

Circuit Court for Baltimore City
Case No. 122153008

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1091

September Term, 2023

JOEL DUNCAN

v.

STATE OF MARYLAND

Shaw,
Albright,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: April 13, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In June 2022, Appellant Joel Duncan was indicted on thirty-four counts, including Attempted First-Degree Murder, Conspiracy, Possession of a Firearm with a Felony Conviction, Use of a Firearm in the Commission of a Crime of Violence, and related offenses, all in conjunction with a shooting that took place on January 15, 2022, in the Fells Point commercial area of Baltimore City. A jury convicted Mr. Duncan of twenty-nine of those counts, including Attempted First-Degree Murder and Conspiracy to Commit First-Degree Murder. Mr. Duncan was sentenced to life in prison with all but fifty years suspended, followed by five years of supervised probation.

At trial, the circuit court admitted recorded video surveillance of the January 15, 2022 events and subsequent recorded jail calls, all over Mr. Duncan's objection. The circuit court also instructed the jury on flight. Here, Mr. Duncan challenges these rulings, asking:¹

- I. Did the trial court abuse its discretion by admitting into evidence surveillance videos and jail calls that were not authenticated by the State?

¹ These questions have been paraphrased for clarity. Mr. Duncan's questions, in his own words, were:

1. Did the trial court err by admitting into evidence surveillance videos that were not authenticated by the State?
2. Did the trial court err by admitting into evidence jail calls where the State did not authenticate the call or the identity of the person alleged to be appellant?
3. Did the trial court err by instructing the jury on flight where Appellant was alleged to be a passenger in a vehicle and no evidence supported a finding that Appellant counseled or directed the driver of the vehicle how or where to drive?

II. Did the trial court abuse its discretion by instructing the jury on flight?

We answer both questions in the negative. Therefore, we affirm the judgments of the circuit court.

FACTS AND PROCEDURAL BACKGROUND

In the early morning hours of January 15, 2022, there was a fight inside the Admiral’s Cup Bar in Fells Point. Those involved were removed from the premises. Shortly thereafter, someone called 911 from a nearby bar to report that they heard gunshots and that an individual had been shot in the leg.

Baltimore City Police officers viewed security camera footage from four sources, the Admiral’s Cup, Baltimore CitiWatch (“CitiWatch”), the Sagamore Pendry Hotel (“Pendry”), and an unnamed business at 1615 Thames Street (“1615 Thames”). The Admiral’s Cup footage appeared to depict Mr. Duncan buying drinks at the second-floor bar, then in a fight with Luciano Bruno, Luis Ariam Rodriguez, and others on the third floor of the Admiral’s Cup, and then leaving with Mr. Bruno down a stairwell while being chased by security staff and the bartender, Shomei Johnson.

Footage from CitiWatch, 1615 Thames, and the Pendry picked up where the Admiral’s Cup video left off. On the 1615 Thames footage, Mr. Duncan and Mr. Bruno are running away from the Admiral’s Cup down Thames Street, then reversing course and returning towards the Admiral’s Cup. The Admiral’s Cup’s outdoor camera captures the pair crossing back in front of the Admiral’s Cup (Mr. Duncan is running, while Mr. Bruno follows behind on the phone) and entering a parked black Toyota Rav4, with Mr.

Bruno sitting in the back behind the driver and Mr. Duncan sitting in the back on the passenger side. A third man, Ronald Maranto, is in the front passenger seat. The 1615 Thames footage also captured the Rav4's license plate as it too drove west down Thames Street and then made a U-turn and returned east.

Footage from the Pendry and one of the CitiWatch cameras depicted what happened when the Rav4 reversed into a parking spot in front of the Pendry with its headlights facing outward. The three cameras show, from different angles, three men approaching the vehicle and appearing to pound against the windows. Then, the car pulls quickly out of its parking spot and a muzzle flash is visible from the rear driver's side window, which immediately shatters. Then, the footage depicts Mr. Ariam Rodriguez, who appears to be wounded, falling to the ground, and being assisted towards the sidewalk by two companions. The Rav4 leaves the scene, but not before Mr. Maranto falls out of the car and gets back in.

Investigation of the case continued the next day. Mr. Johnson (the Admiral's Cup bartender) gave police the Visa card Mr. Duncan had left at the bar, along with the receipt Mr. Duncan got when he used the Visa card to purchase drinks. The police also learned that the Rav4 had been rented from Enterprise by Mr. Duncan. The vehicle was ultimately located in Harford County. Ultimately, Mr. Duncan was arrested on unrelated charges and held at the Harford County Detention Center ("HCDC") where, on recorded calls, someone identifying himself as "Joel Duncan" and speaking to relatives of Mr. Duncan, was heard talking about the incident in detail. Specifically, the caller talked

about renting a Rav4, leaving his Visa card at the Admiral’s Cup, pulling a Glock handgun, and being involved in a shooting where three individuals were “knocked out.”

