Circuit Court for Allegany County
Case No.: C-01-CR-18-000149

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2254

September Term, 2019

CHRISTOPHER CARTER

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 4, 2021

Following trial in the Circuit Court for Alleghany County, a jury found Christopher Ian Carter, appellant, guilty of possession of a controlled dangerous substance, and distribution of a controlled dangerous substance. The court sentenced appellant to fifteen years' imprisonment, with all but ten years suspended, in favor of three years' probation.

On appeal, appellant contends that the trial court erroneously admitted a portion of a surreptitiously made audio recording into evidence, and that the evidence was legally insufficient. For the reasons explained below, we shall affirm.

BACKGROUND

A team of police officers conducted a controlled buy of crack cocaine from appellant with the use of a confidential informant. The police thoroughly searched the informant before and after the controlled buy and provided him with $100 in pre-recorded funds. The police also fitted the informant with a body-wire which live-streamed audio to the police surveilling the transaction who recorded the audio.

The informant initiated a controlled telephone call to appellant to discuss where to meet to conduct their business. Appellant designated a Pit-N-Go convenience store as the meeting location.[1] The informant rode to the Pit-N-Go with an undercover police officer. The vehicle that the informant rode in was being surveilled by another police officer in another vehicle. A third officer had set up a surveillance position near the Pit-N-Go where he saw a silver Honda Accord parked.

[1] Appellant earlier designated a different location, but then changed it to a second location while the team of police officers and the informant were on their way to the first location. Appellant then changed it again. The Pit-N-Go was the third location.

Once the vehicle containing the informant and the police officer parked at the Pit-N-Go, the informant got out, walked over to the silver Honda Accord, got in, engaged in a brief conversation, and returned. Once back in the police vehicle, he gave the police officer four rocks of crack cocaine. A subsequent search of the informant revealed that he was no longer in possession of the $100 in pre-recorded funds he had been provided with.

The silver Honda Accord then left the parking lot followed by the police officer who had set up a surveillance position. Yet another police officer was then instructed to pull over the silver Honda Accord in order to ascertain the identity of the driver. That police officer pulled over the car and determined that appellant was its driver and sole occupant. The police officer took a photograph of appellant's identification card, gave appellant a written warning, and went on his way.

No one else got in or out of appellant's car during the entire episode. Moreover, both appellant and the informant were under constant uninterrupted police surveillance during all relevant time periods.

The informant did not testify at trial. Appellant did not testify and called no witnesses.

DISCUSSION

I.

At trial the State played for the jury the audio recording from the body-wire worn by the informant. Appellant contends on appeal that the court erred in admitting into evidence a portion of that recording. The allegedly inadmissible statement came from the person in the silver Honda Accord in response to the informant saying "Hey, how's it

going?" The person said "one dollar for four." Appellant claims that, because no one identified the voice on the recording as appellant's, the statement was inadmissible because it was not authenticated within the meaning of Md. Rule 5-901(b)(5).[2] According to appellant, the statement was hearsay, and, because no one identified him as the speaker on the recording, it was not admissible under the statement of a party opponent hearsay exception found in Md. Rule 5-803(a).

Appellant's contention relies on a false premise, *i.e.*, that the only way to prove that appellant's voice was heard on the recording was to have it identified by someone familiar with it. As Md. Rule 5-901(b) contemplates, the methods of authentication outlined in that Rule are meant for illustration, and not limitation. Subsection (b)(4) of that rule specifies that circumstantial evidence may be used to authenticate evidence: "Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be."

[2] In pertinent part, Md. Rule 5-901 provides:

> (a) *General Provision*. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> (b) *Illustrations*. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:
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> ****
>
> (5) *Voice Identification*. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, based upon the witness having heard the voice at any time under circumstances connecting it with the alleged speaker.

Thus, as a condition precedent to admissibility the trial court needed only to have found by a preponderance of the evidence, circumstantial or otherwise, that the voice on the recording belonged to appellant. Under the circumstances of this case, where the informant and appellant were under constant uninterrupted surveillance before and after the transaction and no one other than appellant and the informant were observed getting into or out of appellant's car, we believe that the trial court easily made that determination. From that standpoint, the statement was admissible as a statement of a party opponent.[3]

II.

Appellant next contends that the evidence was legally insufficient because no one identified him as the person who sold the crack cocaine to the police informant, and he was never searched and found to be in possession of crack cocaine or the pre-recorded $100 in cash. Thus, according to appellant, the circumstantial evidence of his guilt required the fact-finder to resort to speculation or conjecture.

In reviewing the sufficiency of the evidence, we review the record to determine 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.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

[3] In addition, appellant's statement was also likely admissible as a verbal act, or a verbal part of an act. *See Garner v. State*, 414 Md. 372, 376 (2010) (holding that the statements of the offeror and offeree in a phone call about drugs were verbal acts and hence non-hearsay).

We believe that, in the light most favorable to the State, the evidence was legally sufficient to support the inference that appellant first possessed, and then sold, crack cocaine to the police informant given that: the police searched the informant immediately before the controlled buy, to confirm that he did not already have any drugs on his person; the police maintained constant surveillance on appellant's silver Honda Accord from the time before the drug transaction took place until a police officer stopped that car and identified appellant as its operator and sole occupant; the only person seen entering or exiting appellant's car was the informant; after the informant got out of appellant's car he gave the police crack cocaine; and the informant was searched after the transaction and was found not to be in possession of the $100 in cash the police had given him.

Consequently, we shall affirm the judgment of the circuit court.

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