

Circuit Court for Baltimore City
Case No. 117262004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 726

September Term, 2018

PAUL BETTS

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: April 16, 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 Paul Betts was convicted by a jury in the Circuit Court for Baltimore City of attempted first degree murder; use of a firearm in the commission of a crime of violence; reckless endangerment; prohibited possession of a regulated firearm; and wearing, carrying and transporting a handgun. Appellant presents the following question for our review, which we rephrase slightly:

Did the trial court abuse its discretion in admitting two surveillance videos as well as three still photographs derived from those videos?

Finding no error, we shall affirm.

I.

A jury in the Circuit Court for Baltimore City convicted appellant of attempted first degree murder (count one); use of a firearm in commission of a crime of violence (count three); reckless endangerment (count five); prohibited possession of a regulated firearm (count six); and wearing, carrying, and transporting a handgun (count twelve). The court merged count twelve into count three and count five into count one. It sentenced appellant to life imprisonment with all but fifty years suspended, followed by five years of supervised probation, on count one; twenty years incarceration, the first five without the possibility of parole, consecutive to count one, on count three; and ten years incarceration, concurrent to count one, on count six.

We state the following pertinent facts as set forth at trial. On July 28, 2017, shortly before 11:00 p.m., appellant shot Richard Love in the back with a handgun. The shooting occurred near the intersection of North Luzerne Avenue and McElderry Street in Baltimore

City, Maryland. When they reached the scene, police officers located a single shell casing on the ground outside Club Luzerne, a liquor store near the shooting location. An officer noticed an exterior camera pointed toward the shell casing. Detective Fraser accessed the store's digital video recording (DVR) system and viewed the exterior camera's recorded footage, which showed the shooter wearing light-colored denim shorts, black knee-high socks with a white stripe up the back, black-and-white shoes, a black sweatshirt, and a hat with a brim. The surveillance video also showed the shooting. Det. Fraser downloaded that footage to a USB storage drive.

From the video, Det. Fraser developed a description of the shooter. He then asked other officers to review video footage from nearby CitiWatch¹ cameras capturing an individual matching the same description. CitiWatch footage showed an individual matching the shooter's description near Club Luzerne at approximately 10:55 p.m. and near the storefront of the Green Line Grocery (a store approximately one block from the shooting) at approximately 10:59 p.m. Det. Fraser went to Green Line Grocery on the

¹ Detective Brian Coffin described CitiWatch as follows:

“CitiWatch is a system maintained by the police department. It's a series of cameras located throughout the city, mainly in violent crime ridden areas of the city and neighborhoods with a lot of drug activity and violence. The cameras record for, I believe, 28 days. They're constantly on. Officers can access the system and remotely control each camera. We can turn it 360 degrees, zoom in and out. If no officer is operating the system or a particular camera, the camera will automatically—it's set with a pre-programmed, I guess, it pans around and zooms in on certain areas like corners and stuff like that.”

night of the shooting, but the store closed before he arrived. He returned the following evening, July 29, 2017, and the store owner permitted him access to the store's DVR system. Det. Fraser viewed video footage from that evening and the previous evening. The footage depicted appellant inside the Green Line Grocery wearing light-colored denim shorts, black knee-high socks with a white stripe up the back, black-and-white shoes, a black sweatshirt, and a hat with a brim. Immediately after viewing the footage on the DVR system, Det. Fraser downloaded clips from the footage to a USB drive.

Det. Fraser had been familiar with appellant for several years at the time of the shooting investigation. He identified appellant as the individual in the Green Line Grocery footage wearing the same clothes as the shooter. Officers arrested him pursuant to a warrant on August 23, 2017.

At trial, the State introduced State's Exhibit 4 (the liquor store footage) and State's Exhibit 11 (the grocery store footage) on compact discs (CDs) and State's Exhibits 16A–C (three still photographs that officers took from the videos). The State tried first to authenticate the liquor store footage for admission through the victim's testimony. The State played a portion of the footage for the victim and asked, "is that the incident where you were shot on July 28th?" The victim replied, "Yeah, I guess so," but also indicated, "I told you I can't hardly remember what I was doing, I was high." Defense counsel objected to admission of the video, arguing a lack of foundational testimony to establish the authenticity of the CD containing the footage. The trial judge sustained the objection.

