

Circuit Court for Baltimore City
Case No. 117053003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 456

September Term, 2018

RANDY CASE

v.

STATE OF MARYLAND

Fader, C.J.,
Arthur,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: April 12, 2019

*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.

Appellant, Randy Case, and his co-defendant, Jermaine Doggett, were tried together before a jury in the Circuit Court for Baltimore City for the stabbing death of Darrell Webb. Surveillance cameras captured the attack on video. The videos revealed a man wearing a grey sweatshirt and a knit hat with a white stripe and long tassels joining Doggett in attacking Webb. The man kicked Webb twice in the head before Doggett pulled out his knife and struck the fatal blows. The duo then drove away from the scene in a Honda CRV with ladders tied to the roof. An eyewitness, Mikal Rahman, gave two taped statements to police in which he described the attack and, through a double-blind photo array procedure, identified Doggett as the man who stabbed Webb, and Case as the man in the tasseled hat who attacked Webb with Doggett. The police later recovered the Honda CRV captured on surveillance and found inside of it documents addressed to Case. When police arrested Case, he was wearing a striped, tasseled, knit hat like the one in the surveillance video.

At the joint trial, Rahman refused to confirm whether he had identified the defendants, claiming a lack of memory (which the court determined to be feigned). The lead detective, who selected the photos for the two arrays presented to Rahman and who observed the double-blind array procedure in real time, testified over objection that Rahman had identified the defendants and the court admitted the arrays (State's Exhibit 7 [Case] & 8 [Doggett]) into evidence. The jury convicted Case of assault and he appealed, presenting a single issue for our review:

“Did the Trial Court deny appellant his right to confrontation by allowing the admission of exhibit 7 [the photo array] and Rahman's identification of the appellant by and through an improper witness?”

The evidence at trial demonstrated that the detective had first-hand knowledge of the composition of the photo array because he compiled it himself and he watched Rahman identify Case's photo from that array in real time via a live video feed. Therefore, we hold that the circuit court did not abuse its discretion by admitting the photo arrays into evidence under Maryland Rule 5-901(b)(1), or by permitting the lead detective to testify to Rahman's identification of Case.

BACKGROUND

The following facts were adduced at the joint trial of Case and Doggett over the course of five days from November 30 to December 5, 2017.

A. The Murder of Darrell Webb

Webb died of sharp-force injuries he suffered in the late afternoon of January 29, 2017, in an alley behind East 25th Street off the 2400 block of Brentwood Avenue in Baltimore City. He suffered six stab wounds and five cutting wounds, mostly to the left side of his head, neck, shoulders, and left arm, as well as defensive wounds on each of his hands. Webb also had an 1/8-inch contusion on the left side of his forehead.

B. The Investigation

Police began their investigation into Webb's murder at the scene of the crime, where they found two separate blood trails leading away from the scene and collected several samples of blood and saliva. Detectives also obtained surveillance videos from Mana House and the Brentwood—buildings that are located on either corner of Brentwood Avenue and East 25th Street in Baltimore City. Both buildings had cameras facing the rear alley in which Webb was attacked.

1. Surveillance Footage

The State played portions of the videos for the jury at trial without objection. One video showed a Honda CRV, with ladders tied to its roof, turn onto Brentwood Avenue from East 25th Street at 4:15 p.m. The driver (later identified as Case) idled in front of an alley behind Mana House for a few minutes before parallel parking on the east side of Brentwood Avenue, where he remained in his car. A few minutes later, Webb walked South down Brentwood and turned left into the alley with another man. Just after the two men headed down the alley, a man who wore a brown leather jacket over a brown hoodie, later identified as Doggett, came into the camera's view from the south and followed behind both men into the alley. Doggett was brandishing a large knife held behind his back as he walked. All three men then turned right into an adjoining alley.

