Circuit Court for Baltimore County
Case No.: C-03-CR-21-4840

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1167

September Term, 2022

ANTHONY JOSEPH GEER

v.

STATE OF MARYLAND

Graeff,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 12, 2023

*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).

A jury in the Circuit Court for Baltimore County convicted Anthony Geer, appellant, of attempted first-degree murder, attempted second-degree murder, and first-degree assault for strangling his former girlfriend, Rachel Knop, and second-degree assault for kicking an eyewitness who intervened, Tina Simmons. Geer was sentenced to 30 years, with ten years suspended, for attempted murder; a consecutive term of ten years, with three suspended, for the assault on Simmons; plus five years of supervised probation. He raises the following four questions for our review:

1. Did the trial judge abuse [his or her] discretion by admitting a video recording into evidence?
2. Was Mr. Geer deprived of his right to a fair trial by the prosecutor's action?
3. Was Mr. Geer denied his constitutional right to confront his accuser?
4. Is the evidence legally insufficient to sustain the convictions?

We conclude that the trial court did not err or abuse its discretion in admitting the challenged video, rejecting Geer's complaint about the prosecutor's gesture, and denying his motion to dismiss on the ground that Knop did not testify. Because the evidence amply supports Geer's convictions, we will affirm the judgments.

BACKGROUND

Geer's convictions are predicated on events that took place on November 12, 2021, at a Days Inn in Towson. The State presented testimony from Tina Simmons, a hotel housekeeper who interacted with Rachel Knop and Anthony Geer earlier that evening, then intervened when she witnessed Geer assaulting Knop in a hallway; Edward Tindel, the hotel security guard who managed the security system that recorded the altercation between

Geer and Knop; and Officer Mace, a Baltimore County Police officer who responded, recorded body camera video, and arrested Geer.

In addition to photographs showing Knop's injuries, the trial court admitted into evidence video clips and screenshot photographs from recordings that the officer made with her body camera while she was reviewing video recorded by the hotel's security camera and while she was arresting Geer. The admitted "video of a video" shows two excerpts from the body camera video that the officer made that evening, while she was reviewing the hotel's security camera video with Ms. Simmons and Mr. Tindel.

Edward Tindel testified that he had been "a security guard for the hotel" for 18 years. He confirmed that he "is in charge of the video surveillance at that location[,]" which he described as "about a hundred cameras and . . . encompasses the entire property. We can see what happens on . . . the property day and night. It operates twenty-four hours a day." The video "comes to a head in" his office at the hotel, which has "a very large monitor[.]" According to Mr. Tindel, the time and date on the security cameras "are pretty much accurate" and checked against "the clock on the wall . . . right afterwards[.]"

On November 12, 2021, Tindel "wasn't working but . . . was called to work" because "an incident happened on the property and the police needed to see footage of what happened." In his office, he reviewed the hotel's security camera video capturing that incident, with Officer Mace and Tina Simmons. The single camera that recorded that video was located in the "hallway . . . near room 116." The time and date on the video are "very reliable[.]"

Officer Mace captured that security camera footage on her body worn camera. Although the security camera video "stopped at times" and "was fast forwarded at times" and "actually jumps a couple times," Tindel affirmed that "the system [was] reliable that evening" and that "the things that were on that video are the things that [he] saw that evening[.]" Before testifying that day, Mr. Tindel reviewed the body camera video with the prosecutor, confirming that it showed the same security camera video that he had seen in his office on the evening of the incident.

According to Mr. Tindel, Officer Mace "came to attempt to extract that video from the surveillance" system, but she was not able to do so. Likewise, "a crime lab technician from Baltimore County came and attempted to extract the video from the DVR[,]" but was not successful. On cross-examination, Tindel testified that he did not know why they were unable to extract the video. Over a continuing defense objection, the court admitted the body camera video as State's Exhibit 1, "for the reasons . . . stated yesterday."

Officer Mace, whose first name is not in the record, testified that she responded to the hotel at 9:30 that evening, for "a domestic violence call" involving a woman being "strangled[.]" When the officer met her in the hotel lobby, Ms. Knop "was hysterical, disheveled" and "had a lot of bruises and scratches." The officer also discovered that "the phone cords had been cut" inside the room where the couple had been staying.

Officer Mace spoke with Ms. Simmons and Mr. Tindel in "[t]he security office." While the three reviewed footage from the hotel's security system, she "documented what [she] saw from the exterior of the room that the cameras picked up with time stamps" by "using [her] body worn camera." Her body camera was already "rolling the whole duration

of this incident at The Days Inn." But "through previous experiences," she has "always recorded, taken it off [her] shoulder and held it up to the monitor . . . should, for whatever reasons, we not be able to get a copy." She also uses her body camera video to make sure her written reports are accurate, by "get[ting] all the time stamps off of surveillance, wherever it might be at."

As Officer Mace was preparing to take Ms. Knop to a hospital, she saw Geer "standing off to the side of the building" and arrested him. Her body camera recorded that arrest, and that footage also was admitted into evidence and played for the jury.

Officer Mace took Ms. Knop to the hospital "for a SAFE exam[,]" which is "for strangulation as well as rape victims" because "[t]hey can do x-rays, all sorts of photography, testing." But because of "the COVID pandemic, she was not given a SAFE exam in a prompt manner."

After waiting five hours, the officer "call[ed] for our crime lab unit," which responded and took photos of injuries that were admitted into evidence, to her neck, shoulder, back, forearm, wrist, elbow, knees, and foot. "She was beginning to bruise" and her "skin was broken in the neck region, and she had scratch marks." "[S]he had imprint marks" on her neck, along with "bruises" and "scratches." After Officer Mace "returned to the precinct to start some paperwork and process Mr. Geer[,]" Ms. Knop called the officer to say "she was ready to go home" because "she wasn't getting the SAFE exam[.]"

