

Circuit Court for Baltimore City
Case No. 117017021

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1771

September Term, 2017

ANTIONE MAYO

v.

STATE OF MARYLAND

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

JJ.

Opinion by Zarnoch, J.

Filed: November 14, 2018

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In 2017, a Baltimore City jury convicted appellant Antione Mayo (“Mayo”) of possessing and intending to distribute heroin.¹ Mayo argues that the trial court improperly excluded police body camera footage that: (1) showed the police obtaining the identifying information of a female missing witness; (2) contained statements by police to the woman identifying her as a potential witness; and (3) contained statements by the woman exculpating Mayo. We determine that any potential error in excluding the footage was harmless as to Mayo’s convictions, and so affirm.

BACKGROUND & PROCEDURAL HISTORY

Around midday on December 19, 2016, while patrolling the 600 block of Cherry Hill Road, Detective Courtney Wright of the Baltimore Police Department saw Mayo standing outside a shopping center with what appeared to be the muzzle of a gun pointing out from his jacket pocket. Having known him since Mayo was a juvenile, Detective Wright made a U-turn, pulled his unmarked patrol vehicle up beside Mayo, put the passenger window down, and called him over. Mayo approached and leaned his arms against the passenger side window frame. By that point, based on Mayo’s stance and the perceived shape of a gun in his pocket, Detective Wright felt “a hundred percent sure” that Mayo had a gun in his jacket. Though unafraid for his own safety (based on their familiar relationship with each other), Detective Wright attempted to make diversionary conversation while waiting for backup units to arrive. After about a minute of

¹ Throughout the record, appellant’s name is variously spelled as “Antione” and “Antoine.”

conversation, Detective Wright got out of the car and walked around the front of it toward Mayo. According to Detective Wright, Mayo “went down” at this point, as if attempting to put something on the ground; a gun would soon be retrieved from the ground near the passenger side door. Detective Wright grabbed Mayo, sat him on the ground, and had the backup units (who had arrived by then) place Mayo in handcuffs. Searching Mayo’s person, the officers recovered from his sweatshirt a clear plastic bag containing 19 gelcaps of heroin with a street value of \$190.² Mayo was charged with possession and possession with intent to distribute, as well as three handgun charges of which he was acquitted.

At trial, Detective Wright—who had made over 450 narcotics-related arrests—testified as to the events described above. Admitted without objection as an expert in the sale, identification, and distribution of illegal CDS, Detective Wright also offered his opinion that Mayo intended to distribute the drugs.

Among its other evidence and testimony, the State introduced redacted footage from the police officers’ body cameras that had captured the incident from the time of the arrest.³ Most pertinent here, the State redacted a number of statements made to the

² At trial, the chemist with the Baltimore Police Department who performed the analysis of the recovered gelcaps was recognized without objection as an expert in the analysis and identification of CDS. She testified that the sample that she analyzed tested positive for heroin.

³ Detective Wright testified that he thought he activated his body camera when he made the U-turn to approach Mayo. However, as he later realized, he did not activate it properly, so the footage only began after Mayo had already been detained and was sitting

(Continued...)

officers by a female eyewitness who had been standing near Mayo, just outside the entrance to a store at the shopping center. In the unredacted versions of the footage, which were not played for the jury but which were included in the record, the unidentified woman can be heard telling the officers “that boy wasn’t doing nothing” and “I didn’t see him do anything.” Although the footage also captured the officers taking the woman’s identification card to record her information as a potential witness, the State never provided her information to the defense, and by the time of trial, the State claimed to no longer have the information. After a series of bench conferences on the matter, the trial court granted a missing witness instruction which it later read to the jury.

The jury convicted Mayo of heroin possession and possession with intent to distribute, but acquitted him of the three handgun charges. At a subsequent sentencing hearing, the court denied Mayo’s motion for a new trial and then proceeded to sentence him to eight years for possession with intent to distribute (the possession count merged).⁴ The court recommended placement in the Patuxent Institute’s Eligible Person Program. Mayo timely appealed.

(...continued)

on the ground. The State introduced portions from the footage showing Detective Wright struggling with the body camera, to show that the belated activation was inadvertent.

⁴ At sentencing, the trial court announced Mayo’s sentence as eight years, and then said that the possession conviction would merge. On the commitment record, however, the eight years was put on the possession conviction (count six), and the possession with intent to distribute conviction (count three) was entered as “Merge to Ct 6.”

DISCUSSION

Mayo argues that excluding certain portions from the unredacted body camera footage rendered the admitted portion inauthentic, incomplete, and more prejudicial than probative. We disagree, and even if any of the redacted portions could have been admitted—either because they did not contain hearsay, or because any statements fell within exceptions to the hearsay rule—any error in excluding them was harmless.

I. The Admitted, Redacted Footage was “Authentic.”

We are not persuaded by Mayo’s argument that by redacting the footage, the State somehow rendered “inauthentic” the portion that was admitted.⁵ Rule 5-901(a) states that authentication is satisfied “by evidence sufficient to support finding that the matter in question is what its proponent claims.” When asked at trial, Detective Wright affirmed that the redacted footage was a fair and accurate representation of the events as they occurred. Thus, the trial court was able to conclude that the jury could find the redacted footage to be what the State claimed it to be. *See Gerald v. State*, 137 Md. App. 295, 304 (2001) (quoting 2 *McCormick on Evidence* § 227 (John W. Strong ed. 1999)) (“[I]f a prima facie showing is made, the writing or statement comes in, and the ultimate question

⁵ The State contends that Mayo’s arguments seeking the admission of evidence (i.e., the unredacted footage) are being made for the first time on appeal. However, at trial defense counsel expressly sought the admission of the unredacted footage; defense counsel, the State, and the court had extensive bench conferences about the unredacted footage and a potential missing witness instruction; and all the parties agreed that the unredacted footage would be admitted into the record specifically for the purpose of appellate review. Thus, we consider the issue preserved.

of authenticity is left to the jury”). Additionally, when the trial court itself analyzed the unredacted footage (when considering whether to grant a missing witness instruction), it would have been able to conclude that the redactions did not manipulate or alter the footage such that the admitted portion was no longer a genuine or fair representation of the scene it purported to depict. *See Washington v. State*, 406 Md. 642, 651-52 (2008). In short, although Mayo may have desired more of the footage to have been played for the jury, the exclusion of that additional footage did not make the portion that *was* admitted inaccurate or inauthentic.