The State then introduced Exhibit 4 into evidence through the direct examination of Det. Fraser, who testified that he personally viewed and collected the surveillance footage

the night of the shooting. Det. Fraser testified that he identified the video feed for Club Luzerne’s exterior camera by selecting the screen that was displaying the active crime scene outside, and he went back through the recorded footage until he saw the actual shooting take place. Det. Fraser stated that the time displayed on the actual screen and the time on his cell phone were “within a few minutes of each other.” Further, he explained that he downloaded the footage from a “basic DVR system” to a standard USB drive, which was something he did routinely in his work. Det. Fraser confirmed that the footage on State’s Exhibit 4 was the same footage that he viewed initially at Club Luzerne. The trial judge admitted the video over defense counsel’s objection that the State failed to lay a sufficient foundation to establish authenticity.

The State also introduced Exhibit 11, the grocery store footage, as a single CD containing eight separate video files. The first six clips showed a date stamp of 07-28-2017 and had time stamps ranging from 6:30 p.m. to 7:22 p.m. The other two clips, dated 07-29-2017, had time stamps ranging from 5:03 p.m. to 5:12 p.m. Det. Fraser testified that the day after the shooting, he accessed the Green Line Grocery’s DVR system, viewed footage from the night of the shooting, and downloaded the footage to a USB drive. He also stated that the Green Line Grocery surveillance system was a basic surveillance system like the one at Club Luzerne. The State played portions of each of the eight clips from State’s Exhibit 11. Det. Fraser testified that each was a video of the inside of the Green Line Grocery and that it was the same footage that he extracted from the store on July 29,

2017. The detective noted that the timestamps on the videos were “off.”² The State moved to admit State’s Exhibit 11, and defense counsel objected on the basis that the State did not authenticate the video properly. The court overruled the objection and admitted the grocery store footage into evidence. The State then played portions of four clips that had date stamps of 07-28-2017, and asked Det. Fraser the “actual” times the DVR recorded the clips. Over defense counsel’s objection, Det. Fraser responded: “10:31 p.m.,” “10:34 p.m.,” “11:05 p.m.,” and “11:20 p.m.”

The State also offered two still photographs from the Club Luzerne video (State’s Exhibits 16A and 16B), and one still photograph from the Green Line Grocery video (State’s Exhibit 16C). The trial judge admitted State’s Exhibits 16A–C after Det. Fraser testified that he and another detective paused the surveillance videos, took a “clip” from them, and printed the still photographs. Appellant’s counsel advised the trial court that he had “no objection” when the State moved to admit the photographs.

As indicated, the jury convicted appellant, the court imposed sentence, and this appeal followed.

II.

Before this Court, appellant argues that the circuit court erred in three evidentiary rulings at trial and that these errors warrant reversal. Appellant argues first that the circuit

² Prior to the court admitting the Green Line Grocery footage into evidence, Det. Fraser testified that the “timestamp was off.” After the court admitted Exhibit 11, Det. Fraser clarified that the timestamp in the footage was “four hours slow,” which he had discerned from looking at his phone and comparing it to the time indicated on the DVR’s time stamp.

court erred in admitting the liquor store footage. Appellant argues that, because the State did not present a witness who could authenticate the video through personal knowledge, the only viable theory of admissibility was as a “silent witness.” Further, appellant contends that the authenticating witness did not testify to the reliability of the surveillance system, its manner of function, the quality of the recorded product, and the chain of custody of the recordings. Thus, appellant argues that the State failed to lay a sufficient foundation for authentication and that the court abused its discretion in admitting State’s Exhibit 4.

Next, appellant argues that the State failed to authenticate adequately the grocery store video in State’s Exhibit 11 as a silent witness. Appellant contends, as he did with the liquor store footage, that the authenticating witness failed to testify to whether the surveillance system was reliable, how the videos were edited, why the timestamp was approximately four hours off, and what happened to the USB drive after the authenticating witness downloaded the files. Specifically, appellant points out that the authenticating witness did not explain why he downloaded the footage as clips, how he compiled them onto a single CD, and why the State did not include footage capturing the time of the shooting. Appellant argues also that the State failed to establish that the footage from the grocery store portrayed events that occurred at or near the time of the shooting. Appellant contends that when a video is offered as a recording from a particular date and time, the accuracy of the timestamp is an element of authentication, not an issue of weight for the jury to decide. For these reasons, appellant concludes that the trial court abused its discretion in admitting State’s Exhibit 11 into evidence.