Thirty seconds later, Rahman heard shouting from where he stood on Brentwood. He and another man jogged into the alley after Webb and Doggett, stopping where the two alleys intersected, still in the view of the surveillance camera behind Mana House. Rahman, Webb, Doggett, and the other two men congregated together for another 30 seconds near the alleys' intersection. As those five men stood in the alley, Case, who was wearing a gray sweatshirt, camouflage pants, and a knit hat with a white stripe and long tassels, exited the driver's seat of the Honda CRV that he parked on the east side of Brentwood minutes prior. He, too, walked to join the men in the alley.

Just as Case reached the group in the alley, Webb walked away by himself, back toward Brentwood, but then he stopped, turned around, and walked right up to Doggett. The two men stood face-to-face at the intersection of the two alleys for a moment before

Doggett punched Webb twice in the face, toppling Webb onto the ground. As Webb and Doggett tumbled over, Case ran up and kicked Webb in the head. Webb tried to force his way to his feet, but Case threw him back down and kicked him in the head again. While Case kicked Webb, Doggett removed a knife from his back pocket and leaned over Webb, stabbing him six times until one of the other men looking on approached apprehensively and pulled Doggett away from Webb. That man led Doggett out of the alley back toward Brentwood Avenue, and Case followed. Webb got to his feet and staggered down the alley in the opposite direction.

Case walked back to the CRV and got in. Moments later, Doggett walked up to the parked CRV, opened the rear door on the driver's side and put something inside that door. After speaking to a few of the men who witnessed the murder, Doggett climbed into the back seat of the CRV and the vehicle drove off.

2. An Eyewitness

Two days after Webb's death, police arrested Rahman on the 2400 block of Brentwood Avenue for drug possession. Rahman told police he had information on Webb's murder and gave two taped statements at the police station. Rahman told police that he knew Webb as "[a] kid . . . by the name Rell." According to Rahman's taped statement, Webb was angry with Doggett over something and yelling at him in the alley. Rahman said he ran into the alley because he heard Webb and Doggett arguing. Doggett, who Rahman knew by the nickname "Black," "popped" Webb in the face and caused him to "[a]ll to the ground," at which point a "tall skinny guy," who Rahman identified as Case, "started back up over top of him hitting him." While Case kicked Webb, "Black just

[] pulled out a knife and started chopping [Webb] with it in his back and in his head.” The two men—Doggett and Case—then went into what Rahman described as a “green truck . . . like a Ford Explorer truck” with “little racks on it . . . on the roof” that “was right across the street when you come out the alley[,]” and drove off together.

Detective Curtis McMillan, who was not otherwise involved in the investigation, administered a double-blind photo array procedure¹ to Rahman as Detective Christopher Kazmarek, the lead homicide detective in the case, watched a video feed of the interview on his computer monitor. In the first array, Rahman identified Doggett in Photo 4 as the man who stabbed Webb. In the second array, he identified Case in Photo 2, and wrote below the photo: “This is the guy that was with Black that helped by kicking and punching Rell.” Rahman also identified a picture of the CRV as the vehicle that was there the day of Webb’s murder. Later, in a second recorded statement, Det. Kazmarek asked Rahman to view stills from the surveillance footage, in which Rahman identified himself, Case, and Doggett.

3. Arrests and Forensic Evidence

¹ To guard against the possibility that the investigating officer may inadvertently suggest the suspect’s identification to the witness, the officer who administers the photo array is not otherwise involved with the investigation, making him or her “blind” to which photograph, if any, depicts the suspect. *See Smiley v. State*, 216 Md. App. 1, 38 (2014) (explaining the mechanics of a double-blind photo array procedure), *aff’d*, 442 Md. 168 (2015). In this case, Det. Kazmarek testified that, as lead officer, he compiled the photo array but Det. McMillan administered it.

The next day, police arrested Case and Doggett separately and photographed them at the station. In Case's photo, he was wearing a black-knit Ravens hat with a white stripe and long tassels.