Mr. Duncan was indicted on June 2, 2022, and tried over four days commencing on January 10, 2023. The trial court admitted the Admiral’s Cup, CitiWatch, and 1615 Thames footage, and the recorded HCDC jail calls, among other items of physical evidence.² As for the Rav4’s speedy departure from the scene of the shooting, the trial court gave the jury a pattern flight instruction.

After Mr. Duncan was convicted, this timely appeal followed. We will include additional facts as necessary.

DISCUSSION

Preliminarily, we conclude that Mr. Duncan’s challenge to the admission of the CitiWatch footage is not preserved for our review. We then proceed to consider the remaining merits of Mr. Duncan’s first question.

I. THE SURVEILLANCE VIDEOS

A. *The CitiWatch Footage*

The CitiWatch footage was admitted as State’s Exhibits 15 and 16 on the second day of trial. Mr. Duncan argues that the CitiWatch video “did not meet the standard required by Maryland Rule 5-901 or *Washington* [*v. State*, 406 Md. 642 (2008)] and its progeny.” The State counters that because Mr. Duncan did not contemporaneously object

² The trial court also admitted the Pendry surveillance footage but Mr. Duncan does not challenge that ruling here.

to the admission of the CitiWatch footage (either exhibit), he waived his right to challenge their admission at trial. We agree with the State.

In a criminal trial, “[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.” Md. Rule 4-323(a). Moreover, “[e]rror may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and . . . [i]n case the ruling is one admitting evidence, a timely objection or motion to strike appears of record” Md. Rule 5-103(a)(1).

Below, Mr. Duncan did not object to the admission of the footage when the State offered the footage as Exhibit 15 or 16. Instead, Mr. Duncan affirmatively told the trial court that he had no objection to the admission of Exhibits 15 and 16.

[STATE]: Your Honor, at this time, the State offers what has been marked as State’s Exhibit Number 15 into evidence.

[DEFENSE]: No objection.

[COURT]: State’s Exhibit 15 is admitted in evidence

[STATE]: Now, I’m going to be showing you what has been marked for identification purposes as State’s Exhibit 16.

[DEFENSE]: Judge, no objection.

[COURT]: As to camera view of CitiWatch Broadway and Aliceanna. Correct?

[DEFENSE]: Yeah. No objection.

[COURT]: And that’s marked for identification as State’s Exhibit 16?

[DEFENSE]: Correct. And the State –

[COURT]: Moved in.

[STATE]: Yes.

[COURT]: No objection[?]

[DEFENSE]: None, Judge.

[COURT]: State’s Exhibit 16 is admitted in evidence.

Mr. Duncan counters by arguing that his objection to the CitiWatch footage was preserved because the day after CitiWatch footage was admitted, he objected to the admission of the Admiral’s Cup and 1615 Thames footage, and thereby “incorporated” into those objections his objection to the CitiWatch footage that had been admitted the day before. We are not persuaded. “At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope.” Md. Rule 4-323(b). The CitiWatch footage was admitted on the second day of trial. At the time, Mr. Duncan neither requested, nor was granted, a continuing objection to its admission. The Admiral’s Cup and 1615 Thames footage came up the third day of trial. There being no continuing objection to the CitiWatch footage, any objection to the Admiral’s Cup or 1615 Thames footage could not have encompassed the CitiWatch footage.

B. The Admiral’s Cup Footage

Mr. Duncan argues that the footage from the Admiral’s Cup was not properly authenticated. Looking to the “silent witness” method for authenticating pictorial evidence, as discussed in *Washington v. State*, 406 Md. 642 (2008), and cases following

it,³ Mr. Duncan contends that because the sponsoring witness for the Admiral’s Cup footage, Baltimore City Police Detective Calvin Moss, was not the law enforcement officer who personally downloaded the footage, there was no foundation for admission of the Admiral’s Cup footage, and it was error to admit it.⁴

Under Maryland’s Rule 5-901(a), “[t]he 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.” *Mooney v. State*, 487 Md. 701, 705 (2024). The Supreme Court of Maryland has emphasized that:

Maryland’s Rule 5-901(a) is identical to its counterpart Federal Rule of Evidence 901(a). When interpreting Rule 901(a), the United States District Court for the District of Columbia has articulated that a [c]ourt 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. The threshold of admissibility is, therefore, slight.

Jackson v. State, 460 Md. 107, 116 (2018) (cleaned up). The proponent “need not rule out all possibilities that are inconsistent with authenticity, or prove beyond any doubt that the . . . evidence is what it purports to be.” *State v. Sample*, 468 Md. 560, 599 (2020) (cleaned up).

