

Circuit Court for Baltimore City
Case No: 118268025

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1772

September Term, 2019

LUKE PORTER

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 10, 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.

Luke Porter, appellant, was convicted in the Circuit Court for Baltimore City of two counts of first degree assault,¹ two counts of use of a firearm in the commission of a crime of violence,² possession of a regulated firearm by a prohibited person,³ and the unlawful wearing, carrying or transporting a handgun.⁴ On appeal, Mr. Porter raises the following question for our review:

1. Did the trial court err or abuse [its] discretion by admitting into evidence five surveillance videos without sufficient authentication?

For the following reasons, we shall affirm.

BACKGROUND

In August 2018, Juneous Stainback, Jade Symptom, and their two children traveled by car to Lexington Market in Baltimore, Maryland. Upon arrival, Mr. Stainback purchased marijuana from Tyreas Boyd and then crossed the street to “exchange[] words” with Mr. Porter. An argument ensued between Mr. Stainback and Mr. Porter regarding a “past situation.” Ms. Symptom called out to Mr. Stainback, “telling him to get in the car,” when, according to Ms. Symptom, Mr. Porter “pulled out a gun.” Mr. Stainback heard Ms. Symptom call his name “in a panic,” prompting him to turn back towards Mr. Porter. He was standing “sideways” to Mr. Porter when he saw that “the gun was in [his] face” and he then “went to reach for it.” Mr. Stainback was then shot twice in the hand. He fled

¹ Md. Code Ann., Crim. Law § 3-202.

² Md. Code Ann., Crim. Law § 4-204.

³ Md. Code Ann., Public Safety § 5-133.

⁴ Md. Code Ann., Crim. Law § 4-203.

back to the vehicle operated by Ms. Symptom, fell into the vehicle, and she attempted to drive away. However, as she attempted to get away, she collided with a large truck in a nearby intersection and both were ejected from their vehicle. Mr. Porter was seen afterwards fleeing the scene. Mr. Stainback survived his wounds and was able to testify at trial where he identified Mr. Porter as the perpetrator.

At trial, Detective Marcus Sanders and Detective Steven Fraser testified that they assisted with the investigation of the shooting, retrieving video surveillance from four separate locations near the scene of the shooting. From this surveillance, five separate downloaded recordings were made by the detectives. Over Mr. Porter’s objection, the five recordings were admitted into evidence at trial as State’s Exhibits 1 through 5.

On appeal, Mr. Porter contends that each of the recordings was not properly authenticated and, therefore, lacked the necessary evidentiary foundation for admission at trial.

DISCUSSION

We review a trial court’s ruling on the admissibility of video evidence for abuse of discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011). For the purposes of admissibility, “[a] videotape is considered a photograph....and is subject to the same general rules of admissibility as a photograph.” *Washington v. State*, 406 Md. 642, 651 (2008). Because videos and 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.” *Id.* at 651-52.

Videotape may be authenticated under “two distinct rules.” *Id.* at 652 (internal quotations or citations omitted). Under the “pictorial testimony theory of authentication,” video may be “authenticated through the testimony of a witness with personal knowledge” that the “[video] fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.” *Id.* (internal citation omitted). Under the “silent witness method of authentication,” video may be authenticated through “the presentation of evidence describing a process or system that produces an accurate result.” *Id.*

ADMISSIBILITY OF STATE’S EXHIBITS 1 AND 4

At trial, the State elicited testimony from Detective Fraser to authenticate the video surveillance recordings entered into evidence as State’s Exhibits 1 and 4. Detective Fraser retrieved the footage which made up these recordings from “408 West Saratoga Street” 15 days after the shooting. He testified that the video system used at that location “was a standard DVR system” and that he took steps to confirm that the system was working properly. Specifically, while on site, he observed the “live view” from the system “showing outside...where [his] partner was standing.” Based on this observation, he could see that the system was “accurately depicting what’s actually outside.” Detective Fraser rewound the surveillance video to the date of the incident, accounting for a one day discrepancy in the system, and observed the shooting in question. He then downloaded a clip of the incident “from the internal hard drive that was on the system onto an external USB hard drive and preserved the footage.” He testified that the images “were never altered or edited” and that he “took exactly what was there and downloaded it onto the flash drive.”

Detective Fraser testified that the contents of State’s Exhibit 1 contained “the footage that [he] collected and downloaded.” He also authenticated State’s Exhibit 4, which was a recording from “an additional angle, camera angle from the same system.” The court admitted both recordings into evidence.

Citing *Washington v. State*, 406 Md. at 653, Mr. Porter contends on appeal that “there was no factual basis to establish that [the surveillance system] operated reliably on the date of the shooting.” We disagree.