Appellant’s third argument is that the trial court abused its discretion in admitting

three still photographs as State’s Exhibits 16A–C. Appellant contends that, because the officers derived the photographs in State’s Exhibits 16A–C from the liquor store and grocery store footage, proper authentication of the videos was a necessary predicate to the authentication of the photographs. Thus, for the same reasons appellant argues that the surveillance videos lacked proper authentication, appellant concludes that the trial court erred in admitting the still photographs. Further, because the trial court had ruled already on the admissibility of the videos, and officers derived the photographs from the previously-admitted videos, appellant argues that defense counsel had no basis to object to admission of the photographs. Thus, appellant concludes that this issue is preserved for our review despite defense counsel’s lack of objection to the photographs’ admission.

Finally, appellant argues that the State cannot meet its burden of proving that the erroneous admission of the photographs and videos constitutes harmless error. Appellant argues that the State’s case relied heavily on the surveillance videos from the liquor and grocery stores and that the authentication errors were especially harmful because timing was a crucial part of the State’s theory. Thus, appellant contends that the State’s failure to establish accurate timestamps on both videos, as well as the lack of explanation for how or why officers only saved clips of the grocery store video, unfairly prejudiced appellant and denied him a fair trial.

The State argues that the circuit court exercised its discretion soundly in admitting the evidence. Regarding the liquor store and grocery store footage, the State contends that it presented sufficient foundational proof to support a finding that the video clips were reliable, accurate depictions of what they purported to portray. First, the State argues that

the testimony of the victim and the testimony of Det. Fraser sufficiently authenticated the liquor store footage. The victim's testimony, the State contends, authenticated the liquor store footage because he identified himself in the footage and agreed that it depicted the shooting. Although the trial court admitted the liquor store footage based on Det. Fraser's testimony, the State argues that we can affirm the court's ruling based on the victim's testimony as well. The State argues further that Det. Fraser's testimony regarding the manner of its creation and the general reliability of the reproduction process sufficiently authenticated the footage. The State points out that Det. Fraser personally viewed the original footage less than an hour after the shooting itself, later identified the footage on State's Exhibit 4 as the same footage he initially viewed, and testified that the victim had identified himself in the footage.

Second, the State contends that Det. Fraser's testimony sufficiently authenticated the grocery store footage in State's Exhibit 11. Det. Fraser testified that he accessed the "basic surveillance system" and compared the time displayed on the DVR system to the time displayed on his cellphone to determine that the timestamp was inaccurate. Then, he downloaded the footage from the DVR system to a USB thumb drive, and he confirmed that he did not alter, edit, or tamper with the footage in any way when he downloaded it. This, the State argues, served as sufficient foundational proof to authenticate the footage. The State maintains that appellant's perceived foundational deficiencies do not reflect an abuse of the trial court's discretion in admitting the evidence, noting that appellant was free to make an argument challenging the reliability and accuracy of the two videos after the trial court's threshold determination. In conclusion, it argues that the issue is one of

evidentiary weight for the jury and not of admissibility for the court.

Third, the State argues that appellant affirmatively waived his complaint regarding the admissibility of the still-frame photographs in State’s Exhibits 16A–C. Because trial counsel told the court that he had “no objection” when the State offered the photographs into evidence, the State argues that appellant not only failed to preserve the issue for appeal but also affirmatively waived his right to raise it. Thus, the State concludes that this Court should decline to consider the issue.

Finally, assuming error *arguendo*, the State argues that any error in the admission of the security footage was harmless. The State points out that the still-frame photographs showed that appellant and the shooter were wearing the same outfit in the same area the night of the shooting. Additionally, the State contends that the CitiWatch footage independently established the timeline of events that evening. Specifically, the CitiWatch footage tended to show that the shooting outside the liquor store took place at approximately 10:55 p.m. and that the shooter arrived at the grocery store by 11:00 p.m. The State concludes that any error in the admission of the challenged footage was harmless because the trial court admitted the CitiWatch footage and still-frame photographs. Therefore, the State argues this Court could find beyond a reasonable doubt that the assumed error in no way influenced the guilty verdict.

