

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 2494

September Term, 2023

JONATHAN ESCOBAR-HERNANDEZ

v.

STATE OF MARYLAND

Berger,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 25, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

In 2021, a jury in the Circuit Court for Baltimore County convicted Jonathan Escobar-Hernandez (“Escobar”) of first-degree murder and conspiracy to commit first-degree murder. Escobar successfully appealed his convictions¹ and the case was remanded for a new trial. At the conclusion of the second trial in January of 2024, a jury again found Escobar guilty of first-degree murder and conspiracy to commit first-degree murder. In this appeal, Escobar raises one issue, arguing that the circuit court abused its discretion by allowing the State to offer into evidence audio recorded testimony from two witnesses, Odaliz Rosas-Yanez (“Rosas”) and Hugo Leonel Martinez (“Martinez”), who had testified in his first trial but were not present to testify in his second trial because they had been deported from the United States. For the reasons that follow, we affirm the judgments of the circuit court.

BACKGROUND

In the early morning hours of July 31, 2019, Daniel Alvarado Cuellar (“Cuellar”) was found dead outside of an apartment building in Towson. The cause of death was multiple sharp force injuries, including 16 stab wounds, 18 cutting wounds, and 6 chopping wounds. Escobar and nine other individuals were charged with first-degree murder, conspiracy to commit first-degree murder, and related charges, including participation in a criminal gang.

¹ *Escobar-Hernandez v. State*, No. 541, Sept. Term 2021 (Md. App. Ct. July 13, 2022).

At Escobar’s second trial, Detective Alvin Barton testified that Cuellar and his brother had been at a laundromat hours before the murder. Surveillance video from businesses near the laundromat showed a group of people who appeared to be observing Cuellar. The investigation revealed that the group had ties to a white Dodge Caliber that belonged to Rosas. As a result, police obtained a court order that would allow them to track Rosas’s phone. When the location information was obtained, it indicated the phone had left Maryland and was near the border of Georgia and Alabama and was moving in a southwest direction. Rosas’s vehicle was stopped by police in Mississippi. The occupants of the vehicle, including Rosas, Escobar, Hugo Portillo-Chavez (“Portillo”), Edwin Garcia (“Garcia”), Lionel Velazquez-Hernandez (“Hernandez”), Jose Rivera-Coreas (“Rivera”), and Marlon Fabian-Flores (“Fabian”), were arrested.

The State’s chief witness was Jose Villacorta-Riva (“Riva”), who testified pursuant to a plea agreement. On July 30, 2019, Riva was a member of the MS-13 gang and received a call from Portillo, who held the highest rank within MS-13. Portillo told Riva that he wanted to kill a rival gang member. Riva met up with Portillo and other members of MS-13, including Escobar, Garcia, Hernandez, Rivera, Fabian, and Yoni Membreno (“Membreno”). Rosas and Martinez, who were not members of MS-13, were also present.

Riva testified that the assembled group discussed plans to kill the victim, then traveled in two cars to a laundromat, where Cuellar had been located. They “hid and didn’t do anything to him there” because “there were many cameras” in the area. Eventually, Cuellar left the laundromat. Riva, Escobar, Portillo, and Garcia followed Cuellar to his

apartment in a car driven by “Leo.”² Riva and Garcia approached Cuellar outside the apartment building and asked him for a cigar. The three men smoked together while Escobar and Portillo waited nearby. When Cuellar started to say goodbye, Garcia attacked. Garcia fell in the struggle, and Riva grabbed Cuellar while Escobar kicked him. Riva stabbed Cuellar in the back with a knife and Escobar hit Cuellar with a machete while Portillo watched. Leo then drove Riva, Escobar, Portillo, and Garcia to Cockeysville. Riva was arrested at his home two months later.

Hernandez also testified as a witness for the State, pursuant to a plea agreement. On the night of the murder, Portillo summoned Hernandez, a low-ranking member of the gang, to “run an errand.” Hernandez met up with Portillo, Escobar, Garcia, Riva, Fabian, Membreno, Rivera, and Rosas. Portillo told Hernandez they were going to kill a member of a rival gang. Rosas drove Hernandez and two others to Cuellar’s residence, but Cuellar was not there. Rosas located Cuellar at a laundromat using Snapchat.³ Rosas then drove to a shopping center near the laundromat. The rest of the group arrived in the second car. They observed Cuellar and his brother from behind a shopping center.