³ “The ‘silent witness’ method of authentication allows for authentication by the presentation of evidence describing a process or system that produces an accurate result. (citing cases).” *Washington*, 406 Md. at 652.

⁴ Mr. Duncan asserts that “[t]he trial court erred by admitting into evidence the surveillance video that was not authenticated by the State[,]” inaccurately characterizing the standard of review that we employ in determining whether admission was proper. In fact, as addressed below, the Appellate Court of Maryland reviews authentication determinations by the trial court for abuse of discretion. *See Covell v. State*, 258 Md. App. 308, 322 (2018). This standard is legally distinct from mere error.

The silent witness method of authentication is not the exclusive means of authenticating video evidence. Instead, “[v]ideo footage can be authenticated in different ways under the rules governing authentication, including through the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1), circumstantial evidence under Maryland Rule 5-901(b)(4), or a combination of both[.]”⁵ *Mooney*, 487 Md. at 730.

In *Mooney v. State*, the defendant challenged the authentication of portions of video footage from a surveillance camera purporting to depict him shooting the victim in the back. *Id.* at 707–08. The footage was retrieved the same evening as the shooting; it came from a residence that was close to the crime scene; and the residence was not connected to either law enforcement or the defendant. *Id.* at 709. The victim authenticated, via the pictorial method, those portions of the video that he had witnessed first-hand, such as watching the defendant walk past his car and opening his door, but he was ultimately unable to authenticate the footage of the shooting itself because the gunman was behind him when he was shot. *Id.* at 707. Instead, the State relied on circumstantial evidence that the remainder of the video was what it purported to be. *Id.* at 708. This included the “close temporal proximity of the shooting to the events occurring immediately before and after the shooting, of which [the witness-victim] had personal knowledge,” as well as “evidence of the nature and origin of the video[.]” *Id.* at 709.

⁵ The full text of Maryland Rule 5-901(b)(4):

(4) Circumstantial Evidence. Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.

A trial court’s ruling that evidence has been properly authenticated is one we review for abuse of discretion. *Id.* at 730 (“[T]he circuit court did not abuse its discretion in admitting the video at issue because it was properly authenticated[.]”). “A trial court abuses its discretion when no reasonable person would take the view adopted by the trial court, or when the ruling is clearly against the logic and effect of facts and inferences before the court.” *Lewis v. State*, 263 Md. App. 631, 664 (2024) (cleaned up).

The Admiral’s Cup footage was admitted as five video clips, State’s Exhibits 20, 21, 22, 23, and 24.⁶ These exhibits purport to depict the following:

- Exhibit 21: Mr. Duncan enters the second-floor bar area of the Admiral’s Cup, converses with others seated at the bar and purchases drinks from a bartender later identified as Shomei Johnson. Mr. Duncan gets up and then walks out of the room towards the stairwell.
- Exhibit 22 (first recording of two): Mr. Duncan walks out of the second-floor bar area and then walks up their stairs towards the third-floor bar.
- Exhibit 24: Mr. Duncan is standing with Mr. Bruno at the top of the stairwell on the third floor before both walk into the crowd.
- Exhibit 23: From across the third-floor bar, a fight between Mr. Duncan, Mr. Bruno, Mr. Ariam Rodriguez, and others is visible. The parties are separated and appear to leave the third-floor bar.
- Exhibit 21 (continued): Mr. Duncan and Mr. Bruno run into the second-floor bar area from a side stairwell, pursued by security. Mr. Johnson leaves the bar and joins the pursuit. Mr. Duncan and Mr. Bruno run out of the bar area into the main stairwell.
- Exhibit 22 (second recording of two): Mr. Duncan and Mr. Bruno, pursued by Mr. Johnson and security, run out of the door

⁶ State’s Exhibit 22 showed the inside of the Admiral’s Cup’s second floor stairwell over the course of the evening. It was broken into two clips on State’s Exhibit 22.

from the second-floor bar area and down the main stairwell out into the street.

- Exhibit 20: A Rav4 drives toward the Admiral’s Cup and parks in front. Mr. Duncan runs from an adjacent street and gets into the Rav4 on the rear passenger side, with Mr. Bruno getting into the rear driver’s side, and the Rav4 drives off, westbound on Thames Street.

