

Circuit Court for Baltimore City
Case No. 117171013

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3077

September Term, 2018

CORY WILLIAMS

v.

STATE OF MARYLAND

Meredith,
Graeff,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: December 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.

Appellant, Cory Williams (“Williams”), argues that the Circuit Court for Baltimore City erred in admitting certain pieces of demonstrative evidence and providing an improper instruction to the jury. Williams was tried for the 9 February 2017 shooting and murder of Deonte Bluefort (“Bluefort”). During the trial, the judge admitted into evidence surveillance footage from a store near where the murder was committed, as well as body camera footage of a police officer’s attempt to resuscitate the gun-shot Bluefort prior to his demise. At the close of trial, the judge instructed the jury, among other things, on “flight or concealment of evidence.” The jury acquitted Williams of murder in the first degree and conspiracy to commit murder, but convicted him of murder in the second degree, use of a handgun in a crime of violence, and conspiracy to use a handgun in a crime of violence. This timely appeal followed. We shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

On the afternoon of 9 February 2017, Tacquel Taylor (“Taylor”), Rodney Brooks (“Brooks”), and Williams were walking together near the A&Y Grocery Store on North Hilton and Kossuth Streets in Baltimore. Taylor entered the store to make a purchase and soon departed with Brooks following him. At this time, Taylor claims he did not see Williams in an alley near the grocery and did not see him during his walk home with Brooks. Taylor claims to have heard gunshots five minutes after walking past the alley and ran away from the noise.

Contemporaneous video surveillance footage depicted Bluefort entering the

grocery, while Taylor, Brooks, and Williams were in the alley. Williams remained in the alley, while Taylor and Brooks left to conduct their business in the grocery. One of the two who came out of the alley shook Bluefort's hand and walked away from the grocery with his companion. A little later, Bluefort walked toward the alley, hesitating before entering it. He emerged from the alley holding his stomach as if he had been shot.

Responding to a report of a shooting, police officers arrived at the scene and discovered Bluefort on the sidewalk bleeding profusely and struggling to breathe. He suffered from what was later determined to be five gunshot wounds. Officer Robert Mullen ("Mullen") was equipped with a body camera. He activated the camera and administered CPR to Bluefort until paramedics arrived and took over care of the victim. Bluefort died later. As part of their investigation of the crime scene area, the officers discovered a blood trail that led from the alley to the location where Bluefort was found on the sidewalk. Detective Adam Storie ("Storie"), another responder, "help[ed to recover] video [from] inside the store" He downloaded footage from exterior security cameras, as well as a camera that covered the entrance to the store.

Williams was arrested later and charged with murder in the first and second degrees, conspiracy to commit murder, use of a handgun in a crime of violence, and conspiracy to use a handgun in a crime of violence.

Williams and Brooks were tried as co-defendants. The State called Aman Gabiesalaski ("Gabiesalaski"), co-owner of the grocery, who testified that the store had a surveillance camera system that recorded the inside of the store, as well as the outside of the store at two separate locations, the street and the mouth of the alley where Bluefort was

shot. The State moved into evidence the surveillance footage recovered by Storie from the day of the shooting. Williams objected on the ground of lack of sufficient authentication. Following further authentication testimony, the State moved again to have the footage received. Williams’s counsel objected again, stating “I still have an objection, Your Honor,” but specified his objection was on the ground that he believed the evidence had not been provided to him in discovery. After it was resolved that the evidence had been supplied in discovery, counsel for Brooks expressed concern about authentication, but offered a stipulation that allowed the State to authenticate the surveillance video to Brooks’s satisfaction. Following this process, the State moved ultimately to enter the footage into evidence. The court asked if there were further objections, to which counsel for Williams responded “[j]ust the objection I made to—the Court will know.” Taylor testified to the accuracy of what the footage depicted up to the point in time that he and Brooks walked away from the grocery.