Officer Mace made an in-court identification of Geer. She also reviewed the video recorded on her body camera, identifying Knop, Geer, and Simmons as they appear on the

hotel's security camera video, as well as two sets of screenshots from that video, as accurate representations from the video she recorded with her body camera.

On cross-examination, the officer testified that she was unable to obtain the hotel's security camera video after making "multiple attempts over a week period, different USB's, I just didn't know how to collect it from that system." She also "submitted a request" for a crime lab technician. She was "not sure what happened, but for whatever reason, they advised that they were unable to obtain it."

Defense counsel also asked Officer Mace about the portion of the security camera video showing "another person that comes out of . . . a different hotel room." The officer "made multiple attempts to locate" that individual, a "white gentleman[,]" but "was unable" to do so. Although "it appeared he observed the incident and left the location and did not return[,]" she testified that he "wasn't in that room. I couldn't i.d. him from what I had." In addition, she "knocked on a few doors" in the hotel, "but nobody was willing to talk to" her.

Hotel employee Tina Nicole Simmons testified about her encounters with Knop and Geer. On that date, she was working at the hotel as a housekeeper. Around 7 p.m., she helped Ms. Knop, who was alone and reported that her phone was not working, move from Room 115 to an adjacent room, either Room 116 or 118.

While Simmons was cleaning Room 115, the same man she later saw assaulting the woman "came and was looking for her and being real angry, asking . . . where she was at and where his things were." Simmons "told him that [she] couldn't tell him confidential" information and that "he would have to go to the office," so that "if his name was on the

folio . . . to tell who's in what room[,] . . . maybe he could find out . . . where she was at, but [she] was not able to tell him . . . where she was." "[A]t that point, . . . he was like bitch, . . . he wanted his things[.]" "He left and [she] didn't see him for a while until everything happened when [she] was walking through the tunnel" and saw "him choking her."

Around 9 p.m., Ms. Simmons was walking from one building to another when she saw "these two individuals" that she had seen earlier that day. The "guy" was "on top of [the] lady choking her, beating her head into the ground." He had "his hands around her neck" and said, "bitch, I'm going to kill you."

After "about a minute[,]" Simmons "intervened and got him off of her and tried to keep her safe and tried to keep her away from him." By the time she "got to her, she was actually like passed out" and "it took a couple seconds for her to come to[,]" "at least thirty to forty-five seconds[.]" At that point, Simmons recounted, "he's telling me to mind my business" while "telling her he loves her, that he won't . . . do anything to hurt her" and the "[n]ext minute . . . that he's going to kill her."

After Ms. Simmons "got her up off the ground[,]" he continued to tell the housekeeper "to mind my business and leave them alone[.]" While Simmons was "trying to walk her away[,]" Geer was "grabbing her." Then, "right in front of the room where [they] were at, is . . . a hill. And he pushed her down there[.]" Simmons "assisted [Knop] up the hill . . . and was trying . . . to get her to come to the lobby so we could lock her in the lobby area so she could be safe."

As they "were walking to the lobby, he kept on following and . . . grabbing" Knop "by her hair at one point." After "he grabbed her pocketbook and her phone," he "threw" the phone and "stomped on" it, so "it was cracked and broken." As Simmons "was bending over to get her pocketbook and her phone," he kicked Simmons in her "backside[,]" "hard enough to try to make" her fall. Simmons "kept on telling him he needs to leave her alone and leave me alone, stop talking to me like that and . . . called him out his name."

After getting Knop inside the lobby, police were called. Simmons knew the responding officer, Office Mace. She also watched a surveillance video with the officer and Mr. Tindel, the hotel's "security guard[,]" talking about "[t]he portion" she was in. They also watched "the live feed" from the hotel's security cameras, as Geer tried to open different doors. He "was arrested" by police after he "pulled on the security guard's door[.]"

At trial, Ms. Simmons narrated events shown on the body camera video, explaining that when she approached, he was "on top of her." As she was "walking up[,]" the victim "was out of it. She was just like coming to" and kicked him. Knop was "trying to get him to stop messing with her. He, he just wouldn't leave her alone. And . . . when [Simmons] walked up, he was telling her that he was going to kill her." As Simmons got "between them[,]" the victim "was just crying" and "pleading[.]" After he pushed Knop down the hill, while Simmons was helping her toward the lobby, he continued to follow and taunt them, then kicked Simmons in the back.

On cross-examination, Ms. Simmons testified that she reported to police officers that she observed Ms. Knop with a long hunting knife. On re-direct, she clarified that "[h]e

had . . . the pouch, . . . what the knife goes into" and that "[w]e couldn't find a knife at first. Later on, I think, Officer Mace found a knife in the room." She did not see a knife during the hallway altercation.

Rachel Knop did not testify at trial. As discussed below, the parties stipulated that she had been hospitalized that day. *See infra*, Part III. Pursuant to another stipulation, the State also presented an audio excerpt from a jailhouse telephone call that took place the previous week, on July 12, 2022, in which Geer asked Knop not to appear in court, saying, "Please don't show up. They're going to put me away if you do." *See infra*, Part IV.

We will add material from the record in our discussion of the issues raised by Geer.

DISCUSSION

I. Body Camera Video

Geer contends that the trial court erred in admitting excerpts and stills from Officer Mace's body camera video, because that evidence was not adequately authenticated, violated the best evidence rule, and "was misleading." For reasons that follow, we disagree.

A. Standards Governing Authentication of Photo and Video Evidence

Maryland Rule 5-901(a) provides that "[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." Among the "examples of authentication or identification conforming with the requirements of this Rule" are:

> (1) **Testimony of Witness with Knowledge**. – Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> * * *
>
> (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.
>
> * * *
>
> (9) **Process or System**. – Evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.