Although the trial court discussed *Washington v. State*, it admitted the Admiral’s Cup footage based on circumstantial evidence showing that Detective Moss saw an exact copy of the footage at the Admiral’s Cup the night of the shooting, and further, that on the night of the shooting, additional evidence existed to prove that Mr. Duncan had been at the Admiral’s Cup bar purchasing drinks. The trial court explained:

Upon further review,^[7] and having considered the arguments of the parties, and having considered *Rory Howard Washington v. State of Maryland*, the Court notes that while there appears to be an extraordinarily similar set of circumstances with regard to the testimony of the witness through whom the video surveillance in the *Washington* case was offered at trial to the present circumstances in this case as testified to by Detective Moss, the Court finds it dispositive in this case with regard to the issue of authentication, that Detective Moss went to the location known as the Admiral’s Cup Restaurant and Bar in Fells Point and on not one, but two occasions within a three-day period to look at surveillance video.

That there is testimony supporting the fact that a video system does exist at that bar. Detective Moss testified that there are cameras on each of the three floors, as well as a camera that he observed on his first visit to the bar on January 15, 2022 in the early morning hours, a camera on the outside of the bar, on the side of it as well, meaning depicting the outside, if you will, the sidewalk or city street area.

⁷ At the beginning of the third day of trial, Defense asked the trial court to revisit its ruling with regards to the Admiral’s Cup before they were published to the jury. They contend that their argument also applied against the 1615 Thames footage, which should be stricken from the record. The gist of this argument is that the officer’s testimony was insufficient on its own to authenticate the footage because it did not comply with either the silent witness or pictorial testimony methods of authentication.

Detective Moss testified that when he went back three days later, he looked at the video footage again, after having looked at it on January 15, 2022, that it depicted the exact same thing he had seen before on January the 15th and upon that, he was convinced to the end of asking for the video footage from the proprietor of the Admiral’s Cup, which was given to him and it was downloaded to a thumb drive with the assistance of his associate, Officer Keenan, or Detective Keenan, I apologize, whichever.

And that it was submitted to ECU. There was no chain of custody issue which has been raised and it is through this Detective that it’s now being offered for purposes of the [S]tate’s attempt to identify Mr. Duncan as being the person depicted in the bar. And upon the proffer of the State, the person who, along with a colleague of his, was for lack of a better term, shooed, or put out of the bar by security after an altercation which occurred on the second floor.

The Court also considers the evidence which has been admitted in connection with the Visa debit, or credit card, used for a purchase of drinks in the establishment and that Visa card is attached to an individual by the name of Joel Duncan bearing the same name as the Defendant. And on the totality of those circumstances, that circumstantial evidence, the Court does not reverse its ruling with regard to the admissibility of State’s Exhibits 20, 21, 22, 23 and 24. And that is the Court’s ruling.

We see no abuse of discretion in this ruling. Video obtained “from the crime scene from a source not connected to law enforcement or the shooting” may give rise to an inference that the video is authentic. *Mooney*, 487 Md. at 731. When Detective Moss first saw the video, and Detective Keenan downloaded it, both were at the Admiral’s Cup. The Admiral’s Cup, though it was near the crime scene, was not a source “connected to law enforcement or the shooting[.]” *See id.* As a consequence, the jury could reasonably infer that the Admiral’s Cup footage was authentic.

Moreover, “[c]lose temporal proximity” between the events in a video and those that are separately corroborated may also give rise to an inference of the video’s authenticity. *Mooney*, 487 Md. at 731 (“The close temporal proximity of the shooting to

the events before and after the shooting of which [the victim] had personal knowledge gave rise to an inference that the video accurately depicted the shooting.”). Here, Exhibit 21 of the Admiral’s Cup footage depicted Mr. Duncan, wearing a black shirt, ordering drinks at the Admiral’s Cup bar, and leaving with a man in a white shirt. Mr. Duncan’s drink purchases were separately corroborated by the Visa card (in the name of Joel Duncan) and accompanying receipt showing drink purchases at the Admiral’s Cup. From the Visa card and receipt, the jury could reasonably infer that Exhibit 21 of the Admiral’s Cup footage was authentic.

And from Exhibit 21 and the Visa card and receipt, the jury could reasonably infer that State’s Exhibits 22 (first clip), 24, 23, and 22 (second clip), and 20 were authentic. At the Admiral’s Cup, these exhibits depicted Mr. Duncan in the stairwell (Exhibit 22, first clip), on the third floor (Exhibit 24), getting into a fight alongside the man in the white shirt and hat (Exhibit 23), being chased out of the Admiral’s Cup along with the man in the white shirt and white hat (Exhibit 22, second clip), and getting into the Rav4 outside of, the Admiral’s Cup (Exhibit 20).

That the Admiral’s Cup footage may not have met the silent witness method of authentication is of no moment. *See Mooney*, 487 Md. at 730 (“In short, *Washington* does not in any way preclude authentication of a video through means other than the ‘silent witness’ and ‘pictorial testimony’ theories of authentication, including through use of circumstantial evidence.”). As above, the trial court identified circumstantial evidence tending to show that the Admiral’s Cup footage was authentic. We see no reason, nor

does Mr. Duncan offer one,⁸ for why that evidence was an insufficient basis upon which the jury could reasonably conclude that the Admiral’s Cup footage accurately showed what it purported to show.

