

Circuit Court for Montgomery County
Case No. 133636

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2993

September Term, 2018

ANTHONY JEFFRIES

v.

STATE OF MARYLAND

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

JJ.

Opinion by Wright, J.

Filed: October 16, 2019

*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.

A jury, in the Circuit Court for Montgomery County, convicted Anthony Jeffries, appellant, of robbery and conspiracy to commit robbery. The court sentenced Jeffries to a total term of 25 years' imprisonment. In this appeal, Jeffries presents two questions for our review:

1. Did the trial court err when it permitted the State to introduce surveillance video and photographs without testimony of authenticity?
2. Was the evidence sufficient to sustain the conviction of conspiracy to commit robbery?

Finding no error and the evidence sufficient, we affirm the judgments of the circuit court.

BACKGROUND

In the evening hours of February 28, 2018, Jorge Leon was in the area of the Wheaton Metro station in Montgomery County when an individual approached Mr. Leon, pointed a “weapon” at him, and told him to “roam [his] pockets.” When Mr. Leon informed the individual that he “didn’t have anything on [him],” the individual struck Mr. Leon twice in the face, grabbed a bag that Mr. Leon had been carrying, and then “ran off.” After Mr. Leon reported the robbery to the police, Jeffries was arrested and charged in connection with the robbery.

Motion to Exclude Surveillance Videos and Photographs

On the first day of trial, prior to jury selection, the circuit court heard argument on a motion filed by defense counsel seeking to exclude two surveillance videos and a number of still photographs taken from those videos. The first video was captured by a

surveillance camera located outside of the Wheaton Metro station (hereinafter the “Wheaton Metro video”) and included “about an hour’s worth” of footage from around the time of the robbery. The second video was captured by a surveillance camera located outside of a nearby J.C. Penney store (hereinafter the “J.C. Penney video”) and included footage depicting “a portion of J.C. Penney’s department store on that same day . . . at approximately 9:00 p.m..” According to defense counsel, the State intended to introduce the two videos into evidence, along with “a number of screenshots” that the State had taken from the two videos.

Defense counsel argued that the circuit court should exclude the videos and accompanying screenshots because the State was not intending to call “any live witness to authenticate” the videos but rather would “be relying on certifications that the videos are business records.” The certifications, each of which were signed under penalty of perjury by the business’s custodian of records, stated that the videos were “true and correct copies of records that were made at or near the time of the occurrence of the matters set forth, by or from the information transmitted by, a person with knowledge of these matters;” that they were “kept in the course of regularly conducted activity;” and that they were “made and kept by the regularly conducted business activity as a regular practice.” Defense counsel maintained that those certifications were insufficient to authenticate the videos because the certifications did not provide any insight into “the process used, the manner of operation of the cameras, the reliability of authenticity of the images or the chain of custody of the pictures.”

The State responded that the certifications were sufficient to authenticate the videos as business records because the videos had not been altered or enhanced by the State. The State proffered that it intended to introduce the videos “in their totality” and that it had “some stills” from those videos that it planned to publish for the jury.

The circuit court denied defense counsel’s motion, finding that the certifications from the custodians made the videos authentic. The court explained that it was “very similar to a business record coming in” after it has been “authenticated by the fact that a custodian of records who is not present by law is allowed to give a certification that these are records that we keep in the normal course of business which makes them authentic.”

Trial

At trial, the victim, Mr. Leon, testified that, on the night of the robbery, he was walking in the area of the Wheaton Metro station when he encountered a man named “Oscar,” whom Mr. Leon knew “from middle school.” Mr. Leon testified that, at the time of the encounter, Oscar was with another individual whom Mr. Leon did not recognize. After greeting Oscar with a “high-five,” Mr. Leon “just kept walking.”

Mr. Leon testified that, as he continued walking, he observed that Oscar and the other individual were following him, which Mr. Leon found “unusual” because he and Oscar did not “hang out.” After Mr. Leon had walked a short distance away from the Wheaton Metro station, Oscar approached him and “offered to sell [him] some t-shirts.” As Oscar was showing Mr. Leon some shirts, the other individual, whom Mr. Leon identified in court as Jeffries, grabbed Mr. Leon from behind, “put a gun to [him],” and

said, “roam your pockets.” When Mr. Leon told Jeffries that he “didn’t have anything,” Jeffries “pistol whipped [him] on the face twice” and then grabbed a book bag that Mr. Leon had been carrying. Immediately thereafter, both Oscar and Jeffries “ran off.” Mr. Leon testified that the police arrived on the scene not long after the robbery.