Following the arrests of Case and Doggett, police located a 2002 Honda CRV that had a ladder tied to its roof, just like the one that appeared in the surveillance video. By the front passenger seat inside the vehicle, police found a Save-A-Lot bag containing a brown leather jacket. Swabs for DNA revealed Doggett's blood on the plastic bag and his DNA inside the cuffs and collar of the jacket. Also inside the CRV was a citizen/police contact receipt from a citation made out to Case for a vehicle safety equipment violation; a citation and summons for Case listing four traffic infringements; and a summons for Case to appear in the District Court of Maryland.

Sylvia Semambo, the vehicle's owner, later testified at trial that Case had worked for her for about a month in 2016 and that she would lend him her CRV for work. Viewing surveillance footage from the afternoon of Webb's murder, Semambo identified her CRV. On cross-examination, however, she said that she identified her car based solely on its color (the license plate was not visible) and the police and prosecutor telling her that it was her car.

C. The Jury Trial

A grand jury in Baltimore City indicted Case on seven counts: first-degree murder; conspiracy to commit first-degree murder; first-degree assault; conspiracy to commit first-degree assault; second-degree assault; conspiracy to commit second-degree assault; and wearing and carrying a deadly weapon. At trial, the State called eight witnesses, including

two crime-lab technicians; a DNA analyst; a forensic-data-recovery officer; a medical examiner; Det. Kazmarek; Semambo; and Rahman.

1. Rahman’s Testimony

Rahman began his testimony by declaring, “I don’t remember nothing.” When asked to clarify, he reiterated, “Nothing. I don’t remember nothing about that day.” He said his memory was impaired on the day he spoke with police because he had “used like almost a half a gram of heroin, probably like a half a gram of cocaine, and [his] mind was just gone.” He told the jury he “was so jittery and flinching everywhere[,]” “paranoid,” and “saying things.” Although he remembered the details of his arrest and that police questioned him, Rahman claimed he “d[idn’t] recall what [he] said[.]”

The State asked Rahman if he could remember the incident police questioned him about, and Rahman responded, “Not right off-hand, I can’t remember.” He remembered the police showing him pictures but could “not even remember” who he identified because “[i]t was a lot of pictures, and it was a lot of people up there that day.” Rahman also could not recognize anyone in the courtroom “right off-hand.” He did, however, recognize his initials on State’s Exhibits 7 and 8, the photo arrays of Doggett and Case; he admitted that “[i]t looked like [he] signed it.” But when the State showed him Case’s photo from the array, Rahman said he did not know if he recognized the signature. The State asked whether he did not know if he recognized it or if it wasn’t his signature, to which Rahman answered, “I don’t [] know that handwriting, period. I don’t know if that’s my handwriting or not.” Rahman also claimed no memory of writing or saying what was on the exhibit.

Similarly, when confronted with the signature on State’s Exhibit 8, Rahman testified, “I don’t write like that.”

The State then attempted to introduce the videos of Rahman from the police station into evidence under Maryland Rule 5-802.1(a)(3) on the grounds that Rahman was feigning his memory loss, the statements were recorded in substantially verbatim fashion by electronic means, and Rahman was subject to cross-examination. Defense counsel objected, asserting that the State was relying on a rule that applied to prior inconsistent statements and the testimony was that Rahman did not remember, meaning nothing the State adduced was inconsistent with the prior statement.

After the State failed to refresh Rahman’s memory by showing him the video outside the presence of the jury, the trial court ruled, based on its observations, “that Mr. Rahman’s inability to recollect meeting with the detectives at all and inability to recollect being shown a photo array, and inability to recognize his own handwriting . . . on the photo arrays, after he authenticated his initials then sa[id] he didn’t recognize his signature or handwriting is, for the record, unequivocally, in the view of this Court, wholly disingenuous and wholly incredible and not worthy of belief.” The court then admitted, over the defendants’ continuing objections, Rahman’s video-taped statements to police, which the State published to the jury.

