Circuit Court for Baltimore City
Case No. 121152015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1463

September Term, 2022

DOMONIC DANTE WHITE

v.

STATE OF MARYLAND

Arthur,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Albright, J.

Filed: November 9, 2023

* 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 Maryland Rule 1-104(a)(2)(B).

A jury sitting in the Circuit Court for Baltimore City found Domonic Dante White, Appellant, guilty of first-degree assault, reckless endangerment, and related weapons offenses. The court sentenced Mr. White to an aggregate of 45 years' imprisonment. He then noted this appeal, raising two issues:

> 1. Whether the trial court erred [or abused its discretion] in admitting into evidence a jail call, to which Appellant was alleged to be a party, where the State did not authenticate the call; and
>
> 2. Whether the trial court erred [or abused its discretion] in admitting into evidence surveillance videos that were not authenticated by the State.

We find neither error nor abuse of discretion. Accordingly, we affirm.

BACKGROUND

Shortly before 7:00 p.m. on April 29, 2021, Kaivon Stewart, then a patrol officer (now a detective) in the Baltimore City Police Department, was driving southbound in a marked vehicle on Belair Road in northeastern Baltimore City. As he approached the intersection with Eierman Avenue, he heard a gunshot. Officer Stewart "immediately" turned right onto Eierman Avenue and observed "an unidentified ... male wearing black clothing fully extended out with a handgun pointing towards" a man later identified as Christopher Clanton. Officer Stewart stopped his vehicle, got out, drew his service weapon, and pointed it "into the direction of the suspect."

The suspect fled down an alley. Officer Stewart turned his attention to Mr. Clanton, who was suffering from a gunshot wound to his ear. Officer Stewart called for additional units. He and his partner, Officer Franklin Phipps, then canvassed the area. At that time, no witnesses were located.

Officer Stewart did, however, notice a blue 2007 Pontiac G6 "that was left unattended and running." Police officers conducted an inventory search of the Pontiac. Among the items recovered was a cell phone "that had constant calls coming in." The lock screen of that phone displayed a photograph of a woman and a man; the woman was identified as the owner of the vehicle, Tinnesha Wilson, and the man was her fiancé, Appellant.[1]

Mr. Clanton was transported to Johns Hopkins Hospital, where he was treated for his injuries. He gave a statement to police detectives and identified Appellant[2] as the shooter.[3]

Several weeks later, an indictment was returned, by the Grand Jury for Baltimore City, charging Appellant with attempted first-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, reckless endangerment, discharging a firearm within Baltimore City limits, possession of a regulated firearm by a person

[1] At Appellant's trial, the prosecutor argued that the cell phone belonged to Appellant. Although there was no direct evidence linking Appellant to the phone number associated with the cell phone, there was strong circumstantial evidence that the phone belonged to Appellant; in addition to the lock screen depicting Appellant's visage, there was surveillance video from several nearby stores, recorded within minutes of the shooting, depicting Appellant as the driver of the blue Pontiac.

[2] Mr. Clanton referred to Appellant ("Domonic") by a nickname, "Nick" or "little Nick."

[3] There was conflicting testimony as to whether Mr. Clanton, when initially interviewed by police detectives, identified Appellant as the shooter, but the following day, after he was discharged from the hospital, detectives presented him with a photo array, from which he selected Appellant.

previously convicted of a disqualifying offense, and wearing, carrying, and transporting a handgun on the person.

A four-day jury trial was held. The State called seven witnesses: Officer Stewart, evidence technicians Kanieka Neal and Emily Hopkins, Detectives Marcus Smothers and Anthony Forbes, Mr. Clanton,[4] and Lorraine Marcetti, an employee of the Department of Public Safety and Correctional Services ("DPSCS"). The defense called Bryan Pratt, Ms. Wilson's cousin and a long-time friend of Appellant. Appellant exercised his right not to testify.

Officer Stewart testified as summarized above. Technician Neal processed the crime scene and described what she observed. Under the direction of Detective Forbes, the primary detective in the case, Technician Neal collected physical evidence, including a sweatshirt, a pair of sunglasses, a blood-soaked washcloth, a fanny pack, and an "electronic device,"[5] and she took photographs of the crime scene. She testified that no fingerprints or firearm evidence were recovered.[6] Technician Hopkins, after consulting with Technician Neal and Detective Forbes, created sketches of the crime scene.

[4] Mr. Clanton testified pursuant to a body attachment.

