Circuit Court for Baltimore City
Case No. 120174043

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2329

September Term, 2022

JEREMIAH TEHOHNEY

v.

STATE OF MARYLAND

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

JJ.

Opinion by Sharer, J.

Filed: April 18, 2024

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

A jury in the Circuit Court for Baltimore City convicted Appellant, Jeremiah Tehohney, of conspiracy to commit first-degree murder, four counts of illegal handgun possession, and three counts of use of a firearm in the commission of a crime of violence. At sentencing, the court granted the parties' joint request to vacate the guilty findings for use of a firearm in the commission of a crime of violence. The court then sentenced Appellant as follows: three years of incarceration for one count of illegal handgun possession, and a consecutive life sentence for conspiracy to commit murder. As to the remaining illegal handgun possession convictions, the court sentenced Appellant to concurrent three-year sentences.

On appeal, Appellant presents three questions for our review, which we rephrase as follows:[1]

1. Did the trial court err in admitting multiple jail telephone calls?

2. Did the trial court err in admitting surveillance video footage?

3. Was the evidence sufficient to sustain the convictions?

For the reasons to follow, we shall affirm the judgments of the circuit court.

[1] Appellant phrased the questions presented as follows:

1. Did the trial court err in allowing the State to admit into evidence multiple jail telephone calls allegedly made by Mr. Tehohney?

2. Did the trial court err in admitting [two] surveillance videos without proper authentication?

3. Is the evidence insufficient to sustain Mr. Tehohney's convictions?

BACKGROUND

On the evening of March 28, 2020, Officer Sherif Kellogg responded to the 1100 block of Washington Boulevard in Baltimore City, where he "observed a male lying in the street[.]" Officer Kellogg noticed multiple wounds on the male's back and "put a chest seal on the gunshot wound in the back and . . . began doing compressions on him and rescue breaths."

Sergeant Melvin Jones was assigned as the primary investigator. En route to the scene, Sergeant Jones learned that there were four victims of the shooting: Anthony Covington, Jerrell Harris, Trayvon Cole, and Damonte Dolman. Covington was pronounced dead at the hospital. The remaining victims sustained non-fatal gunshot wounds. Dr. Donna Vincenti, an Assistant Medical Examiner at the Office of the Chief Medical Examiner, was admitted as an expert in the field of forensic pathology. Dr. Vincenti performed an autopsy on Covington and concluded that his "cause of death was multiple gunshot wounds" and that his "manner of death was homicide."

Crime Laboratory Technician Erica Harden photographed the scene and recovered the following evidence: "twenty-eight cartridge cases, eleven metal fragments, and three projectiles." Detective Kyle Johnson testified that he obtained video footage from two businesses near the scene: New City Mart and Bob's Bar. The video footage shows a sedan that stopped in front of the New City Mart. Three individuals exited from the sedan and discharged firearms in the direction of the persons who were standing in front of the New City Mart. The shooters then returned to the sedan, which drove away at high speed,

followed by a truck. The video depicted one of the shooters wearing a blue sweatsuit. Sergeant Jones testified about the videos as follows:

> So, you can see in the vehicle that there was a silver or gray Infiniti M35 that pulled into the block. There was three shooters that you can see on camera that exit the vehicle. They are all discharging firearms. The second vehicle behind is a dark gray with a black top with a silver box in it that's following behind. Evidence on the scene indicates that someone exited from the passenger side of that vehicle and was discharging a firearm along at the victims. So, there was three active shooters that were observed on the camera, and there was one that's from my training and expertise and the evidence on the scene indicate that there was another shooter from the truck. If you watch the video closely, the truck is trailing the Infiniti very close when they start to take off at a high rate of speed.

Detective John Gregorio was assigned to the Southern District Intelligence Detective position, and, as part of his duties he "monitor[ed] Instagram[2] for people who [he] kn[e]w to frequent the Southern District[.]" Detective Gregorio explained the difference between Instagram stories and Instagram wall posts. Instagram stories "are temporary postings that expire after twenty-four hours." By contrast, one can post "a picture or video to [one's] wall, which would be similar to like your Facebook wall." Detective Gregorio viewed a cell phone video of the surveillance footage of the shooting and "noticed one of the shooters in the incident had a complete blue jumpsuit."