During the testimony of Mullen, the State offered into evidence footage from his body camera that showed him administering CPR to Bluefort. The respective defense attorneys for Williams and Brooks objected, claiming the video was not probative of anything relevant because the video showed things that were established already on the record (i.e., Bluefort had been shot and was in distress) and that the prejudicial impact of the graphic video outweighed its potential value. The State responded by claiming the footage showed Bluefort’s condition at the time the officers arrived, that he needed CPR, and that it corroborated the testimony of a medical expert regarding Bluefort’s wounds. Further, the State contended that the body camera time-stamp confirmed the accuracy of

the time-stamp on the store’s surveillance video. The court overruled the objections and admitted the evidence.

At the close of all of the evidence, the State requested a jury instruction on “flight or concealment of evidence.” Williams’s counsel objected initially, claiming there was insufficient evidence to establish flight. After the court instructed the jury, including the flight instruction, the judge asked if there were any objections, to which Williams’s counsel said “[n]o, Judge.”

QUESTION PRESENTED

Appellant presents the following questions for our consideration, which we have rephrased modestly:¹

- I. Did the court err in admitting the surveillance video into evidence?
- II. Did the court err in admitting body camera footage into evidence?
- III. Did the court err in providing an instruction on “flight or concealment of evidence” to the jury?

STANDARD OF REVIEW

Maryland appellate courts review a trial judge’s decision to admit or exclude evidence ordinarily under an abuse of discretion standard. *Gerald v. State*, 137 Md. App. 295, 305 (2001) (citing *CSX Transp. v. Continental Ins. Co.*, 343 Md. 216, 251–52 (1996)).

¹ Appellant’s questions were:

1. Did the lower court err in allowing surveillance video footage into evidence without proper authentication of those videos?
2. Did the lower court err in allowing the State to introduce a body-worn video of a police officer performing resuscitation efforts upon a dying homicide victim?
3. Did the lower court err in propounding a flight instruction?

Although trial courts have broad discretion in determining the admission of evidence, that discretion does not extend to admitting irrelevant evidence. Md. Rule 5-402. Beyond this, even relevant evidence is subject to exclusion “if its probative value is substantially outweighed by the danger of unfair prejudice” Md. Rule 5-403. In that regard, we review a trial court’s determination of whether evidence is relevant without deference. *DeLeon v. State*, 407 Md. 16 (2008). A trial court’s decision, however, in the balancing of probative value and unfair prejudice is reviewed using an abuse of discretion standard. *Oesby v. State*, 142 Md. App., 144, 167–68 (2002).

DISCUSSION

I. Authentication of the surveillance video.

Williams contends that the video footage recorded by the surveillance cameras at the grocery was not authenticated properly and thus the court erred in admitting it into evidence. He claims that (1) there was no evidence provided to show how the cameras operated in a manner sufficient to satisfy a “silent witness” theory of authentication and (2) that Gabiesalski was not present at the time of the incident and thus could not provide corroborative first-hand testimony of what the video displayed. The State responds preliminarily that this contention is not preserved for appellate consideration as Williams’s objection to the footage was ambiguous regarding the ultimate ground of the objection. Should the challenge be preserved, the State contends that the footage was authenticated properly as, not only was the record sufficient to authenticate the surveillance footage under the silent witness theory, Taylor provided the first-hand testimony needed to

authenticate the accuracy of the footage. At the threshold, we hold that the question was not preserved properly for appellate review.

In Maryland, an objection to admission of evidence “shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.” Md. Rule 4-323(a). Further, a party is limited on appeal to any specific grounds on which he or she objects at trial. *Klaunberg v. State*, 355 Md. 528, 541 (1999).

Counsel for Williams failed to maintain a clear objection on authentication grounds. Williams objected initially to the offering of the footage based on a lack of adequate authentication. Following the State’s further attempts to authenticate the footage, Williams changed the thrust of his objection. Rather than relying on authentication, Williams protested that the proffered evidence had not been provided to him in discovery. The State demonstrated that the information was on a video disc that had been provided to Williams. Although counsel for Brooks voiced thereafter an objection to authentication, Williams did not. Following an exchange between Brooks’s counsel and the court that satisfied Brooks’s objection on authentication grounds, the judge asked Williams whether he had any further objections. His response was “[j]ust the objection I made to—the Court will know.”

