

Circuit Court for Harford County
Case No. C-12-CR-23-000203

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2211

September Term, 2024

KORY BRYANT PUTNEY

v.

STATE OF MARYLAND

Graeff,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 30, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Harford County of attempted second degree murder and related offenses, Kory Bryant Putney, appellant, presents for our review a single issue: whether the court erred “in declining to give a missing evidence instruction to the jury.” For the reasons that follow, we shall affirm the judgments of the circuit court.

In opening argument, the prosecutor stated, in pertinent part:

We’re here because Delon Wiggleton is a survivor. He is a survivor because on August 21st, 2022, he was shot outside of Perrywood [Gardens] Apartments

. . . . [H]e is tak[en] to the hospital. And he describes his shooter as someone in a black hood. He couldn’t see who the shooter was, likely because it’s in the dark. It’s in the rain.

But, ladies and gentlemen, the evidence is breadcrumbs for us to follow and leads to the ultimate conclusion, which is the shooter was the Defendant, Kory Putney. And they say a picture is worth a thousand words, and I guess a video is probably multiple terms. And you will have an opportunity to see the surveillance video and the individuals going in and out of where this happened, where the incident started, which is 230 [Mayberry Drive]. And you will see the victim, the woman in the building, and you will see other people, one of whom will be identified as Kory Putney. He’s wearing a black shirt with a gold symbol on the front and black shorts.

And after the shooting, he is the only person not accounted for in that video, except for the shooter, who has the same type of black shorts and also black shoes, which Mr. Putney was wearing.

The State subsequently called Mr. Wiggleton, who testified that he had been friends with Mr. Putney for 25 years. Mr. Wiggleton spent the summer of 2022 “hanging out at the Mayberry Apartments,” and sometimes “stayed with a girl” named Corinne, who lived in a second floor apartment at 230 Mayberry Drive. Mr. Wiggleton testified that Corinne and Mr. Putney are cousins. On August 21, 2022, Mr. Wiggleton’s friend Brandon, whom

Mr. Wiggleton also knew as “Smoke,” gave Mr. Wiggleton a ride to the Apartments, where he encountered Mr. Putney. Mr. Putney subsequently departed.

The State subsequently showed Mr. Wiggleton numerous photographs of individuals. Mr. Wiggleton identified a man wearing a blue shirt and black pants as Smoke. Mr. Wiggleton identified a man wearing a black shirt bearing a gold symbol, black shorts, and black shoes as Mr. Putney. Mr. Wiggleton identified a man wearing a black shirt and tan shorts as himself. Mr. Wiggleton identified a man wearing a black shirt bearing a woman’s face and black pants as “Wiley.” Mr. Wiggleton identified a man wearing a white shirt as “Russell.” Finally, Mr. Wiggleton identified a man wearing a white shirt and black shorts as “Hub.”

Mr. Wiggleton testified that he “got in an argument” with Corinne, “cussed her out[,] and stormed out [of] the apartment” and building. Realizing that he had forgotten his phone, Mr. Wiggleton “turned around to go back in.” Mr. Wiggleton “walked towards somebody with a hood,” who “pulled out a gun and started shooting at” Mr. Wiggleton. Mr. Wiggleton “tried to crawl to the side of the street so somebody could see” him. A man that Mr. Wiggleton knew as Brad “ran out of the house,” “[c]alled an ambulance[,] and stayed with [Mr. Wiggleton] until the ambulance came.” Mr. Wiggleton later discovered that he had been shot “nine or ten times” in his groin, arm, hand, and leg.

The State showed Mr. Wiggleton a second photo, marked as State’s Exhibit 10, of the man in the black shirt bearing a gold symbol, black shorts, and black shoes. Mr. Wiggleton again identified the man as Mr. Putney. The State subsequently played for the jury a video recording taken by a surveillance camera of what Mr. Wiggleton identified as

“when you come into the apartment building.” In the recording, Mr. Wiggleton identified Wiley, Mr. Putney, Hub, Brad, Smoke, Russell, and a woman named Caitlin. The recording reflects that at 11:08 p.m., Mr. Wiggleton walked out of Corinne’s apartment and toward the exit of the apartment building. Seconds later, a man wearing a black and hooded sweatshirt, black shorts, and black shoes and holding an object in his right hand walked out of Corinne’s apartment and toward the exit of the apartment building. Numerous individuals, including individuals that Mr. Wiggleton identified as Corinne, “Cait,” Russell, Brad, and Wiley, subsequently exited the building.