2. Admission of the Photo Arrays

After the State established through Det. Kazmarek’s direct examination that he witnessed Rahman’s interviews, the State showed Det. Kazmarek State’s Exhibits 7 & 8. Exhibit 7 was the photo array through which Rahman identified Case and Exhibit 8 was

the array through which he identified Doggett. In anticipation of the State moving the exhibits into evidence, Doggett’s attorney objected, arguing that the State failed to lay a proper foundation because Det. Kazmarek did not administer the arrays. The court called up the parties for a bench conference on the issue, during which Case’s counsel echoed Doggett’s objection. Because the objections were premature, the court noted the defendants’ arguments and reserved its ruling until the State moved to admit the exhibits.

Det. Kazmarek testified that as the primary detective, he compiled the photos for the arrays and gave them to Det. McMillan to administer through a double-blind procedure as Det. Kazmarek watched a video feed of the interview on his computer monitor. After Det. Kazmarek testified that he observed Rahman listen to Det. McMillan’s instructions and make an identification from each array, the State asked if State’s Exhibits 7 & 8 were the “photo arrays that were shown to Mr. Rahman on January 31st, 2017, by Detective Curtis McMillan.” Det. Kazmarek confirmed that the exhibits were the same photo arrays from that day, and the State then asked, “who wrote on those when they identified certain pictures?” The detective answered, “Mr. Rahman wrote on them and Detective McMillan actually signed his name on the bottom also in the spot that’s provided.” The following then ensued as the State continued to question Det. Kazmarek concerning Rahman’s identification:

Q So on . . . State’s Exhibit Number 7 for identification purposes which photograph did Mr. Rahman pick out?

A Photograph Number 2.

Q Okay. And who is that person?

[CASE’S COUNSEL]: Objection.

THE COURT: Overruled. You may answer the question.

[DET. KAZMAREK]: Randy Case.

BY [THE STATE]:

Q Okay. And did Mr. Rahman sign it and everything?

A Yes.

Q And did he write a statement?

A Yes, he did.

The State then moved to admit into evidence State’s Exhibit 7, prompting defense counsel to object again. Noting the foregoing bench conference moments earlier, the court overruled defense counsel’s objection and admitted Exhibit 7. Similarly, the court admitted Exhibit 8 over objection. After the State published the photo arrays to the jury, the court admitted the four still images from the surveillance footage that Det. Kazmarek showed Rahman during his interview. One of these photos depicts Case in a grey sweatshirt and tasseled hat. The photo carried a written notation: “on video Mikal Rahman identified this person as the person who was with [Doggett].”

3. Verdicts and Sentencing

At the close of the State’s case, the court granted Case’s motion for a judgment of acquittal on the charges of conspiracy to commit second-degree assault and wearing and carrying a deadly weapon. The jury found Case not guilty of first- and second-degree murder and not guilty of conspiracy to commit first- and second-degree murder. The jury

found Case guilty of assault in the first- and second-degree. Those convictions would merge into first-degree assault for sentencing purposes.

On March 8, 2018, the court sentenced Case to serve 15 years for first-degree assault. Case timely appealed to this Court on April 3, 2018.

DISCUSSION

I.

Case claims on appeal that during the trial his Sixth Amendment right to confront witnesses against him was violated. Specifically, Case asserts that Det. McMillan was the proper sponsoring witness through which the State should have admitted State’s Exhibit 7, the photo array in which Rahman identified Case. According to Case, Det. McMillan could have testified as to what photos he showed to Rahman and which photo Rahman identified. Case also asserts Det. Kazmarek’s testimony regarding the photo array was hearsay with no applicable exception to justify its admission into evidence.

A. Issues Preserved for Appeal

Before we address the merits of Case’s appeal, we must clarify the issue before us. The State, in its brief, expresses “some confusion” about Case’s argument on appeal: “Although Case does not use the word ‘authenticate’ or cite the rule pertaining to authentication, the State understands his complaint to be that the trial court erred in admitting State’s Exhibit 7 before it was properly authenticated by a person with knowledge.” The State asks us to decline review of “Case’s bare allegation that he was unable ‘to explore’ Rahman’s claims that the police told him ‘to sign certain documents’ and provided him ‘certain information,’” asserting that Case forfeited this assertion by

failing to support it with argument or legal authority in his brief and by failing to proffer at trial that Det. McMillan fed Rahman information during the interviews. The State also points out that Case had “a full and fair opportunity to question Rahman and Detective Kazmarek about any alleged improprieties,” and that Case was free to subpoena and call Det. McMillan as a witness if Case believed him to have relevant information.