[5] The "electronic device" was a cell phone; in its carrying case was an identification card belonging to another person, Keith Nicholson, whom police determined was not a suspect in this case. The "electronic device" was found "on the street" near the crime scene and is not to be confused with the cell phone found in Ms. Wilson's car, the phone that linked Appellant to the crime.

[6] Several of the items recovered were swabbed for DNA, but no analysis of those samples was performed because, as the lead detective (Detective Forbes) subsequently testified, "[w]e didn't believe that we needed to due to our witnesses[.]"

Detective Forbes testified that he reviewed "some video footage" that had been retrieved by Detective Smothers. The surveillance videos, State's Exhibits 3, 4, 5, and 6, were admitted into evidence over defense objection.[7] Detective Forbes testified that in several of those videos, he identified the blue 2007 Pontiac in a parking lot adjacent to Market 21, a convenience store, just minutes before the shooting.[8] Detective Forbes also testified that, later the same evening, he traveled to the emergency room at Johns Hopkins Hospital, where he interviewed Mr. Clanton. Detective Forbes described how he created the photographic array from which Mr. Clanton selected Appellant as the shooter. He further described the cell phone that had been recovered from the blue Pontiac and identified the car's owner as Ms. Wilson, whom he subsequently interviewed. Detective Forbes acknowledged that "[n]o firearms were located or recovered," nor did police recover any shell casings from the crime scene.

In addition, Detective Forbes, over defense objection, identified Appellant as one of the speakers in State's Exhibit 20, a jail call that was subsequently admitted into evidence. Detective Forbes testified that he spoke with Appellant "for about two minutes," on the morning that Appellant was arrested and placed in a holding cell.

[7] Each of the video exhibits was from the following businesses near the crime scene: Sheldon's Liquor Lounge (State's Exhibit 3); Market 21 (State's Exhibit 4); Candy & Tobacco Deli (State's Exhibit 5); and Shamrock Liquors (State's Exhibit 6). Although Detective Smothers testified that he had also retrieved a surveillance video from a 7-Eleven store, that video was not introduced into evidence.

[8] Mr. Clanton was shown the same video and identified Appellant as the person depicted in a still frame derived from that video.

Detective Forbes also testified that he listened to the entire jail call and described it as a conversation between Appellant and his son, Darien White, on the day after the shooting.

Mr. Clanton testified that he and Appellant had known each other since childhood and were once "best friends." Mr. Clanton and his five-year-old son had been in the neighborhood that evening to visit Mr. Clanton's mother,[9] who lived a few blocks away.[10] After leaving his mother's home, Mr. Clanton took his son to a nearby 7-Eleven to get him "something to drink" when a client called out to him and asked if he could make an appointment to "cut somebody's hair on a later date."[11] While approaching the client on foot, he saw Appellant stepping out of a blue car and was "genuinely happy to see him." Appellant, however, "gave [him] the cold shoulder" and turned to speak to someone else.[12]

Several minutes later, he "followed" Appellant, attempting to engage in a private conversation. Mr. Clanton asked Appellant, "what the [f--k] is up?" Appellant replied, "you know what's up" and pulled a handgun from his waistband. Mr. Clanton turned his head to avoid getting shot in the face, and Appellant fired one shot, striking Mr.

[9] Mr. Clanton testified that he took his son to visit his grandmother "because she hadn't seen him in a while."

[10] Mr. Clanton testified that he "had just left park side where [his] mom still lives." It appears that Mr. Clanton was referring to Parkside Drive, which is several blocks from Eierman Avenue. Md. Rule 5-201(b), (c).

[11] Mr. Clanton is an actor, and he has a side business of cutting hair. Mr. Clanton "normally cut" that client's hair.

[12] There was a crowd of people congregated on the street, holding a party to observe the NFL Draft.

Clanton's ear and head. Immediately afterward, as Mr. Clanton "looked up at" Appellant, who was aiming his handgun "like he was about to finish" Mr. Clanton, "the sirens came." Mr. Clanton declared, "I ain't never been so happy to see police in my life."