C. The 1615 Thames Footage

Mr. Duncan also argues that the 1615 Thames footage was not properly authenticated. Mr. Duncan contends that testimony by Detective Moss that he downloaded the footage from 1615 Thames Street is insufficient foundation for admission under “Maryland Rule 5-901 or *Washington* and its progeny.” Therefore, he argues, the circuit court erred by admitting it into evidence. Again, we disagree.

The 1615 Thames footage was admitted as three video clips, State’s Exhibits 18, 17, and 19.⁹ Exhibits 18 and 17 purport to depict the events between Mr. Duncan leaving the Admiral’s Cup and the shooting, as follows:

- Exhibit 18 (outside 1615 Thames, showing westbound): Mr. Duncan and Mr. Bruno run west down Thames Street, in the opposite direction of the Admiral’s Cup. Mr. Bruno lifts his phone to his ear as if to take a call.
- Exhibit 17 (outside 1615 Thames, showing eastbound): Mr. Duncan and Mr. Bruno slow down and reverse course, walking

⁸ Mr. Duncan filed his Appellant’s Brief on March 26, 2024. On April 15, 2024, State moved to stay the case pending the Supreme Court of Maryland’s decision in *Mooney v. State*. We granted the motion to stay shortly thereafter. The Supreme Court of Maryland issued its decision in *Mooney* on August 13, 2024. The State subsequently moved to lift the stay, a motion we granted, and then filed its Brief. In that Brief, the State argued, in essence, that *Mooney* was dispositive of Mr. Duncan’s authentication arguments. Mr. Duncan moved to postpone, and ultimately to withdraw his request for, oral argument, but never filed a Reply Brief answering State’s *Mooney* argument.

⁹ Exhibit 19 purported to show the RAV4 driving away. Mr. Duncan does not challenge the admissibility of this exhibit.

back towards the Admiral’s Cup, now along the northern side of Thames Street. Mr. Duncan starts to move faster near the intersection with South Broadway Street.

The trial court admitted Exhibits 18 and 17, apparently because they depicted the same events as in portions of the Admiral’s Cup footage, albeit from different views.

[DEFENSE]: So, it appears that the State is trying to bring in this evidence from the 1615 Thames Street –

[COURT]: *East and/or west.*

[DEFENSE]: East and west without a business record exception without – unless you have –

[STATE]: No.

[DEFENSE]: – the custodian of the records of the person who is in control of the footage to testify as to its veracity. So I think that there is certainly an issue with that in and of by itself. Just somebody who went and downloaded it at some point without doing anything to verify what it said and what it shows.

[COURT]: *So, first, no certification. First.*

[DEFENSE]: Well, that’s simply one way of doing – yeah. I mean, the silent, you know – there are certainly a few ways of getting videos in and one way of being silent witness. Someone who says, you know, the store owner says, “I put that camera up,” you know, “I put that surveillance system in. I know it works because I installed it and I either can testify to it or send a business representative saying that this is kept in the normal course of business.”

[COURT]: *Personal knowledge.*

[DEFENSE]: Sure, or someone who says, “I was in the store that day and this is what I saw happen,” and in the end it’s being shown on the video.

[COURT]: *But this is not either of those situations.*

...

[COURT]: With regard to what the State may be seeking to have adduced to the jury from this video, what’s the purpose of it? What’s the objective? To identify the vehicle?

[STATE]: Well, it shows the vehicle traveling westbound after – *well, first it shows immediately that zero, zero seconds it shows the Defendant as well as Luciano Bruno running away from the Admiral’s Cup in the middle of the street.*

[COURT]: Uh-huh.

[STATE]: It will then show them walking back towards that direction where they'll eventually get into the Toyota Rav4, which –

[COURT]: The westbound, then the eastbound?

[STATE]: Correct. So it shows at the end you can also see the right rear passenger, the window is down, and you can see an individual looking out.

[COURT]: *The right rear passenger, not the driver's side rear as before in the other exhibit* [(Exhibit 20¹⁰)] –

[STATE]: Right.

[COURT]: – That was down or out.

[STATE]: Correct.

[COURT]: Okay.

...

[COURT]: Anything further?

[DEFENSE]: No, Judge.

[COURT]: Overruled.

...

[COURT]: Continue.

[DEFENSE]: – I don't need to go to the steps of this on this, submit on that.

[STATE]: Do you want to do [Exhibit] 18, then, too?

[DEFENSE]: No, I'll submit. Note my same objection for this.

[COURT]: A duplicate argument, a similar ruling, and upon the record State's Exhibits 17 and 18 are moved in.