Md. Rule 5-901(b).

"Evidence is authenticated where a reasonable juror could find, by a preponderance of the evidence, that the evidence is what the proponent claims." *Irwin Indus. Tool Co. v. Pifer*, 478 Md. 645, 670 (2022). Because a 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[,] [t]he threshold of admissibility is . . . slight." *Jackson v. State*, 460 Md. 107, 116 (2018) (quotation marks and citation omitted).

In *Prince v. State*, 255 Md. App. 640, 651-54 (2022), *cert. denied*, 482 Md. 746 (2023), this Court reviewed standards and methods for authenticating video and photographs recorded by a commercial security camera:

> This Court must determine whether the trial court abused its discretion in finding that the surveillance footage was properly authenticated before admitting it into evidence. *Donati v. State*, 215 Md. App. 686, 708 (2014). 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." *King v. State*, 407 Md. 682, 697 (2009) (cleaned up).

* * *

> Because photos and videos can be manipulated, "[c]ourts . . . require authentication of photographs, movies, or videotapes as a preliminary fact determination . . . ." *Washington* [*v. State*, 406 Md. 642, 651-52 (2008)]. The admissibility requirements for videotapes are the same as the requirements for photographs. *Id*. at 651. Photographs and videotapes may be authenticated either of two ways: through the pictorial testimony theory of authentication or the "silent witness" theory of authentication. On the one hand, "the pictorial testimony theory of authentication allows photographic evidence to be authenticated through the testimony of a witness with personal knowledge"; on the other, the "silent witness" theory "authenticates a photograph as a mute or silent independent photographic witness because the photograph speaks with its own probative effect." *Id*. at 652 (cleaned up).

Id. at 651-52.

In that case, the State alleged that Prince "summoned five co-workers to come closer, then he shot each of them[,]" killing three. *Id*. at 646. The business owner who authenticated security camera footage of the shootings, Mr. Kucuk, testified that the video equipment was controlled from his office, with cameras throughout the business property; "that he, his business partner, and a 'technical person in charge of the cameras and making sure they are working and connected' were the 'caretaker[s]' of the video"; and "that the cameras were used on a daily basis." *Id*. at 649 (alteration in original). He explained that the "DVR and . . . recorder" "automatically" recorded "all around the building" and that he could access video from his cell phone. *Id*. at 650. On the day of the shooting, he "physically showed" police officers "how to access the video and the past of it." *Id*. He watched the officers while they took a copy and also watched the video itself. *Id*. According to Mr. Kucuk, the portion proffered by the State was one that he viewed and "couldn't be" changed. *Id*. at 650-51.

Like Geer in this case, Prince also relied on *Washington* to challenge the State's silent witness authentication of the challenged video footage. *See Prince*, 255 Md. App. at 649-50, 653. Acknowledging the holding in *Washington* that video evidence may be authenticated under the silent witness theory by "'presentation of evidence describing a process or system that produces an accurate result[,]'" this Court noted that "Maryland courts have not adopted 'any rigid, fixed foundational requirements for admission of evidence under'" this method. *Id*. at 652 (quoting *Washington*, 406 Md. at 652, and *Jackson v. State*, 460 Md. 107, 117 (2018)) (some quotation marks omitted).

We then examined the decision and rationale in *Washington*, where

> the State introduced surveillance footage of a shooting that occurred outside of a bar during the direct examination of the bar's owner, Mr. Kim. The footage was "compiled from the various cameras and was transferred to a VHS tape" by a technician, a process unknown to Mr. Kim. The State relied on the "silent witness" theory of authentication and the trial court admitted the tape into evidence over defense counsel's objection. The Court of Appeals held that there was insufficient foundation as to "the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures." Because the recording was "made from eight surveillance cameras, was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD," the Court held that the foundation was insufficient.

Prince, 255 Md. App. at 653 (quoting *Washington*, 406 Md. at 646-47, 655) (citations omitted).

Writing for this Court, Judge Nazarian distinguished the inadequate silent witness authentication in *Washington* from the State's authentication of video footage showing the workplace shooting in *Prince*. "[A]lthough the system involved 16 cameras" in *Prince*, there was "no evidence that the footage was 'compiled from the various cameras.'" *Prince*,

255 Md. App. at 654 (quoting *Washington*, 406 Md. at 646). Nor was the relevant footage copied multiple times. Instead, "[t]he surveillance footage . . . took the form of a 'simple videotape' and required a less detailed foundation than the more complicated footage at issue in *Washington*." *Id*. at 654.

We held that "the State established that Mr. Kucuk was one of the 'caretaker[s]' of the surveillance footage" based on testimony

> that the cameras were used on a daily basis and that they automatically recorded what they captured. He explained that the cameras did not need to be turned on and that they were running constantly; he was able to access the live feed from the cameras on his cellphone but needed to be in his office to access recorded footage. Although Mr. Kucuk did not access and download the recorded footage for the police himself, he knew the process and was able to show the officers how to do it while he was present. Mr. Kucuk also watched the video that the police officers downloaded and was able to identify State's Exhibit No. 1 as the same surveillance footage. Moreover, there was no evidence that the cameras were not working properly or that the video had been altered.

Id. at 653.

Because the caretaker witness "knew the process by which the police could obtain the video" showing "the viewpoint of one camera[,]" *id*. at 654, we concluded that "[t]he State's foundation authenticated the surveillance footage sufficiently before it was admitted into evidence." *Id*. at 653. "Given that '[t]he threshold of admissibility is . . . slight,' . . . and that the tape did not undergo any editing before being viewed by the police and used during trial," we held "that the State laid a sufficient foundation and that the court did not abuse its discretion in admitting the surveillance tape into evidence." *Id*. at 654 (quoting *Jackson*, 460 Md. at 116).