Ms. Marcetti, DPSCS records custodian, testified that she "handle[s] all the subpoenas for jail calls." Ms. Marcetti confirmed that State's Exhibit 20 was a recording of the jail call placed by Darien White in the morning of April 30, 2021, the day after the shooting. Through her testimony, State's Exhibit 20 was admitted into evidence over defense objection.[13] That call then was published to the jury.[14]

Mr. Pratt, a long-time friend of Appellant and the cousin of Ms. Wilson, testified that, on the night of the shooting, he and Appellant were "going to link up" and go to Mr. Pratt's home to "watch the [NFL] draft." In preparation, they met at a nearby liquor store and bought "a fifth of liquor, some beers and some party mix and stuff." They then drove in separate cars to Eierman Avenue. According to Mr. Pratt, a crowd of approximately 40 people had congregated in the street. Then, according to Mr. Pratt, while he and Appellant were standing near Mr. Pratt's car and talking, "two [masked] guys" they did not know appeared from an alley. Mr. Pratt further testified that one of the masked

[13] There were two different grounds for the defense objection. One ground was the State's late disclosure of the call, approximately one week prior to trial, that is, a violation of Maryland Rule 4-263, which Appellant does not raise on appeal. The other ground was whether Detective Forbes should be permitted to testify that, after listening to the call, he recognized Appellant's voice.

[14] In the discussion that follows, we shall set forth in greater detail the Appellant's statements in the jail call.

youths[15] grabbed Mr. Clanton by the shoulder and tried to rob him, shooting Mr. Clanton while doing so. Mr. Clanton "fell into" Mr. Pratt's car. The assailants, according to Mr. Pratt, then fled "[s]traight down the alley."

The jury deliberated over two days. The jury acquitted Appellant of attempted first- and second-degree murder but found him guilty of first-degree assault, use of a firearm in the commission of a crime of violence, reckless endangerment, discharging a firearm within Baltimore City limits, and possession of a regulated firearm by a person previously convicted of a disqualifying offense.[16] The court sentenced Appellant about five months later.[17]

Additional facts are included where pertinent to discussion of the issues.

[15] According to Mr. Pratt, he did not see the faces of the two assailants because "[t]hey had masks on," but he could "tell they was young kind of by like what they wore and the way they walked."

[16] The charge of wearing, carrying, and transporting a handgun on the person was not submitted to the jury.

[17] The Appellant was sentenced as follows: twenty-five years' imprisonment for first-degree assault; a consecutive term of twenty years (the first five without the possibility of parole) for use of a firearm in the commission of a crime of violence; a concurrent term of one year for discharging a firearm within Baltimore City limits; and a concurrent term of fifteen years (the first five without the possibility of parole) for possession of a regulated firearm by a person previously convicted of a disqualifying offense. The reckless endangerment conviction was merged into first-degree assault for sentencing purposes. In total, the court sentenced Appellant to forty-five years of active incarceration, the first ten without the possibility of parole.

DISCUSSION

Authentication of Evidence Generally

"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." Md. Rule 5-901(a). "This requirement is satisfied if sufficient proof has been introduced so that a reasonable juror could find in favor of authenticity or identification." *Sublet v. State*, 442 Md. 632, 666 (2015) (quotation marks and citations omitted) (cleaned up). In other words, a 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." *Jackson v. State*, 460 Md. 107, 116 (2018) (quoting *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006)) (emphasis in original). "The threshold of admissibility is, therefore, slight." *Id.* (citation omitted).

Part (b) of the rule lists, "[b]y way of illustration only, and not by way of limitation," examples of "authentication or identification conforming with the requirements" of the rule:[18]

[18] We note that Rule 5-901(b)(6) provides for authentication of certain telephone calls:

> (6) *Telephone Conversation.* A telephone conversation, by evidence that a telephone call was made to the number assigned at the time to a particular person or business, if
>
> > (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

(continued)

> (1) *Testimony of Witness With Knowledge.* Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> * * *
>
> (4) *Circumstantial 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.
>
> (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.
>
> * * *
>
> (9) *Process or System.* Evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.
>
> * * *

Md. Rule 5-901(b).

We review a circuit court's decision that evidence is properly authenticated for abuse of discretion. *Donati v. State*, 215 Md. App. 686, 740 (2014) (citing *Hopkins v. State*, 352 Md. 146, 158 (1998)), *cert. denied*, 438 Md. 143 (2014). Abuse of discretion occurs where the trial court's ruling is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Mainor v. State*, 475 Md. 487, 499 (2021)

> (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

The call at issue here, however, was not placed to a number assigned to Appellant, and therefore, the State did not assert Rule 5-901(b)(6) as a basis for authenticating the call, nor did the circuit court rely on it.