Pursuant to Maryland Rule 8-131(a), this Court will ordinarily “not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” The record in this case reveals that Case failed to argue that the trial court’s rulings violated the Sixth Amendment and his right to confront Det. McMillan regarding the allegation that police suggested to Rahman whom he should identify from the photo array or that police fed him other answers. At no point during the trial did Case object to the admission of evidence based on the Confrontation Clause of the Sixth Amendment, nor did he assert that the photo identification process was impermissibly suggestive or otherwise improper—a claim typically grounded in the Due Process Clause of the Fourteenth Amendment. *James v. State*, 191 Md. App. 233, 252 (2010) (“Due process principles apply to remedy the unfairness that would result from the admission of evidence that is based on an identification procedure that was ‘unnecessarily suggestive’ and conducive to misidentification at trial.”). Even now on appeal, Case’s brief fails to support these constitutional claims with legal argument as required by Maryland Rule 8-504(a)(6).²

² We note that Case relied on *Pointer v. Texas*, 380 U.S. 400, 404 (1965), for the proposition that the Sixth Amendment affords a person accused of a crime the right to confront and cross-examine witnesses against him or her. Case misunderstands the scope of the Confrontation Clause. As the Supreme Court has explained, “Confrontation Clause

See Oaks v. State, 83 Md. App. 1, 9 (1990) (declining to address an assignment of error that Oaks did not support with argument in his brief). Accordingly, we will not address Case’s constitutional claims on appeal. *See* Md. Rule 8-131(a); 8-504(a)(6).

Case’s hearsay argument, even if it is cognizable,³ is also not properly before us. When Case’s counsel objected at trial to Exhibit 7 and Det. Kazmarek’s testimony about the photo array, he stated that he had the “same concern[s]” as Doggett’s counsel, who made the primary objection based on his specific assertions that Det. Kazmarek was not “the proper party,” “the proper foundation ha[d not] been laid,” and Det. Kazmarek “did not administer the photo arrays.” Defense counsel did not cite the rule against hearsay as a ground for his objection. Although defense counsel later raised a hearsay objection to the State’s examination of Det. Kazmarek about State’s Exhibits 9, 10, 11, and 12 (the stills from the surveillance videos that Det. Kazmarek showed Rahman during Rahman’s second

cases fall into two broad categories: cases involving the admission of out-of-court statements and cases involving restrictions imposed by law or by the trial court on the scope of cross-examination.” *Delaware v. Fensterer*, 474 U.S. 15, 18 (1985). Case does not complain of any error by the trial court in limiting his ability to cross-examine the witnesses who testified at trial. Nor did the State offer as substantive evidence any statements (out-of-court or otherwise) by Det. McMillan (the detective who administered the photo array). Further, as the State points out, Case failed to subpoena Det. McMillan to testify. If Case believed that Det. McMillan’s testimony would have been relevant to an issue in his case, the Sixth Amendment’s Compulsory Process Clause afforded Case the right to present witnesses in his defense. *See Taneja v. State*, 231 Md. App. 1, 10 (2016).

³ Even if Case had preserved a hearsay objection to Det. Kazmarek’s testimony that Photo 2 depicted Case, the issue is without merit. Det. Kazmarek’s testimony did not relate an out-of-court statement by Det. McMillan and, therefore, did not implicate the rule against hearsay. *See* Md. Rule 5-801(c) (“Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”).

taped interview), Case does not challenge the admission of those exhibits on appeal. We will not transpose his grounds for that objection to his prior overruled objection to the admission of Exhibit 7. Counsel’s failure to state the rule against hearsay as his grounds for objection to Exhibit 7 precludes him from asserting that line of argument on appeal. *See Klauenberg v. State*, 355 Md. 528, 541 (1999) (“It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.”).