B. Relevant Record

After selecting a jury, court and counsel addressed Geer's motions in limine, including one to exclude the video recorded on Officer Mace's body camera, showing portions of the video recorded by a hotel security camera. Noting that significant portions of the altercations leading to Geer's convictions were captured by one of the hotel's security cameras, the prosecutor proffered that, despite "a request for a technician to go and get" that recording, police were "unable to recover" it because "the video was gone. It was either time lapsed, it was too long."

But Officer Mace had used her body camera to record footage from the hotel's security camera while she was reviewing it with Mr. Tindel and Ms. Simmons that night, on a screen in the security manager's office. As her body camera was recording, Officer Mace asked the security manager to fast-forward and to stop the hotel security camera video at times, causing "a skip in motion." The length of the original recording was thirteen minutes and thirty-one seconds, but with such "jumps" and "skips[,]" the video recorded by Officer Mace's body camera was shortened to five minutes and thirty-six seconds. The State planned to mute the body camera video because it would not be "appropriate for the jury to hear the witness, the officer and the manager narrate what's going on."

The trial court reviewed the portions of the body camera video that the State sought to admit through the testimony of the police officer, security manager, and housekeeper who were present while that video was filmed, as well as the testimony of Ms. Knop and Ms. Simmons, who were present during the hallway altercation and shown in the video. Citing *Washington*, defense counsel objected that "this is exactly the type of evidence that

should be excluded because it's been manipulated to the point where we cannot see what is genuinely happening on the screen."

In response, the State proposed to clip the body camera video "more," but insisted that the portions showing "two separate strangulations" were relevant and admissible. Specifically, the prosecutor suggested that he could create two excerpts from the body camera video, showing in "real speed" as indicated by visible time stamps (1) Geer holding Knop from behind in a "rear naked choke" until she became limp, and (2) Geer on top of Knop with his hands around her neck, until Simmons separated them. Still screenshots made from these clips would show Geer and Knop at different moments during those altercations.

Crediting the State's evidence that good faith efforts to download the footage from the hotel security system had been unsuccessful, the court rejected defense objections that the body camera video "should be excluded under the best evidence rule" and that "modifications of this recording" made it inadmissible under the video authentication standards applied in *Washington v. State*. The court ruled that the State could use the two clips showing "the rear naked choke and the other strangling as a real time." In addition, the court would allow the defense to "put in whatever of this they want" and to "advise the jury of the length of the video, the reduction of the video and certainly, . . . that manipulation, but I don't . . . think it's manipulated in the sense that *Washington* discusses it or manipulated for any particular purpose." Defense counsel was granted a continuing objection.

Before trial began the next day, the prosecutor advised the court that the victim, Rachel Knop, might not be physically able to testify, but that the State would proceed with its remaining witnesses and evidence. After describing the surveillance camera system, Mr. Tindel testified its operations as accurate as to time and date, and checked against "the clock on the wall[.]" In particular, the single camera that recorded the video that Officer Mace later captured on her body camera was located in a "particular hallway . . . near room 116" and was "very reliable" in showing an "accurate time and date[.]" Acknowledging that portions of the security camera video were fast-forwarded and that it skipped, he testified that "the things that were on" the body camera video were "the things [he] saw that evening" on the security camera video. Based on that evidence, and over renewed defense objection, the court admitted the body camera video clips and still photos taken from them.

C. Best Evidence Challenge

Geer first contends that the body camera video should not have been admitted because it violated the best evidence rule. We disagree.

"Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court." *Donati v. State*, 215 Md. App. 686, 708 (2014). The best evidence rule, set forth in Md. Rule 5-1002, provides that "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, *except as otherwise provided in these rules* or by statute." (Emphasis added.) In practice, these exceptions sometimes appear to swallow this rule, converting it to a mere preference for originals that may be overcome when there is a reasonable basis for relying

on replicas, because under Md. Rule 5-1004(b), the contents of an original "writing, recording, or photograph may be proved by evidence other than the original if . . . [n]o original can be obtained by any reasonably practicable, available judicial process or procedure[.]"

Consequently, courts have long recognized that "[t]he best evidence rule exists to express a preference for introducing originals over copies of writings[,]" by "stat[ing] a preference for original documents," without "foreclos[ing] use of secondary evidence after a proper foundation has been laid showing good and sufficient reasons for the failure to produce the primary evidence." *Gordon v. State*, 204 Md. App. 327, 347 (2012) (cleaned up), *aff'd*, 431 Md. 527 (2013). Reasons other than '"[i]ntentional destruction to gain an unfair advantage[,]"' including '"[c]arelessness, recklessness, ordinary negligence, and even gross negligence[,] are all satisfactory explanations' for the absence of an original" and for courts to admit secondary evidence. *State v. Cabral*, 159 Md. App. 354, 385 (2004) (quoting Joseph F. Murphy, Jr., *Maryland Evidence Handbook*, § 1104(B)(3), at 461 (3d ed. 1999)). For example, in *Cabral*, this Court affirmed the admission of testimony about a traffic stop after the officer's DVD failed to play because of "unknown technological problems[,]" despite the prosecutor's "repeated, good faith efforts to play the recording," because there was no suggestion "of any intentional misconduct or bad faith on the part of the State." *Id.* at 385-86.