During Mr. Leon’s testimony, the State introduced, and the circuit court admitted, three videos, two of which were the Wheaton Metro and J.C. Penney videos. The third video came from a surveillance camera located outside Netvue Mobile, a retail store sited near where the robbery occurred. In that video, Mr. Leon, Oscar, and Jeffries can be seen walking through a parking lot at approximately 10:00 p.m. on February 28, 2018, the night of the robbery. Shortly thereafter, Jeffries can be seen striking Mr. Leon and then leaving the scene with Oscar.

Although the State did not publish the Wheaton Metro video or the J.C. Penney video during Mr. Leon’s testimony, it did publish three still images taken from the Wheaton Metro video and two images taken from the J.C. Penney video, all of which were shown to Mr. Leon. Mr. Leon testified that one of the images taken from the Wheaton Metro video showed “Oscar” together with “the other guy,” both of whom were “involved in the robbery.” Another image, also taken from the Wheaton Metro video, showed Mr. Leon “walking out of the Metro station” carrying a red backpack “while Oscar is right on [his] side.” Mr. Leon testified that the two images taken from the J.C. Penney video showed Oscar together with “Anthony” in the area of the robbery.

Following Mr. Leon’s testimony, Montgomery County Police Detective John Chucoski testified for the State. Detective Chucoski testified that he was assigned to investigate the robbery and that, in so doing, he obtained the Wheaton Metro, J.C. Penney, and Netvue videos. Detective Chucoski testified that the Wheaton Metro video showed the “Metro tunnel at the bus turnaround at the Wheaton Metro Station” from 9:30 p.m. until 10:30 pm. on the night of the robbery. According to Detective Chucoski, at some point in the video, Mr. Leon can be seen “dabb[ing] or kind of greet[ing] Oscar as he was walking out of the Metro tunnel.” Regarding the J.C. Penney video, Detective Chucoski testified that the video was taken around 7:00 p.m. on the night of the robbery and showed the store’s “lower level,” which was “inside the Westfield Wheaton Mall” and “directly across the parking lot from the bus turnaround and Metro Station.”

Detective Chucoski testified that, after viewing both videos following the robbery, he “clipped” several still images from the videos, which he then showed to Mr. Leon.¹ Upon viewing those images, Mr. Leon recognized both Oscar and the other individual who “committed the actual robbery.” Because Mr. Leon could not identify the second suspect by name, Detective Chucoski posted an image of the suspect on “a web board” that was viewable by other police officers. Shortly thereafter, Detective Chucoski was contacted by another officer, who informed Detective Chucoski that he recognized the suspect as someone he had investigated “in the past” and who was “known to have

¹ Detective Chucoski testified that the images he clipped from the videos included those that the State had previously shown to Mr. Leon during his direct testimony.

criminal history.” Based on that information, Detective Chucoski was able to identify Jeffries as the suspect that Mr. Leon had identified as having “committed the actual robbery.”

DISCUSSION

I.

Jeffries first contends that the circuit court erred in permitting the State to introduce the Wheaton Metro and J.C. Penney videos without direct testimony as to the videos’ authenticity. Jeffries maintains that, pursuant to the Court of Appeals’ decision in *Washington v. State*, 406 Md. 642 (2008), the certifications of business records offered by the State in lieu of live testimony were insufficient evidence of the videos’ authenticity.

The State responds that the circuit court correctly concluded that the videos were properly authenticated as certified business records. The State contends that the certifications submitted by the State complied with the procedures for admitting business records. The State maintains, therefore, that the videos were “self-authenticated” under the Maryland Rules. The State further contends that, even if the videos had not been self-authenticated, they were nevertheless authenticated “by foundational proof presented at trial.”

“A threshold requirement of admissibility of evidence is whether the authenticity of the evidentiary matter may be established.” *Jackson v. State*, 460 Md. 107, 115 (2018). Md. Rule 5-901(a) provides that 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.” In the case of a video, authenticity is ordinarily established under either the “pictorial testimony theory” or the “silent witness method.” *Washington v. State*, 406 Md. 642, 652 (2008). “[T]he pictorial testimony theory of authentication allows photographic [or video] evidence to be authenticated through the testimony of a witness with personal knowledge, and the silent witness method of authentications allows for authentication by the presentation of evidence describing a process or system that produces an accurate result.” *Id.* Nevertheless, “the burden of proof for authentication is slight, and the 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.” *Johnson v. State*, 228 Md. App. 27, 59 (2016), *cert denied* 450 Md. 120 (2016) (emphasis in original) (citations omitted).