Accordingly, we will limit our review to Case’s contentions that Det. Kazmarek was not the proper sponsoring witness for State’s Exhibit 7 and that the trial court erred “by allowing Detective Kazmarek testify as to what photographs Detective McMillan showed Rahman.”

B. Detective Kazmarek’s Personal Knowledge of Exhibit 7

Regarding the admission into evidence of Exhibit 7 and Det. Kazmarek’s related testimony, the State maintains, “Because Detective Kazmarek was the person who prepared the photo array and gave it to Detective McMillan to display and because Detective Kazmarek watched the photo identification procedure in real time, Detective Kazmarek had personal knowledge concerning the authenticity of the exhibit.” The State also suggests that it authenticated Exhibit 7 through circumstantial evidence given that the court admitted into evidence a video recording of the identification procedure in which the photo array was visible sufficiently for the fact-finder to conclude that the array Det. McMillan showed Rahman was the same as Exhibit 7.

Under Maryland Rule 5-901(a), a condition precedent to the admission of real evidence is the “authentication or identification” of the evidence. *See also Bedford v. State*, 317 Md. 659, 676 (1989) (photographic evidence must be relevant and authenticated). Typically, a party accomplishes this by offering evidence through a witness (sometimes called a sponsoring witness) who has first-hand knowledge of the evidence the proponent seeks to admit. *See* Md. Rule 5-901(b). This corresponds with the rule that “fact witnesses must have personal knowledge of the matters to which they testify.” *Little v. Schneider*, 434 Md. 150, 169 (2013) (citation omitted). The personal knowledge necessary to authenticate a piece of evidence may “depend[] on the specific reason it is introduced.” *State v. Young*, 462 Md. 159, 182 (2018). For photographic evidence, a sponsoring witness is generally a person who may “verif[y] that the photograph accurately portrays its subject.” *State v. Broberg*, 342 Md. 544, 552 n.5 (1996) (citation omitted). Authentication is a “low bar,” however. *See Darling v. State*, 232 Md. App. 430, 458, *cert denied*, 454 Md. 655 (2017). A proponent may cross the threshold necessary to authenticate or identify a piece of evidence through other circumstantial evidence. Md. Rule 5-901(b)(4); *see also Johnson v. State*, 228 Md. App. 27, 62-63 (2016) (holding that the admission of evidence was not erroneous “[g]iven the ample circumstantial evidence . . . coupled with the ‘low bar’ for authentication”) (citation omitted)).

We review both evidentiary rulings for abuse of discretion. *See Darling*, 232 Md. App. at 456 (explaining that we apply an abuse-of-discretion standard to issues relating to the authenticity of and admission of evidence).

1. Exhibit 7

Case’s opposition to the court’s admission of Exhibit 7 is that “Detective McMillan would have been the proper witness through which the photo array . . . and the identification derived therefrom could be admitted.” Case does not contest that Photo 2 in Exhibit 7 is a picture of him. Rather, his argument alludes to the idea that the photo Rahman identified in his taped statement may not be the same Photo 2 in the Exhibit 7. To ensure the exhibit’s authenticity, he argues, the State needed to call Det. McMillan, the officer who administered the photo array. This is incorrect. Although Det. McMillan *could* have authenticated Exhibit 7, his ability to do so was not exclusive. Det. Kazmarek testified to his personal knowledge of the photos contained in the array as well as the precise photo Rahman identified from the array.