Here, as in *Cabral*, the State's attempts to obtain the original security camera video were diligent and in good faith, but unsuccessful for unknown technological reasons. Officer Mace testified that she recorded what she saw on the video played by Mr. Tindel

on the hotel's security system that evening because she found such recordings helpful in preparing her reports and useful if the original video became unavailable. Although she made "multiple attempts over a week period" to obtain that video from the hotel's security system, she was unable to do so. Both she and Mr. Tindel also recounted that the video could not be extracted by a crime lab technician for unknown reasons. Absent any suggestion of misconduct or bad faith by the State, the trial court did not abuse its discretion in admitting the body camera video and still photos over Geer's best evidence objection.

D. Misleading/Manipulation Challenge

We also are not persuaded by Geer's alternative objection that the challenged video was too manipulated to be authenticated under the silent witness method. Although Geer asks this Court to compare these facts to *Washington*, we conclude that Officer Mace's body camera video, like the security camera video in *Prince*, was adequately authenticated.

Here, in contrast to *Washington*, the challenged body camera video was not compiled from eight surveillance cameras, or created by an unidentified person via an unknown process involving transfers from cameras to a CD to a videotape. Although it is "video of a video[,]" Officer Mace explained how her body camera works and the circumstances in which she recorded what she was seeing on the hotel security camera video. Her authenticating testimony was corroborated by the two other people who were present while she used her body camera to record what the hotel security camera video was playing on the large monitor in Tindel's office. Moreover, as in *Prince*, the security camera video shows footage from a single camera in a fixed location, as that footage was played by the caretaker of that security system, who testified about how the system and cameras

operate, their reliability, and that those images accurately showed the premises in real time displayed on the video.

The record also refutes Geer's contention that "[t]he witnesses did not state clearly enough that the video admitted as State's Exhibit #1 'fairly and accurately represents the scene . . . it purports to depict as it existed at the relevant time[,]' as required by *Washington v. State*, 406 Md. at 652." Both Mr. Tindel and Ms. Simmons testified that the body camera video showed what they observed when the hotel security camera video was played that night. In addition, Ms. Simmons authenticated the identities of Geer and Knop on the video, based on her face-to-face interactions with each one earlier that evening and on what she witnessed when she intervened to stop Geer's assault on Knop. Most importantly, Simmons also testified that the clips showed Geer's assault on Knop as she observed it, then stepped in to help.

Nor are we persuaded by Geer's complaints that the body camera video was manipulated and misleading because of fast-forwarding and "skips" that took place while Mr. Tindel, Officer Mace, and Ms. Simmons were reviewing the security system video. In response to that defense objection, the court limited the State to two clips that did not contain any such time discrepancies. As a result, the jury did not view any manipulated parts of the security camera video, and the two clips it did see were authenticated by three eyewitnesses who authenticated that they watched "the same" footage on November 12, 2021, and one eyewitness who observed the assaults as they occurred.

Based on this record, the trial court did not abuse its broad discretion over the admission of video evidence in ruling that the State adequately authenticated the body

camera video clips and screenshots, by establishing that they were what the State claimed them to be – real-time recordings of relevant portions of Geer's assault on Knop.

II. Prosecutor's Gesture

Geer next contends that his constitutional due process rights were violated when the prosecutor made a prejudicially suggestive gesture during Officer Mace's in-court identification of him at trial. The State contends that "[t]his issue was not preserved for review, and this Court should not consider it." Despite gaps in the transcript, we are satisfied that there was no error, much less plain error, in the trial court's rejection of Geer's claim that the prosecutor's gesture unfairly targeted him.

A. Relevant Record

During the State's direct examination of Officer Mace, the prosecutor asked whether she was "able to identify" the persons shown on her body camera video:

OFFICER: Yes, sir.

[PROSECUTOR]: Who'd you identify them as?

OFFICER: So, I identified them as victim Knop and then Anthony Geer.

[PROSECUTOR]: Okay and do you see Mr. Geer in the courtroom today?

OFFICER: Where would I be looking?

[PROSECUTOR]: Look around, --

OFFICER: Oh, yes. I'm sorry, I'm sorry. I'm all, I'm never on this side.

[PROSECUTOR]: That's okay.

MR. GEER: Did he just point to me?

OFFICER: Yes.

[DEFENSE COUNSEL]: Your Honor, if we may approach?

THE COURT: Yes.

(BENCH CONFERENCE – VERY DIFFICULT TO HEAR)

THE COURT: On the record, got it right this time.

[DEFENSE COUNSEL]: Your Honor, if we could just let the record reflect that the State's Attorney is pointing at Mr. Geer.

[PROSECUTOR]: I did?

MR. GEER: Yeah, you pointed directly at me.

[PROSECUTOR]: Just now?

MR. GEER: Yes.

[PROSECUTOR]: (inaudible) look around.

THE COURT: Okay and what I, I'll indicate what I saw is that he, he made a sweeping gesture from the jury to the opposite side of the courtroom, which is where Mr. Geer is (inaudible).

[PROSECUTOR]: (inaudible).

THE COURT: (inaudible) because it was a sweeping gesture from the jury box, which would be [the prosecutor's] left.

[PROSECUTOR]: Right. Correct.

THE COURT: To his right.

[PROSECUTOR]: (inaudible).

THE COURT: With one of your hands, I forget which hand it was. And my recollection of what happened is that the officer looked at the jury and swept the courtroom. And was like oh, and she (inaudible) Mr. Geer.

STATE: Yeah, and (inaudible).

THE COURT: Again, from my view it's somewhere in between what you two are saying.

[DEFENSE COUNSEL]: Just wanted to (inaudible).

THE COURT: And, and I, and I'm not, again, the ultimate (inaudible) appeal comes up on appeal. So, noted for the record. Anything further?

[DEFENSE COUNSEL]: No.

[PROSECUTOR]: No, Your Honor.

THE COURT: Thank you.