(Emphasis added).

We see no abuse of discretion in the trial court's decision to admit Exhibits 18 and 17. As above, video footage can be authenticated through circumstantial evidence. Md. Rule 5-901(b)(4); *Mooney*, 487 Md. at 730. Such circumstantial evidence can include

¹⁰ At this point in the trial, Exhibit 20 had just been admitted into evidence and it depicted exactly the events that the trial court is describing.

other video depicting the same events provided that the other video is from other sources “not connected to the police or the parties.” *McCaden v. State*, No. 1417, Sept. Term, 2023, 2025 WL 1949191, at *7 (July 16, 2025) (Graeff, J.), *cert. denied*, 492 Md. 659, 347 A.3d 443 (2025).¹¹

In *McCaden v. State*, Mr. McCaden challenged the admission of portions of three surveillance videos on the ground that they met neither the silent witness nor the pictorial testimony methods of authentication. *Id.* at *2. The trial court admitted those recordings based on pictorial testimony (for those portions after police had arrived on the scene) and circumstantial evidence (prior to their arrival), as in *Mooney. Id.*

We affirmed, concluding that there was “sufficient evidence for a reasonable juror to find that the videos more likely than not fairly and accurately depicted the events that occurred before police arrived.” *Id.* at *7. Specifically, law enforcement arrived on the scene close in time to the events in the videos, the videos were continuous and uninterrupted footage showing the same sequence of events, and the recordings were retrieved from several distinct businesses that were unrelated to one another, law enforcement, or the shooting. *Id.* “That all the videos showed the same chain of events corroborated the authenticity of each video.” *Id.*

Here, the circumstantial evidence that authenticated the 1615 Thames footage was footage from independent sources that depicted largely the same events. As to two of

¹¹ Maryland Rule 1-104 permits us to cite unreported cases for persuasive value if they are “issued on or after July 1, 2023 [and] only if no reported authority adequately addresses an issue before the court.” Md. Rule 1-104(a)(2)(B).

these sources, CitiWatch and Sagamore Pendry, Mr. Duncan raised no objection. The third, Admiral's Cup, was a business not connected to law enforcement or the shooting. The continuous sequence of events from Mr. Duncan's departure from Admiral's Cup to getting into the Rav4 in front of the Sagamore Pendry was as follows:

- Exhibit 18 (1615 Thames): Mr. Duncan and Mr. Bruno run west down Thames Street, in the opposite direction of the Admiral's Cup. Mr. Bruno lifts his phone to his ear as if to take a call.
- Exhibit 20 (the Admiral's Cup): The Toyota Rav4 drives south down South Broadway Street, crossing Thames Street and parking in front of the Admiral's Cup.
- Exhibits 17 (1615 Thames) and 15 (CitiWatch):¹² Mr. Duncan and Mr. Bruno slow down and reverse course, walking back towards the Admiral's Cup, now along the northern side of Thames Street, Mr. Duncan moves faster near the intersection with South Broadway Street.
- Exhibits 15, 17, and 20: Mr. Duncan, moving faster, and Mr. Bruno, on the phone, move diagonally across the intersection of Thames Street and S. Broadway Street towards where the Rav4 just parked.
- Exhibit 20: Mr. Duncan enters the rear passenger-side of the Rav4 and Mr. Bruno enters the rear driver-side.
- Exhibits 15, 17, and 20: The Rav4 then turns west onto Thames Street
- Exhibits 17 and 18: The Rav4 drives west down Thames Street, turns around and starts driving east again slowly.
- Exhibits 17 and 18: Midway on Thames Street, the vehicle stops and rolls down the rear passenger window, where Mr. Duncan appears to spit into the road and then roll the window back up. When weighing the admission of Exhibits 17 and 18, the trial

¹² That CitiWatch cameras are a source related to law enforcement does not detract from our analysis. None of the circumstantial factors in a circumstantial evidence analysis is individually dispositive. *Mooney*, 487 Md. at 719. Regardless, the CitiWatch footage (Exhibits 15 and 16) were admitted without objection.

court found that the moment that Mr. Bruno and Mr. Duncan entered the Rav4 was also captured in Exhibit 20.

- Exhibits 17 and 18: The car then proceeds east, in the direction of Sagamore Pendry.
- Exhibit 25 (Pendry): The same vehicle appears moments later in footage from the Pendry, driving east from where the 1615 Thames cameras left off.

That the 1615 Thames footage was not admitted under the silent witness or pictorial testimony methods of authentication is also of no moment. Circumstantial evidence was sufficient to authenticate the footage. *See Mooney*, 487 Md. at 730. As with the Admiral’s Cup footage, Mr. Duncan offers no reason for why this circumstantial evidence was insufficient.

