Circuit Court for Baltimore City
Case No. 119044001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1804

September Term, 2019

SHAWN MALLEY

v.

STATE OF MARYLAND

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

JJ.

Opinion by Raker, J.

Filed: November 23, 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.

Appellant Shawn Malley was convicted by a jury in the Circuit Court for Baltimore City of home invasion, conspiracy to commit home invasion, second-degree assault, and carrying a weapon openly with intent to injure. He presents six questions for our review:

1. Was the evidence insufficient to sustain appellant's conviction for conspiracy to commit home invasion?

2. Did the circuit court commit plain error by incorrectly instructing on the elements of home invasion?

3. Did the circuit court err in allowing witnesses for the State to testify as to inadmissible other-crimes/bad-acts evidence?

4. Did the circuit court properly admit a police body-camera recording?

5. Must the sentence for conspiracy to commit home invasion be vacated because it was grossly disproportionate?

6. Did the circuit court err in not merging the sentence for second-degree assault into home invasion?

We shall review the jury instruction based upon that rare phenomenon of plain error and shall reverse. We shall find the evidence sufficient to support appellant's conviction for conspiracy to commit home invasion and we shall remand the case for a new trial on home invasion and conspiracy to commit home invasion.[1] Because we find no other error, we shall affirm the judgments of convictions for second-degree assault and the weapon charge.

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[1] Because we shall reverse on the erroneous instruction, which affects home invasion and conspiracy to commit home invasion, we need not address appellant's issues no. 5 and 6. We address issues no. 3 and 4 because they relate to the weapon possession conviction and second-degree assault.

I.

Appellant was indicted by the Grand Jury for Baltimore City for the offenses of home invasion, conspiracy to commit home invasion, assault in the first and second degree, burglary in the first and fourth degree, and theft.[2] He was convicted by a jury of the offenses of home invasion, conspiracy to commit home invasion, second-degree assault, and possession of a weapon with intent to injure. The circuit court sentenced appellant to a term of imprisonment on the home invasion of twenty-five years; on the conspiracy to commit home invasion, twenty-five years, to be served consecutively; on second-degree assault, ten years, to be served consecutively; and on the weapon charge, three years.

The State accused appellant of conspiring with an unidentified individual to break into the residence of his ex-girlfriend, Alissa Starkey, and then assaulting a friend of Ms. Starkey's with whom she had been on a date. Appellant and Ms. Starkey were in a romantic relationship for four months, from June through October of 2018. Ms. Starkey testified that they remained friends after they broke up, but also that appellant's post-breakup behavior veered into harassment. During the incidents relevant to this case, Ms. Starkey was living in an apartment on St. Paul Street in Baltimore, where she had hosted appellant at her home for approximately five visits.

Early in the evening of Monday, December 17, 2018, Ms. Starkey went to a bar with a friend, Katherine Kendall. She received repeated calls and texts from appellant while she

[2] The trial court granted appellant's motion for judgment of acquittal to the burglary and the theft charge.

was at the bar, asking where she was and with whom. At one point, she replied that she was out with Ms. Kendall. Around 11:30 or 11:45 p.m., her colleague and friend Kevin Graves picked up Ms. Starkey and Ms. Kendall. Mr. Graves dropped off Ms. Kendall, went with Ms. Starkey to her apartment, went back out to another bar with Ms. Starkey, and then returned to Ms. Starkey's apartment with her. During this time, Ms. Starkey continued to receive aggressive texts from appellant asking her to demonstrate that she was only out with her girlfriend, Ms. Kendall.

Around 2 a.m. on December 19, 2018, Baltimore City Police Department Officer Matthew Henry and another officer responded to a call from Ms. Starkey's residence. Ms. Starkey told Officer Henry that an individual would not stop texting and calling her. He advised her not to accept the calls and that she could try to obtain a court restraining order against the individual. During this interaction with Ms. Starkey, Officer Henry recorded the discussion with Ms. Starkey. Officer Henry testified at trial that after leaving the apartment, he received another call for service about fifteen to twenty minutes later. In response to the call, he returned to Ms. Starkey's apartment, where he noted that Mr. Graves was not there, and the apartment was in a state of disarray.