(END OF BENCH CONFERENCE)

B. Parties' Contentions

Geer contends that, "[n]otwithstanding" his trial counsel's response, "No," to the court's end-of-conference query whether there was "[a]nything further[,]" "the trial judge should have recognized that the prosecutor's gesture may have aided or enabled Officer Mace's identification." In Geer's view, the court's "failure to step in to take remedial action violated [his] right to due process and to a fair trial[,]" warranting reversal of his convictions. Acknowledging that Md. Rule 8-131(a) requires appellate issues to have been "raised in or decided by the trial court," Geer requests plain error review on the ground that "the prosecutor's gesture may have enabled Officer Mace to identify him before the jury[,]" which prejudiced his defense because "the prosecution's identification evidence at his trial was infirm" given that Ms. Simmons "was never asked to identify Mr. Geer in the courtroom."

The State counters that "[t]his issue was not preserved for review, and this Court should not consider it" because "Geer's request for plain-error review fails all four prongs" for such relief, "primarily because there was no error" and no infringement of his constitutional rights to a fair trial and due process.

C. Plain Error Standards

Ordinarily, we will not review an issue unless it has been raised in or decided by the trial court. *See* Md. Rule 8-131(a). Although we may exercise our discretion to address unpreserved issues, appellate courts should rarely do so because

> considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007). *See Ray v. State*, 435 Md. 1, 23 (2013).

In light of such considerations, appellate courts consistently have held that, before exercising

> discretion to find plain error, the following four conditions must be satisfied:
>
> > (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [ ] proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Beckwitt v. State, 477 Md. 398, 464 (quoting *Newton v. State*, 455 Md. 341, 364 (2017)), *cert. denied*, 143 S. Ct. 216 (2022). In deciding whether to exercise such discretion, we are mindful that appellate review of unpreserved issues is "a rare, rare phenomenon[,]" *Morris v. State*, 153 Md. App. 480, 507 (2003), "reserved for those errors that are

compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Newton*, 455 Md. at 364 (quotation marks and citation omitted).

D. Analysis

As Geer concedes, defense counsel questioned the prosecutor's gesture, but did not seek further remedy. After requesting a bench conference, she did not lodge an objection or request remedial relief, such as an instruction to the jury. Although we cannot discern what was said during the portions of the transcript marked as inaudible, when the court asked whether there was "anything else," defense counsel answered "no." Instead, Geer now seeks plain error relief.

We are not persuaded that this case features the type of error, unfairness, and prejudice warranting that request. "The conduct of the trial, including identifications made at trial, is left to the discretion of the trial judge." *Conyers v. State*, 115 Md. App. 114, 122 (1997). As the transcript shows, the trial court rejected Geer's description of the gesture, instead finding that the prosecutor "made a sweeping gesture from the jury to the opposite side of the courtroom, which is where Mr. Geer is (inaudible)." When Geer and defense counsel insisted that the prosecutor had gestured toward the defense table, the court disagreed, stating that, "my recollection of what happened is that the officer looked at the jury and swept the courtroom. And was like oh, and she (inaudible) Mr. Geer." Absent any contradictory evidence, we cannot say that the court's factual finding about what it observed is clearly erroneous.

Nor are we persuaded that Geer's "substantial rights" were prejudiced in a manner that deprived him of a fair trial. Officer Mace's identification of Geer as the person she

saw on the video was hardly a surprise, or contested by Geer, given that she arrested him at the hotel, that Tina Simmons identified him as Knop's assailant, and that both of those events were captured on video shown to the jury.

Moreover, even if suggestive and properly challenged, an in-court identification generally does not warrant appellate relief for reasons that this Court recognized long ago:

> Even to use the word "suggestive" to condemn such a procedure is to import the specialized jargon of extrajudicial identification law into a legal region where it is not spoken. Any in-court identification of a defendant seated at the trial table is, by its very nature, in a layman's sense of the word, "suggestive." It is self-evidently so, and all parties know it and always have known it. It is nevertheless the standard procedure that is almost always routinely followed. Whatever its suggestiveness, it is done in full view of the jury which is able to weigh it for what it is. Counsel, moreover, is freely permitted to argue such weight or lack thereof to the jury. An in-court identification is not something that invokes, as a matter of law, any exclusionary principle.

Conyers, 115 Md. App. at 123.

Because we discern neither error, nor constitutional prejudice here, we decline Geer's request for plain error relief based on the prosecutor's gesture.

III. Motion to Dismiss

Geer also contends that the trial court erred in denying his motion to dismiss all charges on the ground that because Ms. Knop did not testify, he was denied his constitutional right of confrontation. We agree with the State that the Confrontation Clause was not implicated in the circumstances presented here.

This Court reviews the denial of a motion to dismiss *de novo*, for legal error. *Myers v. State*, 248 Md. App. 422, 430-31 (2020). Because "[t]he proper scope of a constitutional

right, and its application to a particular set of facts, are issues of law[,]" we also review those matters *de novo*. *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 339 (2020).

To be sure, criminal defendants have a constitutional right "to be confronted with the witnesses against [them.]" U.S. Const. amend. VI. Likewise, under Article 21 of the Maryland Declaration of Rights, "in all criminal prosecutions," the accused has a right "to be confronted with the witnesses against him" and "to examine the witnesses for and against him on oath[.]" Md. Const. Decl. of Rts. art. 21.

The Confrontation Clause prohibits admission against the accused of out-of-court statements by a non-testifying declarant when there has been no opportunity for cross-examination. *See Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). Under *Crawford*, and its progeny, the right of confrontation is implicated only when there is such a testimonial statement. *See Cooper v. State*, 434 Md. 209, 233 (2013). Because the "ultimate goal is to ensure reliability of evidence," *Crawford*, 541 U.S. at 61, the Sixth Amendment right applies to witnesses "who bear testimony" against the accused, either by actually testifying at trial or by making a testimonial out-of-court statement that is admitted against the accused. *See Crawford*, 541 U.S. at 51-52.

