

Circuit Court for Montgomery County
Case No: 135238C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1371

September Term, 2019

DEXTER MCDONALD

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 9, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Dexter McDonald, appellant, was convicted by a jury in the Circuit Court for Montgomery County on one count of indecent exposure. At trial, the State relied on testimony from Gregory Shifley, a security supervisor at the Lakeforest Mall where the alleged indecent exposure occurred. Mr. Shifley testified that while watching the “dispatch camera, [closed circuit television] monitor” he observed a man “sitting in the charging station in center court, playing with his genitalia.” A video of the dispatch camera feed was not retained by the Lakeforest Mall and, therefore, unavailable to the parties at trial. However, Mr. Shifley was able to capture “freeze-frames” or “screenshots” of the video, which were subsequently transmitted to an investigatory police officer.

Prior to the commencement of trial, Mr. McDonald moved to “suppress the testimony of Mr. Shifley because [the parties did not] have the video,” arguing that there was a “large piece of evidence [] missing” that could be exculpatory. Alternatively, Mr. McDonald asked that the court limit Mr. Shifley’s testimony “to essentially what he sees on the stills,” clarifying that he had “no issue with the stills.” However, when the State sought to move the still images into evidence, Mr. McDonald objected, renewing his pre-trial motion and objecting to the “foundation of [the] still shots.” The court overruled Mr. McDonald’s objection and admitted the stills into evidence.

On appeal, Mr. McDonald contends that the trial court “erred in admitting photographic stills captured from a closed circuit television video without proper authentication and in permitting the security officer to testify to what he observed on the live feed.” The State, in response, argues that Mr. McDonald failed to preserve the issues raised on appeal and, further, that the court did not err as alleged.

For the following reasons, we shall affirm.

DISCUSSION

We first decline to review whether the court erred in admitting Mr. Shifley’s testimony as to “what he observed on the live feed” because Mr. McDonald did not preserve this issue for appellate review at trial. While Mr. McDonald objected to Mr. Shifley’s testimony prior to the commencement of trial, he waived any objection to its admissibility by failing to object when the testimony was offered into the evidence at trial. *See* Maryland Rule 4-323 (“An 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.”). The objection having been waived, any issue regarding the admissibility of the testimony was not preserved for our consideration. *See Klauenberg v. State*, 355 Md. 528, 539 (1999) (holding that “when a motion *in limine* to exclude evidence is denied, the issue of admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial”).

We shall, however, review whether the trial court erred in admitting the still images taken from the dispatch camera video at trial. Though the State contends that Mr. McDonald’s claim on appeal regarding the still images is not preserved because “he lodged a different objection below than he makes now on appeal,” we note that Mr. McDonald explicitly objected regarding the “foundation of [the] still shots.” The court, in response, did not solicit further explanation. On appeal, Mr. McDonald challenges the authenticity of the still images. Because photographs can be “easily manipulated,” trial courts require

authentication “as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine.” *Washington v. State*, 406 Md. 642, 651-52 (2008). And because authentication is a “condition precedent to admissibility,” Mr. McDonald’s foundational objection was sufficient to raise questions regarding authenticity on appeal. *Id.*

We review a trial court’s ruling on the admissibility of photographic evidence for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011). As both parties concede, pictures may be “authenticated in one of two ways.” Under the “pictorial testimony theory of authentication,” photographic evidence may be “authenticated through the testimony of a witness with personal knowledge” that the “photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.” *Washington*, 406 Md. at 652 (internal citation omitted). Under the “silent witness method of authentication,” photographic evidence may be authenticated by “the presentation of evidence describing a process or system that produces an accurate result.” *Id.*

Under the “pictorial testimony theory of authentication” theory, we hold that there was sufficient evidence for the trial court to find that the State had made a prima facie showing that the images were genuine. *See Jackson v. State*, 460 Md. 107, 116 (2018) (“When making an authenticity determination, the trial 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.”). Indeed, Mr. Shifley first testified to what he observed first-hand over the “dispatch camera, [closed circuit television] monitor” and then

affirmed that the still images were “fair and accurate representation[s] of still shots from the closed circuit television.”

For the foregoing reasons, the trial court did not abuse its discretion in admitting the still images of the video footage at trial.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**