(citations omitted). That is, abuse of discretion occurs where "no reasonable person would take the view adopted by the circuit court." *Id.* (citations omitted).

I.

Parties' Contentions

Appellant contends that the trial court erred in admitting into evidence State's Exhibit 20, a jail call purportedly between him and his son, because it was not properly authenticated. According to Appellant, neither basis on which the circuit court relied in authenticating the call (identification of a voice by a witness and circumstantial evidence of authenticity) was satisfied in this case.

According to Appellant, the only thing he said to Detective Forbes (whose testimony was used to authenticate the call) was that "he *would not speak to him* without a lawyer present," which was insufficient to support an inference that Detective Forbes recognized his voice on the jail call. Appellant further asserts that there was an absence of circumstantial evidence to authenticate the call because it lacked detail about "the specifics of the incident that took place the previous day, such as a location, a person involved, or how exactly things 'got ugly.'" Moreover, asserts Appellant, because of the happenstance that a journalist was the jury foreperson and wrote publicly about his experience,[19] explaining the critical role played by the jail call in eventually persuading holdout jurors to agree to a verdict, we cannot find any error harmless.

[19] Alec MacGillis, *Trial Diary: A Journalist Sits on a Baltimore Jury*, PROPUBLICA (June 1, 2022), available at https://www.propublica.org/article/shooting-baltimore-court-wire-trial-diary (last visited Aug. 1, 2023).

(continued)

The State counters that the jail call in this case was authenticated "both by direct evidence," here the testimony of Detective Forbes that he recognized Appellant's voice, and "by circumstantial evidence, such as indicators within the call itself." According to the State, the "substance" of the call, "with its indicators of familial relationships and the acknowledgment of something serious having happened the day before, permitted the inference" that Appellant was the speaker.

The Jail Call

The recorded jail call purportedly took place between Appellant and his son, Darien White, who was in jail at the time. Soon after the recording began, the caller identified himself as Darien White. Then, an "unidentified female" (according to Detective Forbes, Darien White's mother) accepted the call. Then the following conversation occurred:

> DARIEN WHITE: Hello, Hello?
>
> UNIDENTIFIED FEMALE: Hello?
>
> DOMONIC WHITE: **What's up baby boy?**
>
> UNIDENTIFIED FEMALE: Your father on the phone.
>
> DARIEN WHITE: For sure. For sure.

Because we hold that the trial court neither erred nor abused its discretion in this case, we do not reach Appellant's harmless error argument. We note, however, that the MacGillis article is not part of the record in this case, nor is it properly subject to judicial notice under Maryland Rule 5-201, and we would not consider it were it necessary for us to consider harmless error. In any event, there are other reasons in the record that would lead us to conclude that any error would not be harmless. The jury deadlocked during its deliberations, peppering the court with various requests to reexamine the evidence, and it ultimately acquitted Appellant of the most serious charges, attempted first- and second-degree murder.

DOMONIC WHITE: Listen, listen to me real careful because we don't have a lot of time. **Yo, shit got ugly yesterday. I gotta turn myself in**, you hear me?

DARIEN WHITE: Yeah.

DOMONIC WHITE: Yeah, yo. **Shit got ugly yesterday, yo. So I gotta turn myself in.** But I'm not going to turn myself in. I'mma let them come to me. You feel me?

DARIEN WHITE: Yeah.

DOMONIC WHITE: All that shit. They going to have to find all that shit.

DARIEN WHITE: Right.

DOMONIC WHITE: But as of right now, everything cool right now. But --

DARIEN WHITE: Yeah --

DOMONIC WHITE: -- listen, I'm good. But the main thing is, I got a week. You see what I'm saying. Now, what come after that, it is what it is. But --

DARIEN WHITE: Yeah.

DOMONIC WHITE: You know, I already know what it is. This is what I'm trying to explain to you. I already know what it is. **I know I'mma have to sit for a little minute** --

So I'mma have to sit regardless.[20] I just wanted to let you know what's going on because I don't never want you [*sic*] leave you in the blind. And I don't never want to leave your side again. **I love you, yo. You my son.**

DARIEN WHITE: Right.

[20] We construe this to mean that Appellant anticipated that he would be incarcerated for an extended time.

DOMONIC WHITE: I love everything about you, kid. Everything that I do is for y'all yo. You feel me? I don't ever want you to think I'm ever leaving you, yo. Because I ain't never leaving you.

That might have been the best thing. Because I was really getting ready to go a different route. And I would have never been here for you. And I know that would have hurt you more because it was on my mind slim. It was on my mind.