Specifically, Det. Kazmarek identified Exhibit 7 as one of the photo arrays “shown to Mr. Rahman,” which, he explained, he created by compiling the photos with the assistance of another detective. Further, he explained that as lead detective, he monitored the photo array procedure from his computer as Det. McMillan administered it. The video recording that Det. Kazmarek watched in real time was also admitted into evidence (and Case does not challenge its admission on appeal). This recording supported Det. Kazmarek’s testimony and was further circumstantial evidence authenticating Exhibit 7. *See* Md. Rule 5-901(b)(4); *Johnson*, 228 Md. App. at 62-63. Rahman’s testimony that he recognized his initials on Exhibit 7 and “[i]t looked like I signed it” also constituted circumstantial evidence authenticating Exhibit 7. Accordingly, we hold that Det. Kazmarek’s sufficient first-hand knowledge, coupled with other circumstantial evidence, surpassed the “low bar” necessary to authenticate Exhibit 7 as being what the State

claimed; namely, the photo array that police administered to Rahman during his interview on January 30, 2017. *See id.* We discern no abuse of discretion in admitting the photo arrays into evidence through Det. Kazmarek. *Darling*, 232 Md. at 456.

2. Detective Kazmarek's Testimony

Case suggests that Det. Kazmarek could not testify that Rahman identified Case because Det. Kazmarek did not administer the photo array. We hold that Det. Kazmarek's testimony that Rahman identified Case in the photo array was supported by sufficient first-hand knowledge. We find support in our decision in *Paige v. State*, 226 Md. App. 93, 130 (2015), for the proposition that a fact witness who viewed a video in real time has the personal knowledge necessary to testify about the facts contained in that video.

The testimony at issue in *Paige* came from Salley, a loss-prevention officer at the Macy's in the Columbia Mall. *Id.* at 102. Salley was in an office monitoring broadcasts on 97 closed-circuit televisions streamed from cameras throughout the store. *Id.* While viewing these broadcasts, Salley observed three females, one of whom was the defendant, behaving suspiciously, in a manner consistent with shoplifting. *Id.* at 102-03. At trial, the prosecution offered the surveillance video through Salley, as the records' custodian at the Macy's store. *Id.* at 117. Salley then testified as to what she saw in the video as it played in open court for the jury. *Id.* at 118-21. On appeal, this Court considered the propriety of Salley's testimony. *Id.* at 125. We concluded that Salley's testimony was based on her personal knowledge, noting that Salley personally watched the defendant on the cameras that Salley operated on the day in question and that the recordings were a fair and accurate depiction of what transpired that day. *Id.* at 126. Although the appellant's main contention

pertained to Salley’s opinion testimony in narrating the video, we held that Salley’s fact testimony was admissible: “Salley’s testimony in this case was based on her personal knowledge from having witnessed appellant’s actions, [in] real time[.] . . . That testimony explained facts on the video, including appellant’s selection of various items . . . and then the exit from the store without paying[.]” *Id.* at 130.

Similarly, in this case, Det. Kazmarek testified based on his personal knowledge from having watched, in real time from his computer, Rahman identify Case during the photo-array procedure that Det. McMillan administered. Our reasoning in *Paige* makes clear that a witness may have first-hand knowledge of events the witness watched transpire over a live video feed. *See* 226 Md. App. at 130. Case offers no legal support for the contrary position. Further, we observe that Case did not object when the State asked Det. Kazmarek which photo Rahman selected during the photo array. Rather, Case’s objection did not come until the State asked Det. Kazmarek who was depicted in Photo 2. As we explained in our discussion on the admissibility of Exhibit 7, Det. Kazmarek had personal knowledge of which photo in the array depicted Case because Det. Kazmarek compiled the photos for that array. In fact, given that police used a “double blind” procedure in this case, Det. Kazmarek, as the primary detective who selected the photos for the array, would be *better* situated than Det. McMillan to testify as to which photograph depicted Case. Det. McMillan, as the officer who administered the procedure, would not have known that Photo 2 depicted Case. *See Smiley v. State*, 216 Md. App. 1, 38 (2014) (explaining that the “officer administering the identification procedure does not know which photograph is that of the suspect”), *aff’d*, 442 Md. 168 (2015).

In sum, we discern no abuse in the trial court's discretion to permit Det. Kazmarek to testify that Rahman identified Case in the photo array because Det. Kazmarek compiled the array and then watched, in real time, as Det. McMillan administered the array to Rahman, who identified the photo depicting Case.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
APPELLANT TO PAY COSTS.**