, our review indicates that it clearly showed the posture, build, and haircut of the person in the house, the things that led the victim to identify appellant. And the trial court, after viewing the video, found beyond a reasonable doubt that the person on the video was appellant.¹⁰ The quality of the video was not such that it made it unfair to admit it.

We similarly are not persuaded by appellant’s argument that it was unfair to admit the video because it contained an excerpt of the whole video. “Unfairness usually involves some infirmity with the duplicate itself; for example, an incomplete copy that fails to reproduce *some vital part of the original document.*” 2 *McCormick on Evidence* § 236, at

¹⁰ The video did not show whether the person had tattoos, but that was not dispositive because, although appellant’s mother testified that appellant had the tattoos at the time of the hearing, she did not know when he got them.

575 (8th ed. 2020) (emphasis added). The vital portion of the video, which showed the figure in Mr. Boyd's house, was produced to the court. As such, the recording was not incomplete, and it was not unfair under the circumstances to admit the video. The circuit court did not abuse its discretion in admitting the video.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED, IN
PART, AND VACATED, IN PART. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLANT.**