III.

We hold that the circuit court did not err in admitting the surveillance video from the liquor store. Maryland Rule 5-901(a) provides, “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.” When making an authenticity determination, 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.” *Jackson v. State*, 460 Md. 107, 116 (2018). The amount of evidence needed for admissibility under Rule 5-901(a) is slight. *Id.*

Videotapes and photographs are subject to the same authentication requirements for the purposes of admissibility. *Washington v. State*, 406 Md. 642, 651 (2008). Parties may authenticate photographs and videotapes through the testimony of a witness with first-hand knowledge or as a “silent” photographic witness. *Id.* at 652. The “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.* A photograph may be admissible as probative evidence “so long as sufficient foundational evidence is presented to show the circumstances under which it was taken and the reliability of the reproduction process.” *Id.* Maryland has yet to adopt any “rigid, fixed foundational requirements” for admitting evidence under the “silent witness” theory. *Jackson*, 460 Md. at 117. The authenticating witness may establish the foundational basis through testimony relative to the “type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system.” *Washington*, 406 Md. at 653.

We review a trial court’s ruling on the admissibility of video or photographic evidence for abuse of discretion because “[t]he circumstances surrounding the making of

the photographic evidence and its intended use at trial will vary greatly from case to case.” *Dep’t of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 26 (1996). An abuse of discretion occurs where “no reasonable person would take the view adopted by the [trial] court.” *Metheny v. State*, 359 Md. 576, 604 (2000) (citation omitted).

In *Jackson*, the State sought to admit a CD containing surveillance footage which showed the defendant making withdrawals from a bank ATM with a time stamp between 11:15–11:35 p.m. 460 Md. at 119. The State had also introduced an ATM receipt and a still photograph of the defendant at the ATM, both with time stamps of 11:43 p.m., and it suggested that the video footage further proved an ATM withdrawal at 11:43 p.m. *Id.* at 119–20. The authenticating witness was a bank employee who described the process he used to access the ATM video footage. *Id.* at 117. He testified that he accessed a DVR program and opened the bank branch’s cameras for the date and times corresponding to the ATM receipt. *Id.* He testified that after receiving confirmation from the detective, he submitted a specific request with date, time, location, and camera specifications to the bank’s technical team in North Carolina, who would “download the requested video and mail it directly to the detective.” *Id.* The witness testified that the video on the CD introduced at trial was what he viewed when he accessed the bank’s DVR. *Id.* at 119.

The trial judge recognized that “the State had sufficiently established the foundation for the video footage’s authenticity, even if the video’s relevance remained conditional on the rest of the State’s case.” *Id.* at 120 (noting that, while properly authenticated, the video was not directly relevant to the 11:43 p.m. transaction). The Court of Appeals affirmed, holding that the State sufficiently authenticated the video because it elicited through the

authenticating witness’s testimony “the process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what the witness had viewed when he submitted a request for the video footage.” *Id.* at 119. Thus, the discrepancy between the video time stamp and the withdrawal time at issue was properly a matter for the jury. *Id.* at 120.

Here, the State argued that the surveillance video from the liquor store depicted the shooting of the victim on the night of July 28, 2017. The State’s authenticating witness personally viewed the original footage from the liquor store’s surveillance cameras less than an hour after the shooting and testified that the victim had identified himself in the footage as well. Det. Fraser testified to the process of reproduction and the reliability of that process. He stated that he downloaded the footage he had viewed on the DVR system to a “standard USB” drive and confirmed that the footage on State’s Exhibit 4 was the same footage that he initially viewed at the liquor store. The detective’s testimony provided sufficient foundational evidence to enable a jury to find that the liquor store footage depicted the victim being shot outside the liquor store the night of July 28, 2017.