To describe Williams’s position as ambiguous at this point, relative to admission of the surveillance video, would be generous. In his reply brief, Williams claims that his objection to authentication from earlier in the proceeding carried over and that “[i]t is simply fantastic [to] suggest that [] Williams’[s] objection was anything other than his consistent challenge to the foundation” We disagree. Williams’s initial objection was

based on authentication, his following objection on an alleged discovery violation, and his final allusion to an objection was non-specific. Based on the record before us, there is no clarity as to what ground the trial judge was expected to understand was Williams’s final objection. We have held that “[a] party must bring his argument to the attention of the trial court with enough particularity that the court is aware . . . what the parameters of the issue are.” *Harmony v. State*, 88 Md. App. 306, 317 (1991). We hold that Williams has not preserved this question for appeal.

Even if his appellate contention were before us properly, Williams would not prevail. In Maryland, “[t]he 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.” Md. Rule 5-901(a). This requirement applies to still photographs and videos alike. *Washington v. State*, 406 Md. 642, 651 (2008). These types of evidence may be authenticated in one of two ways generally. First, a witness who “testifies from first-hand knowledge that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time,” may authenticate the evidence. *Id.* at 652. Second, under a “silent witness” theory, a “photograph [can be admitted] as a ‘mute’ or ‘silent’ independent photographic witness because the photograph speaks with its own probative effect.” *Id.* The silent witness theory requires “evidence describing a process or system that produces an accurate result.” *Id.* Both approaches of authentication are satisfied on the record before us.

Taylor was a first-hand witness to the bulk of the events depicted on the surveillance footage. The first-hand witness requirement is not so stringent as to require the witness

appear in or be privy to every angle and moment of the footage in order to act as the authenticator. During his testimony, Taylor identified himself, Brooks, and Williams in the footage, and gave a first-hand running account of most of the events shown on the video surveillance footage. His testimony alone is enough to satisfy the standard for authentication.

The silent witness approach is also satisfied here. Williams complains in this regard that “[n]o evidence showed the manner in which the cameras operated; the authenticity or reliability of the pictures, or the chain of custody from the pictures obtained to those offered at trial.” This mis-perceives the record objectively and skews the facts in *Washington*, from which Williams draws these factors. Gabiesalski testified as to the reliability of the surveillance system from his personal experience with it. The accuracy of the system was corroborated further by the testimony of Taylor and Mullen, confirming the time-stamp and, in the case of Taylor, the events depicted on the footage. The chain of custody is established also on the record, with Storie explaining that he downloaded the footage personally and was the one who made the choice as to what footage to download.

This case is distinguishable from *Washington*, where a bar owner did not know how to pull data off the bar’s surveillance system, so he hired an independent technician to do so. *Id.* at 655. The technician edited the video independently. The first time the investigating detective saw the footage was after the edits had been made. *Id.* Although in *Washington* there was a lack of testimony regarding the operation of the cameras, the remaining concerns expressed there by the Court of Appeals are not implicated in this case. There was no abuse of discretion by the trial judge here in determining the video

surveillance footage was authenticated properly and receiving it into evidence.

II. Receipt of the body-camera video.

The trial judge permitted video recorded by the body camera worn by Mullen into evidence over the objections of Williams and his co-defendant. Williams argued that the video, which showed Mullen giving CPR to Bluefort, was too “inflammatory,” due to its graphic nature and the risk of prejudice it presented outweighing substantially any probative value it may have carried. Counsel for Brooks claimed that the evidence was irrelevant as it did little more than reinforce facts that were established already on the record. The State disagrees, claiming that Williams’s objection did not preserve properly the relevance issue, and concludes that the court exercised its discretion properly in admitting the evidence despite the risk of prejudice. We hold that the relevance challenge is not properly before this Court and that the trial court did not err in admitting the evidence despite the risk of prejudice.