Rachel Knop did neither. Instead, the record shows that after the jury was selected, but before trial began the next morning, the prosecutor advised that she came to the courthouse but was physically unable to take the witness stand, then taken by medics to the hospital. After court and counsel debated what the jury should be told, they ultimately agreed to read the following stipulation, which the court read to the jury

> [I]t is hereby stipulated and agreed by and between the State of Maryland and . . . the attorney for Anthony Geer, under indictment number CR-21-004840, that Rachel Knop was in the hospital yesterday morning and returned home in the afternoon.
>
> This morning, Ms. Knop came to the courthouse, but was taken by medics back to the hospital and is unable to testify.

Because Knop did not testify, and the State did not offer any of her out-of-court statements into evidence, Geer did not have a Sixth Amendment right to confront her at trial. For that reason, the trial court did not err in denying Geer's motion to dismiss the charges as a result of Knop's failure to testify.

IV. Sufficiency Challenges

In his final assignment of error, Geer challenges the sufficiency of the evidence supporting his convictions. In support, he cites five "deficiencies in the State's proof, particularly as it pertains to establishing his identity as the person depicted in the video introduced into evidence." Addressing each allegation of insufficiency in turn, we conclude that Geer did not preserve many of them, that none warrants reversal, and that there is ample evidence to support Geer's convictions.

A. Motions for Judgment of Acquittal

After the State rested its case, defense counsel moved for a judgment of acquittal on the ground that the State "has not met its burden at this time to prove an attempted first-degree murder or second-degree murder" because "[t]here was no testimony by Ms. Knop and what was shown on the video was not substantially enough for the State to meet its burden at this time." According to counsel, "the State has not proved an intent to kill based

on just the mere video that was shown and the strangulation." After Geer elected not to testify or offer any evidence, counsel renewed Geer's motion for acquittal.

Under Md. Rule 4-324(a), a defense motion for judgment of acquittal must "state with particularity all reasons why the motion should be granted." Although criminal defendants may present "a more detailed version of the" acquittal arguments "advanced at trial[,]" they are "not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302, 304 (2008) (quotation marks and citation omitted). Consequently, to the extent Geer failed to cite certain of the "deficiencies" he itemizes here when moving for acquittal, he did not preserve them as grounds for appellate relief.

B. Sufficiency Standards for Attempted Murder and Assault

The Supreme Court of Maryland recently summarized the established standards governing appellate review of whether evidence is sufficient to sustain a conviction:

> "It is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to determine 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" This Court adopted this standard from the United States Supreme Court case, *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).
>
> When reviewing the sufficiency of evidence, this Court does not retry the case. "It is simply not the province of the appellate court to determine whether . . . [it] could have drawn other inferences from the evidence[.]" "[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt."

* * *

> Because the circuit court is entrusted with making credibility determinations, resolving conflicting evidence, and drawing inferences from the evidence, the reviewing court "gives deference to 'a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation[.]'"

Koushall v. State, 479 Md. 124, 148-49 (2022) (some citations omitted). *See State v. Krikstan*, 483 Md. 43, 63 (2023); *State v. McGagh*, 472 Md. 168, 194 (2021).

"First degree murder is the intentional killing of another person with willfulness, deliberation, and premeditation." Maryland Criminal Pattern Jury Instructions ("MPJI-Cr") 4:17.2(A) FIRST DEGREE MURDER.

> Willful means that the defendant actually intended to kill [the victim].
>
> Deliberate means that the defendant was conscious of the intent to kill.
>
> Premeditated means that the defendant thought about the killing and that there was enough time before the killing, though it may only have been brief, for the defendant to consider the decision whether or not to kill and enough time to weigh the reasons for and against the choice. The premeditated intent to kill must be formed before the killing.

Id. *See* Md. Code, § 2-201(a)(1) of the Criminal Law ("CR") Article. To establish attempted first-degree murder charges, the State was required to prove that Geer (1) "took a substantial step, beyond mere preparation, toward the commission of" that crime and (2) that he "intended to commit" that crime. MPJI-Cr 4:02 ATTEMPT.

In Maryland, assault is a statutory crime that encompasses strangulation. *See* CR §§ 3-202, 3-203. The three alternative modalities of second-degree assault are (1) intentionally frightening the victim; (2) battering the victim; and (3) attempting to batter the victim. *See Jones v. State*, 440 Md. 450, 455 (2014). A second-degree assault escalates into first-degree assault when the assailant "intentionally strangl[es] another" or

"intentionally cause[s] or attempt[s] to cause serious physical injury to another." CR § 3-202(b)(1), (3).

C. Alleged "Deficiencies"

To the extent such concerns may be "related to the arguments presented in the trial court," *see Starr*, 405 Md. at 304, we explain why none of Geer's alleged "deficiencies" support his insufficiency challenge.

1. "Ms. Simmons was not asked to identify Mr. Geer."

Although Geer contends that Simmons did not directly identify Geer as the person who attacked Knop, his trial counsel did not cite such a lack of identification in support of either motion for acquittal. In any event, the record refutes that claim because Ms. Simmons testified that while intervening in the assault, she recognized Geer from their earlier encounter, when he demanded that she tell him where to find Ms. Knop after her room was relocated.

Moreover, the fact that Simmons was not asked to make an in-court identification reflects that throughout trial, there was no factual dispute that Geer was the person involved in the altercation with Knop and arrested on the hotel premises. Significantly, in closing, defense counsel acknowledged that the body camera video, in addition to showing the victim "lying on the ground," shows that "Mr. Geer is also lying on the ground. . . . Yes, he is crouched on top of her. But we do not know what he is actually doing." Rather than arguing reasonable doubt about whether Geer was the assailant, trial counsel argued that what "[w]e don't know" is whether "he is trying to arouse her or wake her up."