Hernandez testified that when Cuellar left the laundromat, Portillo, Escobar, Riva, and Garcia followed him. Hernandez, Membreno, Fabian, Rivera, and Rosas remained at the shopping center and continued to observe Cuellar’s brother. They then went to

² Riva was shown photographs of Martinez, Hernandez, and Fabian and identified them all as “Leo.” Riva was not asked which Leo was driving.

³ “‘Snapchat’ is ‘the name of a social media service for sending pictures, messages, and videos that are only available to be seen for a limited amount of time[.]’” *Freeman v. State*, 487 Md. 420, 425 n.4 (2024) (quoting CAMBRIDGE DICTIONARY).

Cuellar’s apartment building, where Portillo, Escobar, Riva, and Garcia reported that they had murdered Cuellar. Twelve days later, Hernandez, Portillo, Escobar, Garcia, Fabian, and Rosas left Maryland in Rosas’s car. On their way to Texas, they were stopped in Mississippi and arrested.

The drivers of the two cars, Rosas and Martinez, had testified at Escobar’s first trial, but had both been released from incarceration and deported between the first trial and second trial. Before the evidentiary portion of the trial began, the State requested a ruling allowing the audio recordings of their testimonies at the first trial to be admitted into evidence. In support of the State’s proffer that Rosas and Martinez were unavailable for trial, the State elicited testimony from Detective Barton, who said that efforts to locate the witnesses began “a few months” before trial. At that time, he learned that Martinez had been released from incarceration and was deported to Guatemala on May 22, 2023. Rosas had been released from incarceration and was deported to Mexico on June 27, 2023. Neither Martinez nor Rosas were required to report their whereabouts to authorities following deportation, and no forwarding addresses were available. Detective Barton contacted federal immigration authorities, but there was no record that either witness had re-entered the county. He went to the apartments where Martinez and Rosas had been living at the time of their arrests to see if they had returned there or if someone living there knew where they were, but those efforts yielded no information.

Escobar objected to the State’s use of their former testimony on grounds that the State had not made reasonable efforts to ensure that the witnesses were available for trial. Escobar argued that the State should have requested that federal immigration authorities

stay the deportation of both witnesses on grounds that they were essential witnesses in a murder trial. The court ruled that Rosas and Martinez were “unavailable due to having been deported and unlocatable,” and permitted the State to play audio recordings of their testimony at the first trial.

Rosas testified that she was dating Rivera at the time of the murder. She was acquainted with Cuellar, who had been friends with an ex-boyfriend. On the night of the murder, Escobar, Portillo, Rivera, and Fabian had Rosas drive them around and directed her to follow a particular car. When Rosas recognized the car as belonging to Cuellar, she told them she didn’t want to follow it. Rivera instead directed her to drop them off near the apartment building where Cuellar lived. Two minutes later, Rivera called Rosas and said that Cuellar was not at his apartment. Rosas used Snapchat to locate Cuellar at a laundromat. She picked up Rivera, Hernandez, Fabian, and Membreno, drove them to the laundromat, then back to Cuellar’s apartment complex and dropped them off in the parking lot. A short time later, Rivera called and had her pick them up at a nearby elementary school and drive them to Cockeysville. On August 12, 2019, Rosas left Maryland with Escobar, Portillo, Hernandez, Rivera, and Fabian. On their way to Texas, they were pulled over in Mississippi and arrested.

Martinez testified that on the night of the murder, Riva called him and asked him for a ride. Martinez picked up Riva, Escobar, Portillo, and Garcia and drove them to a house, then dropped them off behind a gas station near a laundromat. Rivas called Martinez to pick them up from the same location a short time later and drive them to an apartment building. Martinez waited in the car while the others got out and walked away from his

view. Sometime later, they ran back to the car. Martinez saw Garcia putting a knife into his pocket and Portillo putting a machete away. Escobar had blood on his shirt and Garcia had blood on his hand. Martinez drove the four men to Cockeysville.