And I'mma keep it a thousand with you. <u>I thought about you. That's the only reason why I didn't do it.</u> I would rather be on this earth and in prison for a little minute knowing that I can beat this case than to be dead and you never seeing me and I ain't never having your back when you get in situations you can't handle.

DARIEN WHITE: Yeah.

DOMONIC WHITE: So I would rather do it this way. You know what I'm saying? **I'mma be here for you, yo, regardless. Your mother going to make sure you good. She gonna do whatever she can do.** But the most important thing I say is that it is all up to you and what you want. It is all what you want baby boy. Claiming something, it is all on what you want.

(Emphasis added.)

Analysis

We conclude that, besides the testimony of Detective Forbes, the substance of the call is sufficient to establish the Appellant as one of the speakers. To be sure, the voice on the jail call identified as Appellant's was admitted under two grounds: by a person (Detective Forbes) who previously had spoken, albeit briefly, with Appellant and then testified that he recognized Appellant's voice on the jail call, under Rule 5-901(b)(5);[21]

[21] While a witness may identify a voice, as long as the witness has "heard the voice at any time under circumstances connecting it with the alleged speaker," Md. Rule 5-901(b)(4), the reliability of such identification depends on the details of the

(continued)

and through circumstantial evidence contained within the call, under Rule 5-901(b)(4).[22] To authenticate an item, the proponent must introduce evidence, direct or circumstantial, to show that the item is "more likely than not" what it purports to be. *See, e.g.*, *Sykes v. State*, 253 Md. App. 78, 91 (2021); *State v. Sample*, 468 Md. 560, 598-99 (2020). This burden is "slight." *Jackson*, 460 Md. at 116.

To begin with, the familial relationship between Appellant and Darien White is evidence suggesting that the call is what it purports to be. Ms. Marcetti testified that Darien White, Appellant's son, placed the jail call. Detective Forbes identified the woman who was heard during the jail call as the mother of Darien White. That woman, in turn, put another individual on the phone, whom Detective Forbes identified as the Appellant. During the call, that individual addressed Darien White as "baby boy" and "my son," while Darien White's mother stated (to Darien White), "Your father on the phone."

Other details also tend to authenticate the voice on the jail call as the Appellant's. The jail call took place at 11:24 a.m. April 30, 2021, which just happened to be the morning immediately after the shooting. Tellingly, in that call, the individual identified as the Appellant acknowledged that "shit got ugly yesterday," and expressed that he would face

circumstances, including "(1) the ability of the witness to hear the assailant speak, (2) the witness's degree of attention, (3) the accuracy of any prior identifications the witness made, (4) the period of time between the incident and the identification, and (5) how certain the witness was in making the identification." *Hopkins*, 352 Md. at 160 (citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)).

[22] The circumstantial evidence may include "appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be." Md. Rule 5-901(b)(4).

a possible period of incarceration. But perhaps most crucially, the individual described to the Appellant's son specific facts about the shooting of which few people would have been aware:

> I thought about you. That's the only reason why I didn't do it. I would rather be on this earth and in prison for a little minute knowing that I can beat this case than to be dead and you never seeing me and I ain't never having your back when you get in situations you can't handle.

That statement is consistent with Officer Stewart's testimony that, at the last minute, Appellant decided not to kill Mr. Clanton and, instead, fled so that he could try to "beat this case[.]" Along with Detective Forbes' voice identification of the Appellant under Rule 5-901(b)(5), this circumstantial evidence supports that the jail call was more likely than not between the Appellant and his son. *See Walls v. State*, 228 Md. App.646, 689 (2016) (noting that use of personal nicknames and detailed description of the underlying offense can support the admission of a jail call into evidence).

For such reasons, we hold that the circuit court did not abuse its discretion in concluding that the jail call was properly authenticated.

II.

Parties' Contentions

Appellant contends that the trial court erred in admitting into evidence surveillance videos, State's Exhibits 3, 4, 5, and 6, without proper authentication by the State. According to Appellant, the video exhibits were admitted through Detective Smothers' "incredibly cursory" testimony. According to Appellant, Detective Smothers "could not even give the names of all of the places he pulled footage from." He "did not

testify as to who he spoke to at each of the stores, who maintained the surveillance camera systems, or whether he received any assurance that the systems were in good working order." He "did not testify as to whether he personally retrieved the footage or whether a store employee did so." Nor was it "clear whether Detective Smothers actually viewed the videos the night the footage was pulled, or whether he (or someone else) merely located footage from a certain timeframe and transferred it to the flash drive." In sum, concludes Appellant, "the State did not present anywhere close to enough evidence to lay a sufficient foundation for the admission of the videos," and the trial court abused its discretion in admitting them into evidence. Furthermore, Appellant maintains, because the State "relied heavily on the videos in its closing argument to the jury," any error in admitting them cannot be deemed harmless.