D. Any Error in Admitting the Admiral’s Cup and 1615 Thames Footage Was Harmless.

Even if the circuit court erred in admitting the Admiral’s Cup and 1615 Thames footage, the error was harmless. “[I]n order to establish that an error was harmless, the State must show beyond a reasonable doubt that the evidence admitted in error in no way influenced the verdict.” *Gross v. State*, 481 Md. 233, 259 (2022) (cleaned up). Here, we agree with the State that there was “a plethora” of incriminating evidence against Mr. Duncan besides the footage from the Admiral’s Cup and 1615 Thames. Specifically, Mr. Duncan was placed at the Admiral’s Cup by virtue of the Visa card and accompanying receipt having been found at the bar the night of the shooting. Mr. Duncan was seen walking toward the Rav4 in the CitiWatch footage. The CitiWatch footage also showed the shooting. The rental agreement for the Rav4 bore Mr. Duncan’s name. Jail calls from HCDC, from an inmate named Joel Duncan, had the caller talking about the Rav4,

leaving his Visa card at the Admiral's Cup, and boasting about having been involved with the shooting. Given this evidence, we are convinced beyond a reasonable doubt that if the footage from the Admiral's Cup and 1615 Thames was admitted in error, it was a harmless error.

II. The Jail Calls

Mr. Duncan argues that the trial court erred by admitting jail calls from HCDC because the calls were not authenticated. Regarding Rule 5-901(b)(4), which permits authentication via circumstantial evidence, Mr. Duncan argues that the jail calls could not have been authenticated by circumstantial evidence because there was no evidence of criminal agency on his part. Regarding Rule 5-901(b)(5), which permits authentication via voice identification, Mr. Duncan argues that the jail calls could not have been authenticated via voice identification because there was no evidence identifying him as the caller.

But the jail calls weren't authenticated by circumstantial evidence or voice identification. Instead, the trial court determined that they were self-authenticating business records under Md. Rule 5-902(12).¹³ The jail calls were State's Exhibit 26. The exhibit included a business records certificate that the trial court found adequate:

¹³ Md. Rule 5-902(12) states that:

The original or a copy of a record of a regularly conducted activity that meets the requirements of Rule 5-803 (b)(6)(A)-(D) and has been certified in a Certification of Custodian of Records or Other Qualified Individual Form substantially in compliance with such a form approved by the State Court

[COURT]: The testimony of Detective Moss was that he asked a member of the Harford County Sheriff's Department to monitor calls by an individual named Joel Duncan upon learning the name of the person who contracted to rent the vehicle that was the 2019 Toyota Rav4. Correct?

[DEFENSE]: Correct.

[COURT]: And there hasn't been any testimony about why he thought to reach that individual. Of course, for reasons I can imagine that would not be proper for the jury to hear, right?

[STATE]: Right.

[DEFENSE]: Hearsay.

[COURT]: And upon doing that, apparently that request was met with some response in the form of recordings of calls responsive to that request. And the document was then made available after that by this Custodian of Records in connection with that request, notwithstanding it doesn't reference the type of media, meaning a CD-ROM of the recorded calls, of an attached record in the form of an arrest file, or some other attached records, whatever they could be. And it doesn't state that it is regarding Joel Duncan, it's regarding another person. The testimony is, however, that it was responsive to the request and that this was the certification that the State then obtained in connection with that request.

[DEFENSE]: Yes, Your Honor.

[COURT]: It is an issue, and it's not putting the cart before the horse, it is an issue of the weight, if any, to be given to the content of the jail calls and not the admissibility of the jail calls as to this certification under those circumstances. And I note the Defense objection and it's overruled.

Here, Mr. Duncan does not appeal this ruling.

Even if the jail calls did not satisfy a second or third basis for authentication, as Mr. Duncan appears to contend, that would not mean they were inadmissible. An item of

Administrator and posted on the Judiciary website, provided that, before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

evidence that is self-authenticating under Rule 5-902(12) requires no other sponsoring testimony in order to be admitted. Md. Rule 5-902 (“Subject to the conditions in this Rule, the following items of evidence are self-authenticating, and, except as required by statute or this Rule, require no testimony or other extrinsic evidence of authenticity in order to be admitted[.]”). Mr. Duncan identifies no other statute or rule, nor are we aware of any, that must be satisfied before the jail calls at issue here could be admitted.

Nor are we persuaded by Mr. Duncan’s reliance on *Donati v. State*, 215 Md. App. 686 (2014). *Donati* interprets 5-901(b)(5), applying the five-factor test from *Neil v. Biggers*, 409 U.S. 188, 199 (1972), for voice identification. *Donati*, 215 Md. App. at 740. Mr. Duncan contends that if the calls cannot be authenticated by circumstantial evidence, then *Donati* controls and the calls had to be authenticated pursuant to the *Biggers* test, which the State did not even attempt to do. Again, however, the trial court did not authenticate Mr. Duncan’s jail calls by in-court voice identification, as in *Donati*, but as a certified business record under Rule 5-902(b)(12).