Detective Gregorio testified that he "recognized that jumpsuit as having been posted the day prior" to the shooting on Appellant's Instagram account and that he "observed an Instagram story posted to [Appellant's] account of [Appellant] . . . wearing a blue jumpsuit"

[2] "Instagram, Inc. provides mobile phone-based photography sharing services. The Company offers mobile application that enables users to take photos, add effects, and share content online and over various social networks." *Instagram Inc*, BLOOMBERG, https://www.bloomberg.com/profile/company/8153108Z:US (last visited Mar. 18, 2024).

in a video posted on March 27, 2020. In addition, Detective Gregorio observed that Appellant's Instagram account contained a wall post of a photo, which showed Appellant wearing the blue jumpsuit. After the shooting, Detective Gregorio viewed Appellant's Instagram account and "observed that this photo had been removed from the wall post of the defendant." Detective Gregorio testified about the deleted Instagram wall post: "Well, it was initially up on the 29th, but then it was taken down a short time later. So, either later on the 29th or the 30th. But when I had gone back to review again, it was removed."

On April 3, 2020, Sergeant Jones went to Tony Jones's house and interviewed him because, according to Sergeant Jones, "[t]here was an incident that took place the night before that resulted in the ballistic evidence matching from there to the murder scene." Tony Jones testified that on April 1, 2020, Rayquel Jones, "J-Money[,]" and another individual came to Jones's house. Tony Jones recognized that a photo of Appellant from Appellant's Instagram account was "[a] picture of J-Money." Detective Gregorio testified that he monitored Rayquel Jones's Instagram account, which also contained photographs of Rayquel Jones wearing a blue jumpsuit. Similarly, on cross-examination by Appellant's counsel, Tony Jones testified that Rayquel Jones's Instagram account contained photos of Rayquel Jones wearing a blue jumpsuit.

Sergeant Jones alleged that Rayquel Jones and two other persons of interest were involved in the shooting, but there was insufficient evidence to charge them. As a result of Sergeant Jones's conversation with Tony Jones, Sergeant Jones developed Appellant as a suspect. On April 4, 2020, Sergeant Jones interviewed Appellant, who denied any involvement in the shooting. Appellant also denied that his alias was J-Money.

At trial, several recorded jail calls were heard by the jury which, the State asserted, were placed by Appellant while he was in pre-trial detention. The State moved to admit "a letter of certification in reference to calls made by the defendant, and . . . the CD containing those calls." Appellant's counsel objected to the letter of certification and the CD, arguing that "there has to be somebody -- they have to lay the foundation [to] authenticate the calls, somebody who is going to come here and say that they know, or how they know the calls came from my client." The prosecutor responded as follows:

> Well, Your Honor, I'll start with the calls where he's using his own ID number and he talks about creating other ID numbers. I mean, we'll go out of the timeline, and then go back to the other calls. Because [Appellant] talks -- on these calls, he says -- because they start talking about the case and he says, "Don't talk about it on this ID number. I'm going to call you back on a different ID number." And then he gets on the other ID number and he says, "Hey, it's okay. You can talk about it now because this isn't my ID number. They won't find this."

The prosecutor also noted that Appellant's "voice in and of itself is so unique that you recognize his voice on every call."

In all, ten jail calls were played at trial. For consistency and clarity, we refer to the calls by the numbering assigned to the calls in the trial court. In call 5 from April 8, 2020, the caller identifies himself as Jeremiah and J-Money, and the caller indicates that he has three other IDs to make phone calls. In call 7 from April 9, 2020, the caller again identifies himself as J-Money. Based on those two calls, the court determined that "we have an admission at the beginning of call five and seven that it's him. And it's his voice. I mean, he's been identified multiple times as J-Money by multiple witnesses." The court concluded:

> And what we have now is we have two calls where the defendant identifies himself in his voice and that is foundational evidence, and at this point, unless the voices are completely different which I'm sure that they're not, the jury can make its own conclusion, but it has a basis for concluding, reasonably concluding that it's his voice at that point.

For the eight other calls, the court told the prosecutor to stop the recording after the caller identified himself, and then the court found that each call was authenticated. Those calls were presented in the following order at trial.