After this first encounter with the police, Ms. Starkey went back inside her apartment, locked the door, and she and Mr. Graves kissed. She testified that while they were kissing, appellant and an unidentified man whom she did not recognize entered the apartment through a bedroom window accessible by a fire escape. Ms. Starkey testified that appellant ran at Mr. Graves with a knife, and that both men proceeded to fight in her bedroom. The

second intruder stood back with his arms folded. Ms. Starkey testified that the fight became bloody and that eventually she tackled appellant; Mr. Graves ran down the stairs and out of the building. She testified that she believed that appellant left through her bedroom window although she admitted that she told the police she had seen appellant and Mr. Graves run out of the apartment together, and that she told police her bedroom window was always locked.

Kevin Graves testified at trial and described the nighttime events and his encounter with appellant. He testified that after he and Ms. Starkey kissed, two men came into the apartment through the window, that one of the men was appellant and that appellant immediately stabbed him. He described the other, unidentified person as "just like standing in the background, just looking, just watching." Mr. Graves was taken to Sinai hospital by his cousin for treatment for wounds to his back.

The police gathered evidence from the crime scene, including blood swabbed from a door frame inside the apartment. DNA analysis revealed that the blood matched Mr. Graves. Investigation of the crime scene did not turn up DNA evidence linked to appellant at the apartment.

Lieutenant Sean Mahoney testified that he assisted with the arrest of appellant on January 16, 2019. He indicated that there was an outstanding arrest warrant for appellant and that appellant was arrested after attempting to run from the police.

As to the home invasion charge, the court instructed the jury that home invasion could be predicated on intent to commit first-degree or second-degree assault. The court instructed the jury as follows:

> "The defendant is charged with home invasion. Home invasion is the breaking and entering of someone else's dwelling with intent to commit the assault. In this case, first degree assault, *second degree assault.* In order to convict the defendant of home invasion, the State must prove that there was a breaking, that there was an entry, that the breaking and entry were into someone else's dwelling, that the breaking and entering were done with the intent to commit *the assaults* inside the dwelling and that the defendant was the person who broke and entered."

The jury acquitted appellant of first-degree assault, convicted him of second-degree assault, and convicted him of home invasion, conspiracy to commit home invasion, and possession of a weapon with intent to injure. This timely appeal followed.

II.

Appellant argues that the convictions should be reversed for a litany of reasons. He argues first that the evidence was insufficient to support the conviction of conspiracy to commit home invasion because the evidence was insufficient to show that appellant conspired with another person to commit the crime. He maintains that the unidentified second individual who entered Ms. Starkey's apartment was merely an on-looker who did not participate in a crime, and who did not act in coordination with the principal aggressor.

As to the home invasion jury instruction error, appellant recognizes, as he must, that because there was no objection below, the issue is not preserved for our review. He argues, nonetheless, that the circuit court committed plain error by instructing the jury incorrectly

on the basic elements of home invasion. Appellant argues that the court erred in instructing the jury that home invasion could be predicated on intent to commit second-degree assault, whereas the statutory scheme defines home invasion as breaking and entering with the intent to commit a "crime of violence." The statute enumerates crimes that meet the definition of "crime of violence," including first-degree assault but not including second-degree assault. As the jury acquitted appellant of first-degree assault, the erroneous jury instruction on the elements of home invasion cannot be harmless. Appellant further argues that this instruction so prejudiced appellant's right to a fair and impartial trial that it amounts to plain error.

Appellant presents several of the trial court's evidentiary rulings as error: (1) admitting inadmissible other-crimes, bad-acts evidence related to a window-breaking incident; (2) admitting evidence that the police had an "open arrest warrant" for appellant at the time of appellant's arrest; and (3) admitting Officer's Henry's body-camera footage of his interaction with Ms. Starkey at 2 a.m., approximately fifteen minutes before the apartment break-in.

Appellant argues that the circuit court erred in allowing witnesses to testify to two incidents which were inadmissible other-crimes/bad-acts evidence. First, he argues the trial court erred in allowing Mr. Graves to testify to the hearsay statement that Ms. Starkey told him about one month after the knife assault that appellant had broken a window at Mr. Graves residence. Second, he argues the court erred in permitting Lt. Mahoney to testify that he had an open warrant for appellant's arrest at the time of appellant's arrest. Appellant

further argues that the police body-camera footage of Officer Henry's interaction with Ms. Starkey should not have been admitted because it was hearsay. Appellant relies on *Paydar v. State*, 243 Md. App. 441 (2019), to support his argument that the court erred in admitting the video footage.