The State counters that "Detective Smothers did precisely as required" under binding decisional law such as *Jackson v. State*, *supra*, 460 Md. 107 (2018), and *Washington v. State*, 406 Md. 642 (2008). According to the State, Detective Smothers described "the technique he used" to recover the surveillance videos, and he "reviewed the footage before trial and confirmed that it accurately represented the video he pulled from the locations." The State emphasizes that the present case is distinguishable from *Washington* because "Detective Smothers testified that he had made the videos himself, and he testified about how he had done so" and furthermore, he "testified that he reviewed the videos before testifying and that they were in the same condition as when he had originally made them." Therefore, according to the State, the "low bar" for

authentication was satisfied in this case, and the trial court did not abuse its discretion in admitting the videos into evidence.

The Surveillance Videos

At the trial, Detective Smothers testified that his role was to recover surveillance videos from businesses in the vicinity of the crime scene:

> [PROSECUTOR]: And what, if any, thing did you do in reference to the investigation in this case?
>
> [DETECTIVE SMOTHERS]: There was a number of video footage[s] that I pulled.
>
> [PROSECUTOR]: Okay. And where was this video footage pulled from?
>
> [DETECTIVE SMOTHERS]: A number of places. Number of establishments within the area. Would you like me to name them?
>
> [PROSECUTOR]: Yes, please.
>
> [DETECTIVE SMOTHERS]: So I know it is Market 21 which is kind of a convenience grocery store. Shamrock Liquors, which is a liquor store. Sheldon Liquors which is a liquor store. The 7-Eleven and a candy and tobacco store, I think it is called candy 21 or tobacco 21.
>
> [PROSECUTOR]: Okay. Now why did you pull the video footage from those locations?
>
> [DETECTIVE SMOTHERS]: I'm the second detective on the case. And you know, I have -- a little bit better at pulling video footage than [D]etective Forbes.
>
> [PROSECUTOR]: Okay. And with regard to the video footage that you recovered from those locations, could you explain the process that you underwent in recovering that footage?
>
> [DETECTIVE SMOTHERS]: So each of those locations have [*sic*] DVR systems which the video is stored on. You just take a flash drive and you follow the prompts as far as those DVR systems. And you're able to

> export the video from the system on to the flash drive at which point in time you can take back to the office.
>
> [PROSECUTOR]: And did you have an opportunity to review some of the video footage that you pulled prior to your testimony today?
>
> [DETECTIVE SMOTHERS]: Yes, briefly, yes, ma'am.
>
> [PROSECUTOR]: Okay. And in your review of the video footage that you reviewed, did it fairly and accurately represent the video footage that you pulled from these locations?
>
> [DETECTIVE SMOTHERS]: Yes, ma'am.

Following the detective's testimony, State's Exhibits 3, 4, 5, and 6 were admitted into the evidence over defense objection.

Mr. Clanton was shown a still frame derived from State's Exhibit 4, the video clip retrieved from Market 21. Mr. Clanton testified, without objection, that it depicted Appellant, the "person who shot" him. Detective Forbes was shown two different still frames from that same clip and identified the blue Pontiac in both. He explained that he was able to discern the license plate number from the video to confirm his identification.

During closing argument, the prosecutor relied extensively on all four surveillance video exhibits, declaring, "I'm just going to walk you through some of the video evidence[.]" She then displayed videos from Sheldon's Liquor Lounge (State's Exhibit 3), Market 21 (State's Exhibit 4), and Shamrock Liquors (State's Exhibit 6), each of which depicted Appellant and the blue Pontiac, and which corroborated testimony about both the clothing Appellant wore on the night of the shooting as well as the vehicle he

was driving.[23] The prosecutor additionally used the surveillance videos to track the movements of Appellant and Officer Stewart's police vehicle immediately before and after the shooting, declaring that "this is the crime scene that officers responded to" and asserting that the videos furnished "corroboration" of the prosecutor's theory of the case.