In some instances, certain evidence, including business records, may be “self-authenticated.” Md. Rule 5-902(b)(1) provides, in pertinent part, that “[t]estimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of [Md.] Rule 5-803(b)(6) that has been certified pursuant to subsection (b)(2) of this [Md.] Rule[.]” Subsection (b)(2) of the Rule states, in pertinent part, that the business record “shall be certified” with a “Certification of Custodian of Records or Other Qualified Individual,” which must include, among other things, a statement under penalty of

perjury that the business records: “(a) are true and correct copies of records that were made at or near the time of the occurrence of the matters set forth by, or from the information transmitted by, a person with knowledge of these matters; and (b) were kept in the course of regularly conducted activity; and (c) were made and kept by the regularly conducted business activity as a regular practice.” Md. Rule 5-902(b)(2).

Similarly, Md. Rule 5-803(b)(6), which is referenced in Md. Rule 5-902(b)(1), states, in relevant part, that the following are not excluded by the hearsay rule:

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation.

Thus, “[t]here are two ways that the necessary evidentiary foundation for admitting business records may be established: by extrinsic evidence (usually live witness testimony) regarding the four requirements of [Md.] Rule 5-803(b)(6) or by ‘self-authentication’ pursuant to [Md.] Rule 5-902[.]” *State v. Bryant*, 361 Md. 420, 426 (2000). In other words, “[Md.] Rule 5-902[] creates an alternative method for authenticating business records without requiring the live testimony of the records custodian. It allows proof, by certification, of the same facts to which a witness would have been required to testify in court to lay the foundation for the hearsay exception at

trial.” *Id.* at 427. Moreover, “[p]roper certification, under [Md.] Rule 5-902[], establishes a *prima facie* foundation for the business records exception.” *Id.* at 428.

In *Department of Public Safety and Correctional Services v. Cole*, 342 Md. 12 (1996), the Court of Appeals determined that a videotape could be authenticated and admitted as part of a business record. *Id.* at 27-28. There, the petitioner, a correctional officer, who was appealing an administrative ruling terminating his employment, challenged the admissibility of a videotape that had been recorded by surveillance cameras at the prison where he worked. *Id.* at 17-18. Before the Court of Appeals, the petitioner argued that the video had not been properly authenticated because no live witness testified to the video’s accuracy. *Id.* at 20. The Court of Appeals disagreed, holding that the video had been properly authenticated under the “silent witness” theory. *Id.* at 27. In addition, the Court determined that the video “could have been admitted as part of an official record made and kept in the ordinary course of the correctional institution’s business activity.” *Id.* at 27-28. The Court explained that “[Md.] Rule 5-803(b)(6) sets out the well-established exception to the rule against hearsay for records of regularly conducted business activity” and that “[t]here are times when items made part of and included within an official record can be admitted into evidence as part of a business record admitted under this exception.” *Id.* at 28. The Court noted that, in that case, “the correctional institution’s official record consisted of the videotape, the envelope in which it was stored and the chain of custody form attached thereto.” *Id.* at 28-29. The Court concluded, therefore, that “the videotape could have been admitted

under the business records exception if the Department properly authenticated that record.” *Id.* at 29.

Considering the above, we hold that the Wheaton Metro and J.C. Penney videos were properly authenticated. The proffered certification for each video complied with Md. Rule 5-902(b) and Md. Rule 5-803(b)(6). As a result, the videos were properly authenticated as business records. That is, the State presented *prima facie* evidence that the videos were part of an official record made and kept in the ordinary course of each business’s activity. Jeffries presented no evidence below to refute the authenticity of the certifications or the business records. Instead, Jeffries argued that the State was required to present live testimony or other evidence regarding “the process used, the manner of operation of the cameras, the reliability of authenticity of the images or the chain of custody of the pictures.” But, as explained, no such evidence is required under the business records exception. Accordingly, the circuit court did not err in admitting the videos.

Jeffries argues that Md. Rule 5-902(b) and Md. Rule 5-803(b)(6) are inapplicable in the instant case because the videos are “totally silent” and “do not contain any out-of-court declarations.” We disagree, as Jeffries has failed to cite case law that states that a business record must contain hearsay in order for the record to be self-authenticating. *See Bryant*, 361 Md. at 427 (“[Md.] Rule 5-902 was designed in the interest of judicial economy to eliminate the need to call foundation witnesses for evidence that is so likely to be authentic that extrinsic evidence is unnecessary.”).