Appellant’s arguments that the State did not authenticate the liquor store footage speak primarily to the evidentiary weight of the video, not its admissibility. Specifically, appellant notes that the State failed to establish whether the cameras were fixed or motion activated, whether the system saved the recorded footage automatically or manually, and whether the system stored the footage indefinitely or for a finite time. Appellant argues further that the State failed to establish the chain of custody and the reliability of the time stamp on the footage.

A trial court’s authentication finding is a threshold determination and does not require exhaustive testimony bearing on technical matters if the moving party presents other foundational proof sufficient to enable the court to find that the video is what it purports to be. *See Washington*, 406 Md. at 654–55 (“Any concerns that the defendant had regarding the surveillance procedures, and the method of storing and reproducing the video material, ‘were properly the subject of cross-examination and affected the weight, not the admissibility, of the CD.’” (quoting *Commonwealth v. Leneski*, 846 N.E.2d 1195, 1199 (Mass. App. Ct. 2006))). We conclude that Det. Fraser’s testimony to the reliability of the reproduction process and his identification of State’s Exhibit 4 as the same footage he initially viewed established sufficient foundational proof for authentication. The circuit court did not abuse its discretion in admitting the liquor store video as State’s Exhibit 4.

Turning to the admission of the surveillance video from Green Line Grocery, we hold that the circuit court did not err in admitting the video as State’s Exhibit 11. The State argued that the grocery store footage depicted appellant inside the grocery store wearing the same clothing as the shooter on the evening of the shooting. The State introduced through Det. Fraser’s testimony the process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what he viewed when he downloaded the footage. Det. Fraser testified that he accessed the store’s DVR system the day after the shooting and viewed footage of appellant inside the store wearing clothing similar to the suspect’s. He stated that he then downloaded portions of the footage to a USB drive and did not alter, edit, or tamper with it in any way. Det. Fraser testified that he recognized each clip as the same footage that he viewed and downloaded at the

grocery store on July 29, 2017. The trial court exercised its discretion soundly in concluding that the State presented sufficient foundational proof for it to find that the footage on State’s Exhibit 11 was the same footage that Det. Fraser viewed and downloaded from Green Line Grocery.

Again, appellant’s arguments that the State did not properly authenticate the grocery store footage go to the evidentiary weight of the footage, not its admissibility. In addition to the same perceived foundational deficiencies that appellant raised for the liquor store footage in State’s Exhibit 4, appellant argues that the authenticating witness for Exhibit 11 failed to explain why the video clips were not continuous and why the State did not introduce a clip corresponding to the exact time of the shooting. In *Jackson*, the surveillance footage served “as a silent witness of the *continuous activity* at the ATM between 11:15–11:35 p.m.” 460 Md. at 119 (emphasis added). The time stamp and continuity of the video throughout the entire time frame was therefore essential to the video showing what it purported to show. In appellant’s case, and at the authentication stage, it was irrelevant that the State introduced the grocery store footage as eight non-continuous video clips, that the time stamp on the video clips was “slow,” and that the clips did not include video from the exact time of the shooting. The State needed to offer evidentiary foundation to enable the jury to reasonably conclude that the video clips depicted appellant inside the grocery store wearing the same clothing as the shooter in the liquor store footage near the time of the shooting—not a continuous series of events inside the store. Det. Fraser’s testimony sufficed, and the trial judge did not abuse her discretion in admitting the grocery store video as State’s Exhibit 11.

We address next the State’s argument that appellant waived any argument against the admissibility of the still photographs because he stated that he had “no objection.” We find that he did not waive this issue. When the State offered the photographs, the trial court had just admitted the videos over the strong objection of defense counsel. It was clear to the trial court that the defense objected to the videos, and any objection to the still photographs would have been futile.

We hold that the circuit court did not abuse its discretion in admitting the still photographs. Appellant argues that because the circuit court admitted State’s Exhibits 16A–C as “depictions of still images from the videos,” proper authentication of the videos was a necessary predicate to the photographs’ authentication. The authenticating witness described the reproduction process of saving and printing the photographs from the videos. Det. Fraser testified also that the photos were fair and accurate depictions of still images from the videos already in evidence and identified them as the same still photographs that he and another officer reproduced. Therefore, like the videos in State’s Exhibits 4 and 11, the State laid a sufficient evidentiary foundation to authenticate the still photographs in State’s Exhibits 16A–C.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**