III. The Flight Instruction

Mr. Duncan argues that the trial court abused its discretion by giving the flight instruction because “it was inapplicable to the facts of the case and not generated by the evidence.” Specifically, Mr. Duncan alleges the fact that he left the scene as a passenger in the Rav4 would not permit a reasonable juror to infer consciousness of guilt. Providing the jury with the flight instruction would therefore be an abuse of the trial court’s discretion. We disagree.

“The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding.” Md. Rule 4-325(c). The trial court generally has discretion to decide whether or not to give a requested jury instruction. *Carter v. State*, 366 Md. 574, 584 (2001). The court’s discretion is not unlimited, however. Indeed, Rule 4-325(c) has been interpreted to obligate trial courts to give a requested jury instruction where a three-part test is met: “The instruction must state correctly the law, the instruction must apply to the facts of the case (e.g., be generated by some evidence), and the content of the jury instruction must not be covered fairly in a given instruction.”¹⁴ *Molina v. State*, 244 Md. App. 67, 147–48 (2019); *see also Carroll v. State*, 428 Md. 679, 689 (2012). Ultimately, we review the decision to give or deny jury instructions for abuse of discretion. *Nicholson v. State*, 239 Md. App. 228, 239 (2018).

With specific regard to flight instructions, the Supreme Court of Maryland, in *Thompson v. State*, 393 Md. 291 (2006), held that it may be warranted where the following four inferences could reasonably be drawn based on the facts:

that the behavior of the defendant suggests flight; that the flight suggests a consciousness of guilt; that the consciousness of guilt is related to the crime charged or a closely related crime; and that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson, 393 Md. at 312.

¹⁴ Mr. Duncan concedes that it is both a correct statement of law and that its content was not covered by other instructions already.

Flight is not dependent on the defendant running from the scene. *Hoerauf v. State*, 178 Md. App. 292, 325 (2008). It is enough that the defendant move from one place to another as long as there are “attendant circumstances that reasonably justify an inference that the leave was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt[.]” *Id.* at 325–26.

Here, because there was evidence from which a reasonable jury could draw the four *Thompson* inferences, we see no abuse of discretion in giving the flight instruction.

First, Mr. Duncan’s behavior suggests flight. While he was not the driver, he did lease the Rav4 that he rode in to flee. Moreover, the car had been parked in such a way as to permit a quick exit (backed into the parking space in front of the Pendry).

Second, the way that Mr. Duncan left the scene suggests a consciousness of guilt. The car sped away from the scene and its doors were safely usable, allowing a passenger hypothetically in the wrong place at the wrong time to exit the vehicle. In fact, another suspect did fall out of the car while it left that location (and get back in). Mr. Duncan stayed in the Rav4, however.

Third, to the extent that Mr. Duncan was conscious of his implication in a crime, it could only be the shooting of Mr. Ariam Rodriguez. Immediately after the shooting, the car hurriedly departed the scene, leaving the victim lying on the ground.

Finally, Mr. Duncan’s consciousness of guilt suggests actual guilt of the shooting. The gun was fired through the window of the seat where Mr. Duncan—who was in

possession of a gun at the time and confessed to having drawn a gun on the victims in his jail calls—sat.

Mr. Duncan’s reliance on *State v. Salazar*, 541 P.2d 1157 (Ariz. 1975), does not persuade us otherwise. In *Salazar*, the Supreme Court of Arizona held that “[t]he fact that the defendant is present as a passenger in the vehicle involved in the flight is not sufficient **in and of itself** to support the giving of an instruction on the ramifications of flight.” *Salazar*, 1541 P.2d at 1158 (emphasis added).

Although Mr. Duncan and Mr. Salazar were both passengers in the respective vehicles leaving the crime scenes, *Salazar* is materially different from this case. In *Salazar*, the vehicle left the crime scene at a normal speed and only sped away when police signaled the car to pull over. *Id.* Meanwhile, Mr. Salazar apparently urged the driver to stop the vehicle to no avail. *Id.* at 1158-59. Here, by contrast, Mr. Duncan was not merely a passenger in a fleeing vehicle. Instead, he had rented the vehicle. More important, he was in possession of a firearm at the time and made no move to provide assistance to the victim or exit the vehicle when he had the chance. There is, likewise, no evidence that Mr. Duncan tried to stop the car from leaving the scene. The trial court did not abuse its discretion in giving the flight instruction here.

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