In call 8, on April 9, 2020, the caller identified himself as "Oooooh[,]" stated "[i]t's not my first body[,]" and indicated that police showed him an Instagram picture that he had deleted.

In call 14, from April 4, 2020, the caller identified himself as "Ooooh[,]" he indicated that police had shown him pictures from his Instagram account, and he asked the recipient of the phone call to delete parts of the caller's Instagram account and to change the username associated with the account.

In call 4, on April 6, 2020, the caller identified himself as Paul Matthews, and he indicated: "This is my second body. This ain't my first body."

In call 3, on April 7, 2020, the caller identified himself as "Oooooh[,]" and told the recipient of the phone call: "They kept saying. How he get this screen shot that was in your phone[.]"

In call 2, from April 7, 2020, the caller identified himself as Shelly Thomas. The caller and the recipient of the phone call discussed sending money to the caller. In addition, the caller stated that he would "try to [get] Sequoia to get in contact" with an attorney.

In call 1, from April 8, 2020, the caller identified himself as "Ooooh." The caller stated that "this is not my first body," and the caller discussed a picture that had been removed from Instagram, and the caller referenced the nickname "J-Money[.]"

In call 6, on April 9, 2020, the caller identified himself as "Ooooh." The caller told the recipient of the phone call to post a picture on Instagram.

Lastly, in call 9, from April 21, 2020, the recipient of the phone call told the caller that another individual would cause the caller to be indicted because that individual "put up a fucking picture from the, from the fucking shit and you can see what [the caller] had on."

Additional facts will be included as they become relevant to the issues.

DISCUSSION

I. THE JAIL CALLS

a. The authentication of the jail calls.

Appellant first argues that the trial court erred in allowing the State to introduce into evidence the jail calls that were allegedly placed by Appellant. According to Appellant, the calls were not authenticated under Md. Rule 5-901. The State responds that the calls were properly authenticated, arguing as follows: "Given the identification of Jeremiah and J-Money in calls 5 and 7, the determination that the same voice called in the remaining 8, as well as their content, the trial court neither clearly erred nor abused its discretion."

"When an appellant claims evidence was erroneously admitted based on lack of authenticity, we review the trial court's decision for abuse of discretion." *Sykes v. State*, 253 Md. App. 78, 90 (2021). "Pursuant to Maryland Rule 5-901(a), authentication of

evidence . . . is a condition precedent to its admissibility, and the condition is satisfied where there is sufficient evidence 'to support a finding that the matter in question is what its proponent claims.'" *Id*. at 91 (quoting Md. Rule 5-901(a)). "[T]here must be sufficient evidence for a reasonable juror to find that the [evidence] is authentic by a preponderance of the evidence." *State v. Sample*, 468 Md. 560, 598 (2020).

Although a voice recording may be authenticated by testimony identifying the speaker, a recording may also be authenticated in other circumstances, including the following:

> (1) where the call is in response to a message left for the caller, where the caller responded in a timely fashion and asked by name for the person who had left the message, (2) where the conversation revealed that the caller had knowledge of facts that only he would be likely to know, and (3) where the caller showed a familiarity with details that the person in question would be likely to know and was reached at the telephone number and address shown for the person in the telephone directory[.]

Knoedler v. State, 69 Md. App. 764, 773-74 (1987) (citations omitted). *See also* Md. Rule 5-901(b)(4) (illustrating that evidence can be authenticated through "[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be"); *Sample*, 468 Md. at 567-68 (holding that "Facebook-related evidence" was sufficiently authenticated through circumstantial evidence).