Williams’s objection at trial was to the prejudicial nature of the footage, rather than to its relevance. The Court of Appeals has held that “a contemporaneous general objection to the admission of evidence ordinarily preserves for appellate review all grounds which may exist for the inadmissibility of evidence.” *Boyd v. State*, 399 Md. 457 (2007). “An objection loses its status as a general one [, however,] where a rule requires the ground to be stated, where the trial court requests that the ground be stated, and *where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence.*” *DeLeon v. State*, 407 Md. 16, 25 (2008) (emphasis in original). Here,

as Williams objected specifically to the inflammatory nature of the footage, but not to its relevance, he is limited on appeal to seeking reversal only on the grounds of his specific objection. Thus, the issue of relevance *vel non* is not before us properly and we will not consider it further.

Assuming the evidence to be relevant, it may be excluded nonetheless “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Md. Rule 5-403. The balancing required between probative value and unfair prejudice is one conducted by the trial judge, to whose decision we give great deference. *Oesby v. State*, 142 Md. App. 144, 167–68 (2002).

Williams claims that, due to the graphic nature of the body camera footage, and its lack of probative value in establishing any new facts, the video was prejudicial and should have been excluded under Md. Rule 5-403. As we must give great deference to the trial court in making its decision, we analyze the record solely to determine whether its decision was an abuse of discretion. There was no abuse. The record shows that the body camera footage helped establish the time the initial treatment of Bluefort occurred, which coincided with the time-stamp on the corresponding images from the surveillance camera footage, as well as corroborating the location of the shooting. Further, the video was used to establish the nature and severity of Bluefort’s injuries, both facts that were probative to the crimes for which Williams was on trial. Even where the same or similar facts had been otherwise established at trial, the use of photographs or video to corroborate and strengthen a fact has been permitted. *See Reid v. State*, 305 Md. 9, 21 (1985) (refusing to overturn admittance

of photographs with graphic aspects because “[t]he photographs present more clearly than words what the witnesses were attempting to describe . . .”). We hold that the court did not abuse its discretion in admitting it into evidence.

III. Flight instruction.

Williams concedes that his trial counsel failed to make an objection following the giving of the flight instruction to the jury, yet he argues that we should overlook this failure as “(1) there was substantial compliance with the preservation requirement; (2) counsel was ineffective in failing to preserve this issue for appeal; or (3) the provision of this inappropriate instruction constitutes plain error.” If we find the issue has been preserved, Williams contends that there was not sufficient evidence to generate flight and, thus, the instruction was given improperly. The State, in turn, responds the issue was not preserved due to the failure to object following the instruction. Further, the State desires that we decline review on direct appeal of the challenge based on plain error or ineffective assistance of counsel.

Maryland Rule 4-325(e) states that “[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.” The Court of Appeals has stated, “[u]nless the attorney preserves the point by proper objection after the charge or has somehow made it crystal clear that there is an ongoing objection to the failure of the court to give the requested instruction, the objection may be lost.” *Sims v. State*, 319 Md. 540, 549 (1990). An objection may continue

through discussion and instruction if the objection was made before instruction and restating after instruction it would be futile, but “these occasions represent the rare exceptions.” *Id.*

Williams wishes us to hold that counsel complied substantially with the preservation requirement by objecting prior to instruction. We do not subscribe to this characterization of counsel’s actions. Counsel objected prior to instruction, but when asked following jury instructions if there were any objections, counsel stated “[n]o, Judge.” This is not substantial compliance with the rule. Although “counsel need not make a precise objection after the instructions are read to the jury,” the requirement that it be crystal clear the objection was ongoing is a high bar. *Houghton v. Forrest*, 183 Md. App. 15, 31 (2008). This distinction between what is crystal clear and what is not might seem esoteric at first blush, but has been addressed by Maryland appellate courts. *Id.* If ““nothing transpired at or after the conference on instructions that would [] lead anyone to believe that the [objecting party] conceded his objection,”” then we will hold there was substantial compliance. *Id.* at 32 (quoting *Haney v. Gregory*, 177 Md. App. 504, 509 (2007)). But, if it is “difficult, if not impossible, to determine whether defense counsel acquiesced in the judge’s determination,” then we will hold there was not substantial compliance. *Id.* (quoting *Sims*, 319 Md. at 549).

