

Circuit Court for Prince George's County
Case No: CT19-0551B

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 844

September Term, 2020

DARNELLE ANTONIO FORD

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 28, 2021

*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.

Following a jury trial in the Circuit Court for Prince George’s County, Darnelle Antonio Ford, appellant, was convicted of unlawfully taking a motor vehicle¹ and theft of property with a value between \$1,500 and \$25,000.²

At trial, the victim, Keith Mitchell, testified as follows regarding events that transpired on March 15, 2019. That night, Mr. Mitchell drove to a liquor store located near the intersection of Route 1 and 198 in Laurel, Maryland. At the time, he was operating a blue 2019 Buick Encore (“the Buick”) owned by his girlfriend. He waited in the parking lot of the liquor store to pick-up a friend following his work shift. As he waited, two men approached him, “pepper-sprayed” him, and “punched” him in the face. The assailants then took his belongings, including his wallet and bank cards, forced Mr. Mitchell into the back of the Buick, and proceeded to operate the vehicle. At their behest, Mr. Mitchell provided the assailants with the pin number to his bank card. His vision impaired by pepper-spray, Mr. Mitchell believes that the assailants drove the Buick to various ATMs, but that they could not obtain any money. Mr. Mitchell testified that the assailants beat him throughout the journey and, ultimately, abandoned his wounded body in Baltimore City. Mr. Mitchell was treated at Shock Trauma for his wounds. Though Mr. Mitchell did not identify Mr. Ford as one of the assailants in a photo array, following investigation, Mr. Ford was arrested and charged as one of the assailants.

On appeal, Mr. Ford raises the following questions for our review:

¹ Md. Code Ann., Crim. Law § 7-105.

² Md. Code Ann., Crim. Law § 7-104(a) & (g)(1).

1. Did the circuit court abuse its discretion in admitting video evidence, and an “Information Needed” flyer made therefrom, where the video evidence was not properly authenticated?
2. Was the evidence sufficient to sustain the convictions for unlawful taking of a motor vehicle and theft?

For the following reasons, we shall affirm.

DISCUSSION

Admission of Video Evidence

Mr. Ford’s first contention on appeal is that the trial court abused its discretion by admitting video evidence, and a flyer made therefrom, which was not properly authenticated. We decline to consider this issue on appeal because it was not preserved for review. *See* Maryland Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”). Prior to trial, the State notified Mr. Ford of its intention to authenticate the video at issue as a self-authenticating certified business record pursuant to Maryland Rule 5-902(b), which states:

Testimony of authenticity as a condition precedent to admissibility is not required as to the original or duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803(b)(6) that has been certified pursuant to ... this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent’s intention to authenticate the record under this subsection and (ii) makes a copy of the certificate and record available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent’s notice written objection on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Despite being on notice, Mr. Ford failed to note any written objection to the trustworthiness of the video within the time specified by the Rule. He, therefore, waived any challenge to the admission of the video on the grounds of its authenticity. Further, on appeal, he argues that because the trustworthiness of the video only came into question during testimony at trial, he was permitted to object to the video's authenticity and admission despite his failure to comply with Maryland Rule 5-902(b). However, this argument was not raised for the trial court's consideration and, therefore, was not preserved for appellate review.

Sufficiency of the Evidence

On appeal, Mr. Ford contends that the evidence presented at trial was legally insufficient to establish criminal agency and, therefore, insufficient to sustain his convictions. As the Court has previously stated:

When reviewing a conviction for sufficiency of the evidence, we ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State. It is not our role to retry the case. Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. The finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation.

Hayes v. State, 247 Md. App. 252, 306 (2020) (internal citations and quotations omitted).

Upon review of the record, we are satisfied that there was sufficient evidence to establish that Mr. Ford was one of the assailants who confronted Mr. Mitchell and took the Buick. Though Mr. Mitchell was unable to identify Mr. Ford in a photo array, his inability

to do so is not dispositive that Mr. Ford was not one of the assailants in question. After all, Mr. Mitchell’s vision was obscured while he was with the assailants as a result of the pepper spray, making identification of the assailants difficult.

Despite his inability to identify Mr. Ford during the array, Mr. Mitchell was able to provide the police with a few distinguishing traits of the assailants. He described them as black males and specified that one assailant had “long dreadlocks.” Pertinently, while Mr. Mitchell was with the police or in the ambulance, a charge was made using Mr. Mitchell’s bank card at Elkridge Liquors in Howard County. An investigating officer was able to obtain and view a video from Elkridge Liquors.

Upon viewing the video, the officer observed that at 7:14 p.m., a blue Buick Encore pulled into the parking lot adjacent to the store and a man with long dreadlocks exited the vehicle. The dreadlocked man in the video was later identified by an officer as Mr. Ford. The vehicle in the video was described by an investigating officer as being the same make and model as the stolen Buick. The video showed the man attempt to use the ATM at 7:16 p.m. Mr. Mitchell’s bank records confirmed the attempted withdrawal at that date and location. Taken together, the evidence, though circumstantial, was sufficient to establish that Mr. Ford was the assailant with long dreadlocks as described by Mr. Mitchell.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY THE APPELLANT.**