Jeffries' reliance on *Washington* is also unavailing. To begin with, Jefferies is wrong in his assertion that, in that case, the Court of Appeals "held that surveillance footage may be admitted *only* if 'a witness testified to the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system.'" The Court of Appeals made no such holding. Rather, the Court, in noting that "[a]uthentication of a photograph does not require testimony of the person who took the photograph," merely stated that "[c]ourts have admitted surveillance tapes and photographs made by surveillance equipment that operates automatically when 'a witness testified to the type of equipment or camera used, its general reliability, the quality of the recorded produce, the process by which it was focused, or the general reliability of the entire system.'" *Washington*, 406 Md. at 653 (citations omitted).

Moreover, the issues in *Washington* were different than the ones presented here. There, the video in question, which purportedly depicted a shooting and its aftermath, was "made from eight surveillance cameras" and "was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD, and then to videotape." *Id.* at 655. As a result, the Court of Appeals determined that "the foundational requirement [was] more than that required for a simple videotape," holding that the State had failed to establish the video's authenticity where "[t]here was no testimony as to the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures." *Id.*

Here, the videos were admitted pursuant to the business records exception, an issue that was never raised or even discussed in *Washington*. In addition, there was no indication that the videos in the instant case had been altered prior to their admission.

Jeffries argues, for the first time on appeal, that the manner in which the videos were labeled and presented to the circuit court provided no insight into how the videos were compiled and even suggested that the videos may have been altered from their original state. Because this argument was not raised in the trial court, it is not preserved for our review. Md. Rule 8-131(a).

II.

Jeffries next argues that the evidence adduced at trial was insufficient to sustain his conviction of conspiracy to commit robbery because the State failed to establish that he and Oscar entered into an unlawful agreement to rob Mr. Leon. We disagree.

“The test of appellate review of evidentiary sufficiency 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.’” *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, “including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, “[t]he test is ‘not whether the evidence *should have or probably would have* persuaded the majority of fact finders but

only whether it *possibly could have* persuaded *any* rational fact finder.” *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.’” *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, “[w]e defer to the fact finder’s ‘opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]’” *Neal*, 191 Md. App. at 314 (citations omitted).

A conspiracy occurs when two or more persons combine or agree “to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means.” *Savage v. State*, 226 Md. App. 166, 174 (2015). “When the object of the conspiracy is the commission of another crime, . . . the specific intent required for the conspiracy is not only the intent required for the agreement but also, pursuant to that agreement, the intent to assist in some way in causing that crime to be committed.” *Mitchell v. State*, 363 Md. 130, 146 (2001). The essence of a criminal conspiracy is the unlawful agreement, and the crime “is complete when the agreement to undertake the illegal act is formed.” *Savage*, 226 Md. App. at 174. “The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.” *Townes v. State*, 314 Md. 71, 75 (1988). “A conspiracy may be shown through circumstantial evidence, from which a common scheme may be inferred.” *Hall v. State*, 233 Md. App. 118, 138 (2017).

The “unlawful purpose” in the instant case was robbery. “Robbery is defined as ‘the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear.’” *Id.* (quoting *Mitchell*, 363 Md. at 145-46).

Here, the evidence adduced at trial established that Oscar and Jeffries were together in the area of the Wheaton Metro a few hours before the robbery; that they were together again when Oscar initially encountered Mr. Leon outside the Wheaton Metro just prior to the robbery; and that they remained together as they followed Mr. Leon away from the Wheaton Metro. The evidence further showed that, after Mr. Leon had walked some distance away from the station, and despite the fact that Oscar had just encountered Mr. Leon only moments before, Oscar re-engaged Mr. Leon and offered to “sell him some t-shirts.” Upon Oscar showing Mr. Leon one of the t-shirts, Jeffries committed the robbery. Immediately thereafter, Oscar and Jeffries “ran off.”

That evidence, when viewed in a light most favorable to the State, was sufficient to sustain Jeffries’ conspiracy conviction. Jeffries’ and Oscar’s concerted actions around the time of the robbery satisfactorily established that the two had entered into an agreement to rob Mr. Leon. *See Jones v. State*, 132 Md. App. 657, 660 (2000) (“If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may . . . infer a prior agreement by them to act in such a way.”). Moreover, the fact that both men fled the scene immediately after the robbery demonstrates a consciousness of guilt as to the charged crimes. *See Mills v. State*, 239 Md. App. 258, 277 (2018) (noting that a

defendant’s “flight and ensuing concealment could properly be considered by the jury as evidence of consciousness of guilt.”); *see also Ford v. State*, 462 Md. 3, 47 (2018) (“Consciousness of guilt evidence is considered relevant to the question of guilt because the particular behavior provides clues to the person’s state of mind, and state of mind evidence is relevant because the commission of a crime can be expected to leave some mental traces on the criminal.”) (citing *Decker v. State*, 408 Md. 631, 641 (2009)).

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