The State argues that this Court should affirm the judgments of convictions. As to the conspiracy to commit home invasion, the State maintains that the evidence was sufficient to sustain the conviction. In response to appellant's argument that the second intruder was simply an on-looker, and hence that there could be no conspiracy, the State argues that the concurrence of actions between appellant and his unidentified confederate indicated the existence of an unlawful agreement, *i.e.*, a conspiracy, to invade the victim's home for the purpose of committing a crime of violence. The State's theory is that the second person along with appellant was a principal in the second degree, acting as an aider and abettor, present with appellant to provide appellant backup, for the purpose of giving aid if necessary.

As to the propriety of the home invasion jury instruction, the State argues that even though the jury instruction was wrong, appellant did not object to the instruction and, therefore, the issue is not preserved for our review. Moreover, in the State's view, the error does not warrant plain-error review.

As to appellant's argument that the trial court erred in admitting testimony about an "open warrant" for appellant's arrest and a subsequent window-breaking incident, the State argues first that the issues are not preserved for our review, and, in the alternative, that the

trial court admitted the evidence properly. According to the State, the window-breaking incident was not bad-acts inadmissible evidence because it was admitted not for propensity purposes but rather as evidence to show appellant's motive and intent for the home invasion. As to the "open warrant" testimony, again the State argues non-preservation. On the merits, the State argues that there was no evidence to indicate that the warrant was issued for any offenses other than the ones for which appellant was on trial. If either or both are error, the State argued harmless error. As to the police body-camera recording, the State argues that the circuit court admitted the recording properly and that none of the statements were inadmissible hearsay. If error, the State claims it was harmless.

III.

The standard of review for sufficiency of the evidence is "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Derr v. State,* 434 Md. 88, 129 (2013). When we review a sufficiency of the evidence claim, we do not re-weigh the evidence, but instead we examine whether the verdict was supported by sufficient evidence which could convince the trier of fact of the defendant's guilt beyond a reasonable doubt. *State v. Smith*, 374 Md. 527, 534 (2003). We view all rational inferences in favor of the prevailing party. *Abbott v. State*, 190 Md. App. 595, 616 (2010).

A. *Sufficiency of the Evidence*

We hold that the evidence was sufficient to support the conviction of conspiracy to commit home invasion. A criminal conspiracy "consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Molina v. State*, 244 Md. App. 67, 167 (2019). The essence of a criminal conspiracy is an unlawful agreement. *Townes v. State*, 314 Md. 71, 75 (1988). The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose or design; and it may be established by direct or circumstantial evidence. *Id.*; *Molina*, 244 Md. App. at 168; *Bordley v. State*, 205 Md. App. 692, 723 (2012).

We agree with the State that, when viewed in a light most favorable to the prosecution, the evidence supports a reasonable inference that appellant conspired with another person to commit the home invasion. A reasonable finder of fact could find that the appellant and the unidentified second person agreed to commit the home invasion. The unidentified individual and appellant climbed a fire escape together in the middle of the night and entered the apartment of the victim. A reasonable trier of fact could find that they entered the apartment through the third-story bedroom window. Appellant possessed a knife openly and wielded it, indicating his intent to commit a crime of violence. A reasonable

trier of fact could infer that the unidentified man who climbed the fire escape with appellant knew of the knife and saw the knife before the entry to the apartment. Inside, appellant called to his confederate to "get the knife" (according to the testimony of Ms. Starkey and Mr. Graves). A reasonable trier of fact could have found that the unidentified man entered the victim's apartment with appellant for the purpose of supporting the attack and standing by to aid appellant. The trier of fact could have determined that the unidentified man agreed with appellant to commit home invasion. In sum, the evidence was sufficient for the jury to find appellant conspired with another person to commit home invasion. That the jury chose to acquit appellant of first-degree assault (the necessary predicate for home invasion and for conspiracy to commit home invasion) does not affect the determination as to whether there was sufficient evidence for the jury's consideration.[3]

B. *Jury Instruction*

The circuit court jury instruction defining the offense of home invasion was indisputably erroneous. Appellant recognizes that he did not object to the instruction on

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[3] Whether appellant may be retried for home invasion or conspiracy to commit home invasion in light of the jury acquittal of first-degree assault is not a question before us in this appeal. We shall reverse and remand for a new trial, and any questions related to the retrial and double jeopardy are reserved to the circuit court.

the elements of the offense of home invasion; hence, he asks us to exercise our discretion and to review the erroneous instruction under plain-error review.