II. Excluding the Unredacted Footage Did Not Affect the Verdict.

Mayo argues that only admitting the redacted footage violated the verbal completeness doctrine. However, as Mayo acknowledges, the verbal completeness doctrine does not permit admitting statements that would otherwise be hearsay. *Rutherford v. State*, 160 Md. App. 311, 320 (2004) (quoting *Conyers v. State*, 345 Md. 525, 545 (1997)). As such, Mayo’s “completeness” argument interrelates with his claim that the redactions improperly excluded footage that either was not hearsay, or that could have fallen within exceptions to the hearsay rule. Here, even were we to assume that some of the redacted footage could have been admitted as non-hearsay or as admissible hearsay, any error was harmless, for the footage surrounding the “missing” female witness had no bearing on the drug possession counts that yielded guilty verdicts.

We assess for harmless error under the test set forth by *Dorsey v. State*: we independently review the record to determine whether “there is no reasonable possibility

that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.” *Devincentz v. State*, 460 Md. 518, 560 (2018) (quoting *Dorsey*, 276 Md. 638, 659 (1976)). In other words, we must be able “to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict[.]” *Id.*

First, it was harmless to exclude the portion of the footage that showed the officers taking the woman’s identifying information. Detective Wright not only acknowledged at trial that this occurred, but the trial court granted a missing witness instruction—and thereby told the jury that there may have been a witness who could have given important testimony, and whose unaccounted-for absence could weigh against the State.⁶

⁶ The missing witness instruction read by the court was as follows:

There may be a person who was a witness to all or part of the events in this case that was not called as a witness. If a witness could have given important testimony on an issue in this case, and if the witness was particularly within the power of the State to produce, but was not called as a witness by the State, and the absence of that witness was not sufficiently accounted for or explained, then you may decide that testimony of that witness would have been unfavorable to the State. However, before you decide it may have been unfavorable, we’d have to, you’d have to decide whether that witness was available. There may be evidence from which it may appear that the police got information, identification information involving that witness that may have appeared on the display from the body camera that you saw here. The unfavorable inference should not be drawn unless you find that the State could have and should have presented that witness.

As the State points out, this instruction may very well have been more exculpatory to Mayo (at least with respect to the drug counts) than actually playing the woman’s statements would have been. For the reasons discussed in greater detail below, the

(Continued...)

Admitting footage that would have merely shown the officers taking the woman's identification would thus have contributed nothing further on this point.

Second, it was harmless to exclude the footage of Detective Wright telling the woman that she was a potential witness. Detective Wright acknowledged on cross-examination that he had a conversation with the woman in which he noted that she saw the whole incident. Admitting the footage of that statement would only have repeated what the jurors heard at trial, and it would have shed no light on what the woman may have thought she saw Mayo do.

Finally, the woman's substantive statements—including “that boy wasn't doing nothing” and “I didn't see him do anything”—would have had no bearing on the guilty verdicts for heroin possession and possession with intent to distribute. Mayo's defense counsel effectively conceded during closing argument that Mayo was in possession of the heroin gelcaps.⁷ To find Mayo also guilty of possession with intent to distribute, the jury

(...continued)

woman's statements would have had no substantive bearing on the drug charges. On the other hand, because the instruction told the jurors that they could infer that a missing witness's testimony may have been unfavorable to the State, the instruction might have led the jury to think that the woman said something more exculpatory regarding the drug charges than she actually did.

⁷ By stressing that Mayo was not distributing the drugs, defense counsel appeared to acknowledge that Mayo *possessed* the drugs: “Nineteen capsules of heroin is not a tremendous amount. It's not even really a bulk purchase. Anybody who uses heroin has money, that time of year or any time of year. They can pick up two tens, a hundred dollars apiece, may[be] a hundred and fifty for two, two packs of ten heroin or whatever. So that's whatever you do. *That's it, it's simple possession.* No money, no money mentioned in any police reports” (Emphasis added).

did not need to find that Mayo had conducted a drug transaction while at the shopping center; rather, the jury only needed to find that Mayo possessed the drugs with the intent to distribute them at some point. Detective Wright testified that, in his expert opinion, Mayo intended to distribute the drugs. The jury was free to believe Detective Wright, and Mayo has not challenged the sufficiency of the evidence on this point. *See Longshore v. State*, 399 Md. 486, 499-500 (2007) (“Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder”) (Citation omitted). Simply put, it was immaterial for the drug possession charges whether the woman saw anything; the convictions did not depend upon whether any transaction occurred while Mayo was at the shopping center, within her sight.⁸ The woman’s statements might have been meaningful with respect to the three handgun charges, because she could have been in a position to see whether Mayo placed a gun by the car, but the jury acquitted Mayo of those counts. As to the drug possession convictions that Mayo *was* convicted of, we are convinced beyond a reasonable doubt that excluding the portions of the unredacted body camera footage in no way affected the verdict.

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

⁸ Detective Wright even testified that he did not see Mayo conduct any hand-to-hand drug transaction at the shopping center, further weakening the notion that the woman’s statements would have undercut the possession charges.