The jury convicted Escobar of first-degree murder and conspiracy to commit first-degree murder. The court imposed two consecutive sentences of life in prison without the possibility of parole.

DISCUSSION

In his sole issue, Escobar argues that the trial court abused its discretion in finding that Rosas and Martinez were “unavailable witnesses” whose prior testimony was admissible as an exception to the hearsay rule. Specifically, Escobar asserts that because the State was aware that Rosas and Martinez were not United States citizens and would be subject to deportation once they were released from custody, the State should have taken steps to prevent their deportation. Escobar argues that the introduction of their prior testimony was harmful reversible error. We are not persuaded.

Former testimony is admissible as an exception to the hearsay rule if (1) the witness is unavailable, and (2) “the party against whom the testimony is now offered ... had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.” MD. R. 5-804(b)(1). A witness is considered “unavailable” if they are “absent from the hearing and the proponent of the statement has been unable to procure the declarant’s attendance ... by process or other reasonable means.” MD. R. 5-804(a)(5). “The party seeking the admission of the former testimony must demonstrate that it made a good faith effort to procure the unavailable declarant.” *Vielot v. State*, 225 Md. App. 492, 501-

02 (quoting *Alexis v. State*, 209 Md. App. 630, 665 (2013)). “The lengths to which the prosecution must go to produce a witness ... is a question of reasonableness.” *State v. Breeden* 333 Md. 212, 221 (1993) (quoting *Ohio v. Roberts*, 448 U.S. 56, 74 (1980)) (emphasis in original) (further citation and some internal quotation marks omitted). “[T]he trial judge’s ultimate determination that the witness is, indeed, unavailable and that the rule has therefore been satisfied is subject to review by the abuse of discretion standard.” *Vielot*, 225 Md. App. at 502 (quoting *Muhammad v. State*, 177 Md. App. 188, 298 (2007)).

Even assuming that Escobar’s claim has merit, reversal of his convictions would not be warranted because we are convinced that any error in admitting the prior testimony would have been harmless. An error in admitting evidence is harmless if the reviewing court is “satisfied that 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.” *Nicholson v. State*, 239 Md. App. 228, 244 (2018) (quoting *Dionas v. State*, 436 Md. 97, 108 (2013)) (additional citation omitted). “To say that an error did not contribute to the verdict is [] to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.” *Dionas*, 436 Md. at 109 (quoting *Bellamy v. State*, 403 Md. 308, 332 (2008)) (additional citation omitted).

“In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence.” *Dove v. State*, 415 Md. 727, 743 (2010). “[W]itness testimony is cumulative when it repeats the testimony of other witnesses introduced during the State’s case-in chief.” *Id.* at 744. “[C]umulative evidence, which tends to prove the same point as other evidence presented during the trial [,] may render

harmless otherwise reversible error.” *Gross v. State*, 481 Md. 233, 262 (2022) (cleaned up). The test is “whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded.” *Dove*, 415 Md. at 744 (quoting *Ross v. State*, 276 Md. 664, 674 (1976)).

Martinez’s testimony, if believed, tended to establish that Escobar was present when Cuellar was murdered, and that Escobar had blood on his shirt. This evidence was both cumulative and unimportant in relation to all of the other evidence considered by the jury. Riva gave a first-hand account of how he and Escobar killed Cuellar with a knife and a machete. Hernandez testified that Escobar, Riva, Portillo, and Garcia followed Cuellar to his apartment and later told the other members of the gang that they had murdered Cuellar.

Rosas’s testimony, if believed, tended to establish that she provided transportation to gang members on the night of the murder, located Cuellar at the laundromat, and left the State with Escobar and several others twelve days later. In addition to being relatively unimportant, this evidence was cumulative of the testimony of Hernandez.

We are satisfied that Rosas’s and Martinez’s previously recorded trial testimony did not influence the jury’s verdict in this case. Accordingly, the admission of that evidence, if erroneous, was harmless beyond a reasonable doubt.

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