Criminal Law Article § 6-202(b) states that "[a] person may not break and enter the dwelling of another with the intent to commit a crime of violence."[4] Section 6-201(d) defines a crime of violence to "[have] the meaning stated in § 14-101 of this article." Section 14-101 sets out first-degree assault as a crime of violence. Second-degree assault is not listed as a crime of violence under § 14-101 and cannot be a predicate offense for home invasion.

The general rule is that we will not decide any issue not raised in and decided by the trial court. Md. Rule 8-131. With respect to jury instructions, Md. Rule 4-325(e) requires a timely objection to a jury instruction to preserve the issue for appellate review. We have discretion, however, under some circumstances, to decide questions not raised in the trial court. Rule 4-325(e) provides that "An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object."

Plain error is "error which vitally affects a defendant's right to a fair and impartial trial." *State v. Daughton*, 321 Md. 206, 211 (1990). We have often iterated that we are cognizant of plain error as a rare, rare phenomenon, *Morris v. State*, 153 Md. App. 480, 507 (2003), and we have limited the instances in which an appellate court should take cognizance of an

[4] All subsequent statutory references herein shall be to Criminal Procedure Article of the Annotated Code of Maryland (West 2001, 2018 Repl. Vol.).

unpreserved error to those which are "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *State v. Hutchinson,* 287 Md. 198, 203 (1980). We will "intervene in those circumstances only when the error complained of was so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Trimble v. State*, 300 Md. 387, 397 (1984), *cert. denied*, 469 U.S. 1230 (1985).

In this case, we shall exercise our discretion and review the jury instruction as plain error. It does not appear that this error was intentionally waived. No one at the trial level appeared to realize that the instruction was wrong legally — not the trial judge, not the prosecutor, and not defense counsel. The error to us is clear and obvious, and not subject to any dispute. The error has affected appellant's substantial rights, because he was acquitted of first-degree assault, and therefore, the erroneous instruction (including second-degree assault as a predicate for the home invasion offense) affected the outcome of the proceedings. And finally, we conclude that the error seriously affected the fairness and integrity of the proceedings. *See State v. Rich*, 415 Md.567, 578 (2010).

The materiality of the error is clear and apparent. The jury acquitted appellant of first-degree assault; therefore, it would be inconsistent for the same jury to find the first-degree assault as the home invasion crime-of-violence predicate. The conviction of the home invasion offense is explained by the erroneous instruction, which instructed the jury that second-degree assault could be a basis for the conviction.

This case is not one causing us to speculate as to the effect of an erroneous instruction; rather, we can say with reasonable certainty that the error in the instruction resulted in the guilty verdict that otherwise would not have been rendered. That type of error "vitally affects a defendant's right to a fair trial," and justifies our taking cognizance of the error.

The error is not harmless. Accordingly, we shall reverse the judgments of conviction for home invasion and conspiracy to commit home invasion. We shall remand to the circuit court for a new trial on those charges.[5]

C. *The Evidentiary Issues*

Because the instructional error does not affect the judgments of convictions for second-degree assault and carrying a weapon openly with intent to injure, we turn our attention to the arguments related to those convictions. We hold that the circuit court did not err in allowing witnesses for the State to testify to the "open warrant" for appellant and the subsequent window-breaking incident. We hold that the circuit court admitted the police body-camera recording properly. Even if the court erred as to either of these issues, we would find the error to be harmless beyond a reasonable doubt.