The State also called Detective Thomas Sibiski of the Harford County Sheriff’s Office, who testified that at approximately 11:30 p.m. on August 21, 2022, he went to 230 Mayberry Drive in response to “a reported shooting.” After “emergency services” arrived and “began to tend to” Mr. Wiggleton, Detective Sibiski “direct[ed] responding deputies to . . . start” a “crime scene log,” which “documents who enters” and “who leaves at those times.” Approximately “an hour and a half into the investigation,” the detective received “an order to hold 230 Mayberry.” Detective Sibiski testified that at 11:55 p.m., he made “an approach to . . . apartment . . . 204 [to] seize that pending a search warrant.” When asked “what goes into holding the building,” the detective replied: “So we would try to make contact with anybody inside of the apartment if anybody is there. And prevent anyone from entering, leaving, destroying evidence, pending the application for a search warrant.” When asked whether, “to [his] knowledge, did anybody enter or exit the apartment while it was being held,” Detective Sibiski replied: “To my knowledge, no.”

The State also called Sergeant George Breidenbaugh of the Harford County Sheriff’s Office, who testified that he also “respond[ed] to [the] call at 230 Mayberry.” Sergeant Breidenbaugh “received a directive to hold” the building, after which he “[d]irect[ed] deputies towards the apartment building, and specifically one of the apartments on the second floor,” and “had at least one deputy, if not multiple, . . . make sure that [officers] identified anybody coming in and out of the apartment, and specifically that apartment on the second floor, and make sure nobody came in and out of that apartment.” When asked whether, “to [his] knowledge, did anybody try to get in and out of the second-floor apartment,” the sergeant replied: “Don’t believe so.” When asked when he began to hold the building, Sergeant Breidenbaugh replied: “Immediately, as soon as we found out, one of the deputies, if it wasn’t my lieutenant, I believe, got information, somebody had been reviewing the surveillance cameras from the apartment building, and found out that the victim and suspect had left that apartment in the apartment building. So immediately after finding that out, we held the apartment.” The sergeant testified that the holding began “a little before midnight.”

The State also called Detective Terry Lindsey of the Harford County Sheriff’s Office, who testified that in the early morning of August 22, 2022, he responded to the Johns Hopkins Bayview Medical Center in Baltimore City to interview Mr. Wiggleton. Detective Lindsey showed Mr. Wiggleton the photograph previously identified as State’s Exhibit 10 and asked Mr. Wiggleton to identify the person. Mr. Wiggleton stated: “Oh[,] that’s Kory.”

The State also called Corporal Amanda Ross of the Harford County Sheriff's Office, who testified that in the "[l]ate evening of August 21st, 2022, [she] received a phone call from [her] lieutenant asking [her] to come out and assist with a shooting call-out." Corporal Ross "went to [the Office's] CID headquarters in Forest Hill to work on authoring a search warrant for the apartment that they were currently holding, as well as to review the camera footage from the Perrywood Garden[s] apartments." The corporal had "access to the surveillance system at [the] apartments, so [she] got onto the system to begin looking through footage during the incident." Corporal Ross testified that "[p]atrol deputies had already accessed their camera system as well and saw both the victim and an individual with a gun in his hand exiting apartment 204 and 230 Mayberry Drive."

The State subsequently played for the jury a video recording taken by a surveillance camera of what Corporal Ross identified as "the exterior entry door" of 230 Mayberry Drive. At 11:08 p.m., an individual identified by the corporal as Mr. Wiggleton exited the building. Mr. Wiggleton was followed by an individual that Corporal Ross identified as the "individual [that] in the interior cameras was seen coming down the stairwell with a gun in his hand." The recording then displayed "a flash of light" that the corporal identified as "a muzzle flash." The State subsequently re-played for the jury the video recording taken by a surveillance camera of "right inside the entry door" and "up the steps towards the second floor." At 11:08 p.m., an individual identified by Corporal Ross as Mr. Wiggleton "ran down the stairs," followed by an individual with "a firearm displayed in his right hand."