Analysis

"For purposes of admissibility, a videotape is subject to the same authentication requirements as a photograph." *Jackson v. State*, 460 Md. 107, 116 (2018) (citing *Washington v. State*, 406 Md. 642, 651 (2008)) (cleaned up). "Photographs and videotapes may be authenticated through first-hand knowledge,[24] or, as an alternative, as a mute or silent independent photographic witness because the photograph speaks with its probative effect." *Id.* (citations and quotations omitted).

"Generally, surveillance tapes are authenticated under the silent witness theory, and without an attesting witness."[25] *Id.* at 653 (citation omitted). The Supreme Court of Maryland "has yet to adopt 'any rigid, fixed foundational requirements' for admission of evidence under the 'silent witness' theory." *Jackson*, 460 Md. at 117 (quoting *Dep't of*

[23] The State did not display the video from Candy & Tobacco Deli (State's Exhibit 5) during closing argument.

[24] Maryland Rule 5-901(b)(1) provides that testimony of a witness with first-hand knowledge ("that an item is what it is claimed to be") satisfies the authentication requirement. This method sometimes has been called the "pictorial testimony theory of authentication." *Washington*, 406 Md. at 652; *Prince v. State*, 255 Md. App. 640, 652 (2022), *cert. denied*, 482 Md. 746 (2023).

[25] The reason for this is obvious: by their very nature, surveillance videos generally are recorded through automatic processes without contemporaneous human intervention.

Pub. Safety & Corr. Servs. v. Cole, 342 Md. 12, 26 (1996)). "The foundational basis may be established through testimony relative 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.'" *Id.* (quoting *Washington*, 406 Md. at 653).

According to the Appellant, the instant case is controlled by *Washington v. State*, *supra*, 406 Md. 642 (2008). We disagree. In that case, our Supreme Court held that the video recordings there had not been properly authenticated because the State failed to call the person who had created and complied the recordings (the technician). In his stead, the State called the bar owner, who acknowledged that "that he did not know how to transfer the data from the surveillance system to portable discs" and could "not testify as to the subsequent editing process." *Id.* at 655-56. Nor could the video recordings be authenticated through testimony of the police detective, who "testified that that he saw the footage only after it had been edited by the technician." *Id.* at 655.

Here, by contrast, Detective Smothers was the person who extracted the surveillance videos. He described the process that he followed:

> So each of those locations have DVR systems which the video is stored on. You just take a flash drive and you follow the prompts as far as those DVR systems. And you're able to export the video from the system on to the flash drive at which point in time you can take back to the office.

Moreover, Detective Smothers subsequently viewed the video as recorded, to ascertain that it faithfully matched the original video recording. That is all that was required to satisfy the "slight" burden of authentication.

Appellant's arguments to the contrary are unavailing. While the Appellant asserts that Detective Smothers "could not even give the names of all of the places he pulled footage from," the detective correctly identified three of the four places from which he retrieved the videos: Market 21, Shamrock Liquors, and Sheldon's Liquor Lounge. Some imprecision in the detective's identification of the fourth establishment, Candy & Tobacco Deli, is not fatal to authentication of the video evidence. Nor do we find any law or authority to require that Detective Smothers give a detailed recitation of the various store employees who gave him access to their video recording systems. Overall, Detective Smothers' trial testimony is a far cry from *Washington*, where the State could not show any more than that its video evidence was created "by some unknown person, who through some unknown process, compiled images from the various cameras to a CD." 406 Md. at 655.

Moreover, viewing his testimony in a light most favorable to the prosecution (as the prevailing party), we reject Appellant's assertion that Detective Smothers "did not testify as to whether he personally retrieved the footage or whether a store employee did so." Detective Smothers testified that he went to stores to retrieve videos because he was "a little bit better at pulling video footage than [D]etective Forbes." At any rate, as noted above, "[t]he threshold of admissibility is … slight." *Jackson*, Md. at 116. We agree with the State that authentication of evidence does not demand proof of the absence of tampering. Therefore, Detective Smothers also need not testify as to the precise time he viewed the video recording evidence to verify that they were faithful reproductions of the

originals. We decline Appellant's invitation to adopt "rigid, fixed foundational requirements for admission of evidence under the 'silent witness' theory." *Id.* at 117.

Therefore, we hold that the circuit court did not abuse its discretion in concluding that the surveillance videos in this case were properly authenticated.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS ASSESSED TO APPELLANT.