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[5] We do not remand for resentencing on the convictions of second-degree assault or the weapon charge, as it appears that appellant was sentenced to the maximum term of years, although we recognize that the sentence for the weapon charge runs concurrently. *Cf. Johnson v. State*, No. 109 (Sept. Term, 2018), *on motion for reconsideration*, slip op. at 7–8, 10 (Md. Ct. Spec. App. Nov. 18, 2020) (noting that Maryland case law does not "remotely [suggest] that resentencing is compulsory or that the State or the trial court is entitled to another bite at the sentencing apple").

i. The Challenged Evidence

During Mr. Graves's testimony, the prosecutor asked him about an incident that led him to call 911 on January 16, 2019, the month after the break-in at Ms. Starkey's apartment, inquiring as follows:

> THE STATE: And why did you call 911?
>
> MR. GRAVES: That was the day — well, allegedly I thought that —
>
> DEFENSE COUNSEL: Objection; allegedly.
>
> THE COURT: Yeah, as to allegedly, I'll have to sustain same. Just answer the questions.
>
> MR. GRAVES: Supposedly he was supposed to have came and —
>
> DEFENSE COUNSEL: Objection.
>
> THE COURT: Your objection is noted. I'm going to allow it — just to get through it allow it. Overruled.
>
> MR. GRAVES: Yes, I called the police because someone had come at my door with like a crowbar or some type of bat and had like bust like my window like inside and like the glass got on my mom and my grandmother.
>
> THE STATE: And did you ever call the police on the defendant?
>
> MR. GRAVES: Yes.
>
> THE STATE: And why did you call the police on the defendant?
>
> MR. GRAVES: Like I was saying, someone came to my door.

Lt. Mahoney testified to the arrest of appellant on January 16, 2019, nearly a month after the event at Ms. Starkey's apartment. In explaining why he was in the area of

appellant's arrest locale, he testified that appellant was wanted on a warrant, explaining as follows:

> THE STATE: Did you have an opportunity to respond to the area of 2127 St. Paul Street?
>
> LT. MAHONEY: Yes, I did. I was backing a unit up on a call.
>
> STATE: And what was the call for?
>
> LT. MAHONEY: *He was wanted on a warrant. Say a call came in, gave a name and a description of a gentleman wanted on a warrant. I forgot exactly what the charges were.* One of my officers responded and was headed in that direction to back him up.
>
> DEFENSE COUNSEL: May we —
>
> LT. MAHONEY: Sorry.
>
> THE COURT: You may [approach the bench].
>
> DEFENSE COUNSEL: We certainly can't unring that bell. We certainly can't unring the bell that he was —
>
> THE COURT: That he was backing up on a warrant for him.

Later in the trial when the court indicated that it would admit the police body-camera footage, defense counsel asked the court, "What do we do about the warrant situation?" The court noted that the bell had "already been rung," and that there was an "air of trustworthiness to it." The court ruled: "Your objection is noted."

The State also introduced, over a defense hearsay objection, police body-camera footage recorded during Officer Henry's 2 a.m. conversation with Ms. Starkey, which occurred fifteen minutes or so before the break-in into Ms. Starkey's apartment. In the recording, Ms. Starkey expressed several points that appellant argues are impermissible

hearsay, including: that she was intoxicated; that her ex-boyfriend had been harassing her and showing up at her home and work; that she did not feel safe; that Mr. Graves works at the hospital with her and that he too had seen appellant enter the hospital without reason to do so; and that she had called Anne Arundel County police before that department told her to call the Baltimore City police.

ii. Analysis

As a threshold matter, we address the State's preservation argument and hold that the evidentiary issue related to the window-breaking incident is not preserved for our review. Rule 8-131(a) states that "[o]rdinarily an appellate court will not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" We hold that this issue is not preserved for our review. Defense counsel did not object on the grounds of impermissible bad-acts testimony or hearsay, but instead only objected to the lack of firsthand knowledge and the speculative nature of Mr. Graves's testimony. He objected because the witness qualified his testimony, with the words "allegedly" and "supposedly," that someone broke a window at the house where he lives with his mother and grandmother.

Appellant challenges the admission of the open-warrant testimony on the grounds that it is inadmissible bad-acts evidence. We hold that this issue is not preserved as well. Appellant did not timely object to defense counsel's question when the State asked the witness, "And what was the call for?" Objections to evidence must be contemporaneous.

Ware v. State, 170 Md. App. 1, 19 (2006) (holding that "an objection must be made when the question is asked or, if the answer is objectionable, then at that time, by motion to strike."). There was no contemporaneous objection, and when defense counsel did object, he noted merely that you "can't unring the bell." He never did ask the court to strike the answer. *See Williams v. State,* 99 Md. App. 711, 717 (1994).