Consequently, Geer was not prejudiced by a lack of identification by the State's eyewitness, both because Simmons did testify that she recognized Geer and because Geer conceded his involvement in and arrest following the altercation.

2. "Rachel Knop did not appear at trial."

As explained in Part III of this opinion, Ms. Knop's testimony was not essential to the State's case. After she was unable to testify, the State relied on the testimony of Ms. Simmons about her encounters with Knop and Geer that day, including her account of Geer's assault on Knop in the hallway, and the corroborating visual evidence, showing the altercation and injuries.

3. "A potential witness was not called to testify."

In the body camera video, an unidentified male exits a room into the hallway while Geer is assaulting Knop, then walks out of the security camera view. On cross-examination, when defense counsel asked why that witness was not interviewed, Officer Mace testified that she "made multiple attempts to locate him" based on information provided by the hotel, but he had not been identified or located.

Because defense counsel did not assert this ground when moving for acquittal, the "mystery guest" issue is not preserved for review. But even if counsel had raised the issue, such "missing witness" evidence – whether it relates to the hotel guest or to the victim Knop – was not grounds for acquittal on insufficiency grounds, but rather, a reasonable doubt/weight of the evidence matter for Geer to argue to the jury, which defense counsel did. Consequently, the State's failure to present testimony from the unidentified witness to the hallway assault does not render the evidence insufficient to convict.

4. "The video recording was not of good quality."

This complaint about the quality of the images on the video also goes to the weight of the evidence, because it was up to the jury to decide whether and how much to credit the video. That issue was raised when trial counsel argued in closing that "[i]t's hard to see the video, it is grainy. So, you probably have to watch this video many times as you deliberate." To counter that criticism, the State presented testimony from Ms. Simmons, who narrated the video by describing what she personally observed and experienced. Because weighing this evidence was a task reserved for the jury, the quality of the video did not preclude Geer's convictions.

5. "The recorded telephone call was not definitively linked to Mr. Geer."

The record also refutes Geer's final allegation of "deficiency." At trial, after the State began playing the stipulated audio excerpt from a jailhouse call between Geer and Knop, defense counsel requested a bench conference, during which Geer told the court, "That's not me." Court and counsel then discussed options for how to proceed, in light of the jury having already heard part of the call.

The prosecutor proffered that it could rebut such an identification challenge by playing additional portions of the call, which would establish, through contextual references that would be highly prejudicial to Geer, that the male caller was, indeed, him. After court and counsel agreed that a mistrial would be required if Geer was not the caller on the recording, they agreed to play the rest of the stipulated excerpt, then address the identification concern outside the presence of the jury. When the recording continued, the

caller again asked Knop not to "show up" for his case, promising to "make it up to you no matter how long it takes" and asking, "do you love me?"

The court then held a conference with counsel and Geer. Defense counsel, explaining why she stipulated to admitting the excerpt, stated that it had been her "understanding that it was Mr. Geer on the call simply because of the context of what was played on the call." She objected to playing the full call, because that would require presenting information about other convictions to the jury. After taking time to consult with her client, defense counsel advised that Geer would not challenge the audio recording on identity grounds.

Under Md. Rule 4-323(a), "[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." In these circumstances, Geer affirmatively waived his lack of identification objection to the jail call recording by belatedly raising, then ultimately deciding not to pursue such a challenge. To the extent that Geer seeks to denigrate the evidentiary value of the recording, rather than its admissibility, we conclude that, too, was a matter for him to argue to the jury.

D. Sufficiency Analysis

Because trial counsel's motions for acquittal addressed only Knop's failure to testify, whether the State had proven Geer's intent to kill, and a broad complaint that the video did not show "substantially enough[,]" Geer did not preserve his contentions regarding the missing guest, lack of identification by Simmons, or identity of the phone

caller. In any event, Geer's list of deficiencies in the evidence does not persuade us that the State failed to prove these crimes.

Instead, we conclude there is ample evidence to sustain Geer's convictions. Contrary to Geer's contention, the State did not rely solely on the video to establish the attempted murder and assaults.

Ms. Simmons corroborated and supplemented the visual evidence, testifying that she observed Geer "on top of [Knop] choking her, beating her head into the ground[,]" while saying, "bitch, I'm going to kill you." Simmons saw Geer strangling Knop for "about a minute" before she intervened. Knop lost consciousness for 30 to 45 seconds. According to Ms. Simmons, she prevented him from continuing to use such force, because "there was no telling what . . . could have happened to her, and [she] just couldn't . . . not do anything and see that." The jury watched portions of that altercation in progress and saw Knop's injuries, which included bruises, scratches, and imprint marks on her neck.

Collectively, this evidence supports Geer's convictions for both attempted first-degree murder and first-degree assault of Ms. Knop. Although Geer did not move for a judgment of acquittal on any of the assault charges, the evidence that Geer kicked Simmons after she intervened to protect Knop is sufficient to support the conviction for second-degree assault of Ms. Simmons.

CONCLUSION

We affirm Geer's convictions for attempted first-degree murder and related assaults because (1) the trial court did not abuse its discretion in admitting two real-time excerpts from a body camera video recording of footage captured by a single hotel security camera,

over best evidence and misleading modification objections; (2) the prosecutor did not prejudice the arresting officer's in-court identification of Geer by gesturing toward him; (3) Geer was not denied his Sixth Amendment right to confront witnesses given that the victim did not testify or make a testimonial statement admitted at trial; and (4) the evidence is sufficient to sustain all of Geer's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.