In 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.” *See Jackson v. State*, 460 Md. 107, 116 (2018). Here, the State laid a sufficient framework for the authentication of State’s Exhibits 1 and 4 under the silent witness method of authentication. Detective Fraser’s testimony was sufficient to show that the video fairly and accurately represented the scene of the incident in the moments before and after the shooting. The testimony was sufficient because it addressed the videos’ general reliability and the process by which the videos were acquired. *See Washington*, 406 Md. at 653 (“[c]ourts have admitted surveillance tapes...when a witness testifies to...its general reliability ...[or] the process by which it was focused.”).

Additionally, though not the basis of the court’s admission of State’s Exhibits 1 and 4, the testimony of Johnnie Raines, who witnessed the argument that preceded the shooting and the shooting itself, was sufficient to authenticate the videos under the pictorial testimony theory of authentication. Mr. Raines identified himself in both videos and, of the footage, verified the events therein, including the shooting and the events which

transpired after the shooting. Of State’s Exhibit 1, he testified: “that’s the scene that I see clearly in my head. That’s when the shooting happened.”

ADMISSIBILITY OF STATE’S EXHIBITS 2, 3, AND 5

The State elicited testimony from Detective Sanders to authenticate the video recordings entered into evidence as State’s Exhibits 2, 3, and 5. Detective Sanders testified that during his time as a detective, he had been a part of “approximately 50 different shooting cases where [he had] pulled or retrieved video surveillance footage.” He testified that in his investigation of 50 shootings, he had “become familiar with numerous DVR systems,” similar to the systems used in this investigation. Of the systems, he testified that it “allows for an individual to play back” and allows the user “to save from the actual internal system to an external system such as a USB flash drive.”

Regarding State’s Exhibit 2, Detective Sanders testified that he retrieved video footage from “401 West Saratoga Street” the day after the shooting. He testified that he “viewed the DVR system, which was a “standard DVR system” and was “able to conduct a search on the date and time of the shooting incident, locate video footage that was relative to the investigation and then retrieve it on the USB flash drive.” He testified that the system was “connected to the exterior cameras and interior cameras.” In retrieving the video, he “search[ed] the date and time, insert[ed] the USB flash drive and then click[ed] the button to save the selected video footage from the DVR to the flash drive. He testified that he did not make any edits or changes to the video. He testified that the contents of State’s Exhibit 2 contained “the scene conditionally unedited as when [he] first originally retrieved it.”

Detective Sanders offered similar testimony regarding State’s Exhibits 3 and 5. Of 3, he testified that it was a recording from a convenience store located at 413 West Saratoga Street. He testified that it was a “DVR system similar to the one that was recovered from 401 West Saratoga Street.” Similarly, to retrieve the footage, he went “into playback mode [and] plugg[ed] in the date and time.” Following a search of the camera footage, he conducted “a save of the available footage from the internal drive to an external drive which is the USB flash drive.” He testified that State’s Exhibit 3 was the same unedited and unchanged video that he retrieved in the store.

As to State’s Exhibit 5, Detective Sanders testified that he retrieved the video footage from St. Jude Church, which also possessed a DVR system. When he retrieved the video, he was able to “view the DVR system,” “input the date and time of the incident that [he] was investigating,” “view different camera angles,” and “save the footage from the internal hard drive system to the external USB flash drive.” He affirmed that there was not “anything he could do to edit or manipulate or change any of those video camera footage.” He testified that State’s Exhibit 5 contained the “exterior camera view of the St. Jude Church,” that the video had not been edited or changed, and that it was the same video he pulled off of the DVR system.

On appeal, Mr. Porter contends that the testimony needed to establish that the video footage contained in State’s Exhibits 2, 3, and 5 under the silent witness theory was lacking and that “Detective Sanders’s testimony about how DVR systems operate generally was insufficient.” Again, we disagree.

As with State’s Exhibits 1 and 4, the State laid a sufficient framework for its authentication under the silent witness method of authentication. Detective Sanders’s testimony regarding his experience and familiarity with retrieving DVR system surveillance coupled with his testimony regarding the manner in which he obtained the footage was sufficient to show that the video fairly and accurately represented the shooting incident. *See Washington*, 406 Md. at 653 (“[c]ourts have admitted surveillance tapes...when a witness testifies to the type of equipment or cameras used...[or] the process by which it was focused.”).

Moreover, though not the basis of the court’s admission of State’s Exhibit 2, Mr. Stainback identified himself in the video and testified consistent with the events contained within the footage. Therefore, his testimony was sufficient to authenticate the video under the pictorial testimony theory of authentication.

HARMLESS ERROR

Even if the trial court erred in admitting State’s Exhibits 1 through 5, the error would have been harmless because admission of the video did not influence the verdict. *See Mack v. State*, 244 Md. App. 549, 575 (2020) (“even an established error may be deemed harmless if a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.”). As the State correctly argues, “the testimony of three witnesses identifying

[Mr.] Porter as the gunman demonstrates that, even if admitting the videos was in error, that error was harmless.”

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