Were we to address the merits of the open-warrant claim, we would find that the circuit court did not err in allowing the testimony. Lieutenant Mahoney stated that he responded to a location because appellant was wanted on a warrant, without mentioning any specific crime. The reasonable inference is likely that appellant was arrested for the home invasion charges in the instant case. *See Hill v. State*, 666 S.W.2d 663, 666 (Tex. App. 1984) (testimony was admissible "that the officer had an arrest warrant for [defendant] based on another offense" where "no extraneous offense was revealed to the jury"); *cf. United States v. Jackson*, 509 F.2d 499, 507–08 (D.C. Cir. 1974) (noting that an argument that the testimony that a search warrant was executed at appellant's apartment implicated him in another crime "fails because there was nothing to indicate that the warrant was issued for any offenses other than those for which appellant was on trial.").

The circuit court did not err in admitting the police body-camera recording. Md. Rule 5-803(b)(8)(D) sets out the general admissibility of body-camera footage, establishing that such recordings typically fall within an exception to the rule against hearsay:

> "Subject to Rule 5-805 [hearsay within hearsay], an electronic recording of a matter made by a body camera worn by a law enforcement person . . . may be admitted when offered against an accused if (i) it is properly authenticated,

> (ii) it was made contemporaneously with the matter recorded, and (iii) circumstances do not indicate a lack of trustworthiness."

Appellant argues that *Paydar v. State*, 243 Md. App. 441 (2019), supports his argument and is dispositive. In *Paydar*, body-camera footage included hearsay statements but was admitted by a trial judge who did not find the statements to be within an exception to the rule against hearsay. The Court of Special Appeals reversed. In *Paydar*, the appellate court found that the trial court's error in admitting victim body-camera statements was prejudicial. The *Paydar* jury principally had to weigh the credibility of the victim's statements in court; the body-camera statements that she made outside of court were cumulative to her statements in court, such that the Court of Special Appeals could not find them harmless.

In the instant case, appellant argues that Ms. Starkey's statements recorded on the body camera, about her ex-boyfriend, the appellant, harassing her, are impermissible hearsay within hearsay, because the State introduced those statements for the truth of the matter asserted. Appellant also argues that two statements made by Officer Henry to Ms. Starkey were impermissible hearsay; *i.e.*, his statement that she could go see a commissioner and his statement that she could save her call logs as evidence of harassment.

The State argues that Ms. Starkey's statements that she was intoxicated and that she did not feel safe both fall under the then-existing mental, emotional, or physical condition exception to the hearsay rule. Md. Rule 5-803(b)(3). With respect to Ms. Starkey's statement about calling two police departments and Officer Henry's statements to her about saving her call logs and going to see a court commissioner, the State argues that this footage

was not offered to prove the truth of the matter asserted, and thus was not hearsay. In any event, if error, it was harmless. With respect to Ms. Starkey's statements that her ex-boyfriend had been harassing her at her home and her work, the State argues that identification of the intruder was at issue in the case, and the State introduced portions of the recording for identification purposes. The State is persuasive in these arguments and the body-camera footage was relevant to the issue of identification.

Appellant suggests that *Paydar* stands for the proposition that cumulative, consistent statements are both harmful and insufficient to overcome the rule against hearsay, even where such statements support credibility (as such statements typically would do). The *Paydar* Court, however, was clear that any determination of harmless error is highly fact-sensitive.

Even if the body-camera footage was impermissible hearsay, any error was harmless beyond a reasonable doubt. The State introduced phone records as well as testimony from Officer Henry, Ms. Starkey, and Mr. Graves that appellant was the intruder and was the one who harassed Ms. Starkey. The body-camera footage was relevant to identification of the intruder and to the back-story of the hours before the break-in. The body camera footage could not have contributed to the jury verdict of guilt.

JUDGMENTS OF CONVICTIONS OF THE CIRCUIT COURT FOR BALTIMORE CITY FOR HOME INVASION AND CONSPIRACY TO COMMIT HOME INVASION REVERSED AND REMANDED FOR NEW TRIAL. ALL OTHER JUDGMENTS OF CONVICTIONS AFFIRMED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.