Although the objection as part of the pre-instruction discussion was an appropriate first step, counsel’s following actions appear lacking. Failure to pursue beyond the initial objection when the court was asking the State for details regarding the flight instruction has not been overcome by Williams. Opportunity was given to establish the objection as

continuing, but was not taken by counsel. Further, this Court has determined that the language of the judge and counsel are to be taken into account in determining if the objection was continuing. *See id.* at 32–33 (holding that it was only crystal clear the objection was continued when the judge “made it clear any further objection would be futile,” and the objecting party “asked the trial judge whether the instructions were subject to ‘[o]ur objections on principle.’”) Here there was no such clarity. The initial debate over the instruction to be given continued without further objection. The judge did not inform the parties that further objections would be futile or give adequate cause to believe she would be unresponsive to a subsequent objection. Following instruction, the judge asked whether either party had “[a]ny objections to the instructions,” to which counsel stated plainly, “[n]o, Judge.” This dialogue appears to show that any objections that were made prior to or during discussion of possible instructions were not being pursued, which fails to preserve the issue for appeal. *Gore v. State*, 309 Md. 203, 209 (1986).

Williams invites us next to notice plain error. We decline to do so. We are hesitant to exercise this discretion except in the most “compelling, extraordinary, exceptional or fundamental,” circumstances. *Robinson v. State*, 410 Md. 91, 111 (2009). Before we might consider recognizing plain error, there are four pre-conditions that generally must be met: (1) there must be an error or defect that has not been waived or abandoned; (2) the legal error must be clear or obvious; (3) the error must have impacted the outcome of the court proceedings; and (4) the error must affect the fairness, integrity, or public perception of the proceedings. *Newton v. State*, 455 Md. 341, 364 (2017). As discussed above, the challenge to the error (if error there was) was abandoned by counsel. Even had it not been, there is

no plain error. The putative error in this case is neither clear nor obvious. There is an aura that the jury instruction was generated by the record as Williams’s “flight” is supported by his disappearance from the alley. It was up to the jury to determine whether this was an indicia of guilt.

Finally, Williams wishes us to hold that failure to preserve this issue through proper objection can be found on this record in this direct appeal as constitutionally ineffective assistance of counsel. Williams acknowledges that post-conviction proceedings, rather than direct appeal, are the preferred forum for vetting such a claim. *In re Parris W.*, 363 Md. 717, 726 (2001). This is the rule because often the trial record is not an adequate basis from which to make such determinations as that forum is not concerned usually with the character or effect of counsel’s assistance. *Smith v. State*, 394 Md. 184, 200 (2006). Yet, when a record is sufficient to “permit a fair evaluation of the claim,” we may consider an ineffectiveness claim on direct appeal. *Parris W.*, 363 Md. at 726. Williams claims that the record is sufficient here because “there is no reason to fail to [lodge] a formal exception after counsel had objected-to, and the court had propounded, an improper jury instruction.” We disagree. There is not enough on this record for us to evaluate properly whether failure to note a follow-on objection to the flight instruction represented an instance of ineffective assistance of counsel or prejudiced Williams’s ability to receive a fair trial. All we have on the record before us is the fact that counsel failed to renew the objection, but nothing regarding why the change of heart occurred, or whether that failure alone fell below the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984). As such, we decline the present invitation to consider and decide whether Williams received ineffective

assistance of counsel and, if so, whether he was prejudiced thereby.

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