Corporal Ross testified that “through the course of the investigation,” Mr. Putney “was . . . developed as a suspect” because Mr. Wiggleton had told Detective Lindsey that Mr. Wiggleton “was talking to an individual named Kory at this apartment,” “items . . . belonging to a Kory Putney” were discovered in the apartment, and Mr. Wiggleton identified in “a photograph . . . the Kory he was speaking to and having a conflict with in the apartment.” While the corporal was “watching the surveillance footage,” she “was able to account for all of the comings and goings of everyone else except this individual identified as Kory and the shooter here in this image as well.” Corporal Ross testified:

So, I noticed that of all the individuals that I was watching, this was the only individual wearing black shorts and black shoes, both in State’s Exhibit 10 and in the individual on screen. Also, in looking at their facial features, you can see like a more distinct, prominent nose and a smaller, thinner face on the individual on screen, as well as the individual in State’s Exhibit 10.

Following the close of the evidence, defense counsel requested “a missing evidence instruction,” arguing:

The videos that the State has submitted into evidence, the security camera videos, they’re free, they all end within three minutes of each other. The most recent interior that was largely discussed and largely shown to the Jury ends at 11:26 p.m. The exterior one ends at 11:28. The other interior one that doesn’t matter also ends at 11:26. The officers testified, and it is clear from the body cam, that they did not secure the premises of apartment 204 until 11:57 p.m. Detective Ross, Corporal Ross, known as Detective Ross, testified that she viewed the video up until the police got there.

In fact, she said that she would view the video until about 11:58, about midnight, she said. She also testified that she has access to those cameras, that she’s the person who determined when the feed started and stopped. It was submitted to the State’s Attorney’s Office as evidence. So, she had access to it. She failed to provide the 29 to 31 minutes of video that was here. A significant argument in the State’s case is that it has to have been Mr. Putney because when the apartment was searched, Mr. Putney was not

there, and nobody left the apartment between the shooting, or everybody who left the apartment is accountable [sic].

There's 31 minutes of video that the Jury does not get to see that is supposed to back that statement up. And if I'm the State and I want to prove to the Jury, right, that, well, this is how we know, then I submit the other 31 minutes of surveillance footage. But it is missing. It is literally there is a scene missing in this movie. That is appropriate for a missing evidence instruction. It was the elements basically, and there isn't a direct missing evidence instruction, but there is a missing witness instruction.

So for that, in order for that to be generated, that there was somebody, there was testimony about a witness, that that witness was not called, that that witness could have given an important testimony on an issue in this case. And if the witness was peculiarly within the power of the State to produce but was not called by the State as a witness, and the absence of that witness was not sufficiently accounted for or explained, then you may decide that the testimony of that witness would have been unfavorable to the State.

* * *

The issue is, did she have access to it? Did she have – so, let me address something before we get into whether it's equally available to me. Right? Thing number one. This is – it is not – the standard is not only or solely in the power of the State to produce. It is peculiarly. Now, what you heard here is that Detective Ross had access – the Sheriff's Office has access to these cameras. They can just log in and look at them. Right? They have unfettered access to them.

Two, Detective Ross then determines what she needs, submits it to Perrywood, and Perrywood gives it to her. She testified to that process. And that what she gave the State was what she requested. So that's thing number one. It is peculiarly – I do not like saying that word. It's within the power of the State to obtain it.

Two, the discovery of this case – this is about events that occurred in August of 2022. The discovery of this case was sent February 15, 2024. Eighteen months after this evidence was collected. Right? So I do not have the same opportunity to request basically in real time surveillance video when it's not given to me until 18 months after the events.

The State replied, in pertinent part:

Well, Your Honor, part of the reason he didn't – Defense Counsel didn't get a discovery until 18 months after this happened, this case was in warrant status until December of 2023. So I think it's not a fault of the State that this case took so long for him to get discovery. It's the Defendant was on the lam, for lack of a better word. It's not a willful act by the State.

Additionally, Your Honor, as you said, if it's 30 minutes of nothing, why would the State preserve that, especially when this is a circumstance where it's not a law enforcement – yes, law enforcement has access to it, but there's nothing preventing [defense counsel] from, or any Defense Attorney, from going and collecting evidence that they may think is helpful for their client. There's nothing barring him from doing that, or at least attempting, which has not been proffered to the Court that he's even done so.

Denying defense counsel's request, the court stated:

[T]he fact that State's witness indicated during the course of an objection that there was a review and there was nothing on it, a review of the time frame that you're calling out as being missing. I think it's fair game for the Defense to point that out.

* * *

And for the State to attempt to rely on that time frame is questionable, frankly. I don't know that it rises to the level of a missing evidence because during the course of trial, the – and what was objected to was the officer saying there was nothing on it.

* * *

I know it's not in evidence. And that's why I'm not going to give an instruction because it's not missing. It just wasn't deemed material to the State.

* * *

[I]t's a difference between – having an instruction in that regard and the Defense being able to drive a truck through this 30 minutes of gap. I mean, I think you're free to do that[,] Counsel. But giving an instruction, I'm not inclined to grant it because I believe it was fair game to the Defense in the case. It wasn't peculiarly under the control of the State here.

During closing argument, defense counsel argued, in pertinent part, that “there is a reasonable doubt as to” whether “the shooter of [Mr.] Wiggleton intended to kill” him, whether “the shooter was the man in the black shorts and the hoodie [depicted] in the video,” and whether “that man is” Mr. Putney. Defense counsel also argued, in pertinent part:

The video from the apartment building ends at 11:26 p.m. 31 minutes before detectives enter that building and lock it down. So the State is here trying to tell you that we know that nobody else left that apartment before we entered it. But there is a 31-minute scene missing from that particular movie. They’re asking you not to conclude based on logic but based on faith that there’s nothing in that 31 minutes that would be important for you to see. That is 31 minutes of reasonable doubt right there. That is 31 minutes where you have no idea if someone left.

* * *

. . . 31 minutes of critical information that would allow you to come to the conclusion beyond a reasonable doubt that Mr. Putney wasn’t still in that apartment when the video ends. He could have been in any other apartment in that building. He could have left the building entirely because nobody is watching it during that 30-minute gap. Half an hour is not a short amount of time. There is a lot that can happen in half an hour. Think about this case. There is a lot that happens in the span of about a minute and a half. We’re talking 20 times. That gap right there, ladies and gentlemen[,] is reasonable doubt itself.

That’s it. The police didn’t give you enough information. The State didn’t give you enough information to be able to make the decision they’re asking you to do. They simply haven’t. They’ve kept it from you. And you heard the detective testify. She’s the one who was watching the video at CID. She’s the one who determined when the video stops and when it starts. She deprived you of 30 minutes of crucial evidence and then is asking you to believe her. Just believe that nobody else left. That is your decision to make, not hers. And you cannot make a fine video on reasonable doubt without those 30 minutes.

Mr. Putney contends that “because the video is at the heart of the case, . . . is the type of evidence usually collected by the State, and . . . was in the State’s custody before it was destroyed,” the court erred in declining to give the requested instruction. We disagree. We have stated that “[w]here . . . missing evidence was not central to the defense case, was not the type of evidence usually collected by the state, or was not already in the state’s custody[,] a trial court may be well within its rights to refuse [a missing evidence] instruction.” *Gupta v. State*, 227 Md. App. 718, 738 (2016) (internal citations, quotations, and brackets omitted). Here, the “heart of the case” is not whether Mr. Putney was inside 230 Mayberry Avenue at some time between 11:26 p.m. and 11:57 p.m. on the night of the shooting, but whether he is the individual who, as recorded by surveillance cameras at the apartment building, followed Mr. Wiggleton out of the building, and whether he is the individual who subsequently shot Mr. Wiggleton. Also, Mr. Putney does not specify any evidence that Corporal Ross or any other officer made a copy of the footage recorded by the surveillance cameras between 11:26 p.m. and 11:57 p.m., which could then have been disclosed to him. Finally, defense counsel, during argument, repeatedly and forcefully urged the jury to conclude that the absence of surveillance footage “was not sufficiently accounted for or explained,” and hence, the footage “would have been unfavorable to the State.” This argument was the effective equivalent of the “missing evidence” instruction requested by defense counsel, and hence, the court did not err in declining to give the instruction.

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