Here, the court conducted a careful examination of the calls to determine whether they had been authenticated. First, the court required the State to play the calls that contained Appellant's self-identification. In call 5, the caller identifies himself as both "Jeremiah[,]" which is Appellant's first name, and as "J-Money." The court properly

recognized that Appellant had "been identified multiple times as J-Money by multiple witnesses." In addition, in call 5, Jeremiah/J-Money indicates that he has other identifications to make jail calls: "I got four ID's. I got (unintelligible), I got the J-Money. I got the woo-woo, and I got the [expletive] who says his whole name. That's four ID's." Similarly, call 7 starts with the following identification: "This is a Global Tel Link prepaid call from J-Money, an inmate at Maryland Correctional facility." The court noted that "we have an admission at the beginning of call five and seven that it's him. And it's his voice." The court then instructed the State that the court was "not going to allow any of the phone calls in order" and that the State "need[ed] to lay the foundation first." For each of the remaining eight phone calls, the court told the prosecutor to stop the recording after the caller had identified himself and his voice could be heard — before the substance of the phone call was played — and then the court determined that each call was authenticated. Based on this procedure, the court found that the caller was the same in each recording. For all these reasons, there was "sufficient evidence for a reasonable juror to find that the [evidence] is authentic by a preponderance of the evidence." *Sample*, 468 Md. at 598.

In any event, there was additional circumstantial evidence that Appellant was the caller. In call 8, the caller (using the name "Oooooh") discussed how investigators showed him a photograph on Instagram that he had deleted, thus alluding to Appellant's custodial interview with Sergeant Jones. In call 14, the caller (using the name "Ooooh") discussed how law enforcement showed him a screen shot of an Instagram photograph, and he asked the recipient of the phone call to login with his password: "My password (unintelligible) [a four-digit code]." In call 4, the caller (using the name "Paul Matthews") tells the

recipient to logon to the caller's Instagram account with "password (unintelligible) [the same four-digit code that was stated in call 14]." In call 3, the caller again used the name "Oooooh[,]" and further stated "[t]hey got me in the gym right now because the jail is crowded." In call 2, the caller reiterated that he was "in the gym[.]" In call 1, the caller used the name "Ooooh" and relayed how police showed him a pictured that had been deleted from Instagram. In call 6, the caller again used the name "Ooooh." In call 9, the caller told the other party to the phone call "[t]his is not my ID" and then the caller expressed concern that another individual had posted a picture on Instagram of the caller "in the same exact clothes[.]"

There was thus strong circumstantial evidence that the caller was Appellant. *See Walls v. State*, 228 Md. App. 646, 689 (2016) (determining that even if the issue had been preserved, a jail call was authenticated when the caller "describe[d] the night of the murders in great detail and use[d] his nicknames" for other individuals). As a result, the court properly determined that the jail calls were sufficiently authenticated.

b. The admissibility of calls 1, 4, and 8 under Md. Rule 5-404(b).

Next, Appellant claims that the court erred in admitting calls 1, 4, and 8 because, according to Appellant, the admission that this was not his "first body" amounted to inadmissible evidence of prior bad acts under Md. Rule 5-404(b). The State responds that this issue was not preserved, and even if it were preserved, the court did not abuse its discretion in admitting calls 1, 4, and 8 under the three-pronged test for determining the admissibility of "other acts" evidence.

At trial, Appellant's counsel objected to call 1, contending that "the prejudicial nature outweighs any probative value that it has." The court then asked if Appellant's counsel's argument was "any different for any of the other statements[,]" and Appellant's counsel responded: "It's the same argument. It's also, in addition to being prejudicial, it's also irrelevant."

The court found "that the statements . . . 'Not my first body,' 'This is not my first body. This ain't my first body,' 'This is my second body,'" were "extremely and highly probative." The court further noted that "even if the Court were to determine or analyze this under the prior crimes or prior bad acts rule of the Maryland Rules of Evidence, this Court finds that this evidence would come in." The court then continued to rule as follows:

> And again, I want to stress, I don't find that this is other crimes evidence. I find that this is evidence about this crime. But even if it were other crimes evidence, that court says when evidence of a defendant's other crimes, wrongs, or acts is offered, the trial court must engage in a three-part analysis in deciding admissibility.
>
> First, it must determine whether the evidence is especially relevant and therefore is excepted from the presumptive rule of exclusion. The special relevancy exceptions enumerated in Maryland Rule 5-404(b), are the following: proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident. They are also not exhausted and not exclusive. But the Court finds that these statements fall within those special relevant exceptions. In particular, identity. The whole basis of this case is was [Appellant] the individual that fired the gun. And in stating "this is not my first body," "this is my second body," "ain't my first body," "this ain't my first body," those are all probative, relevant statements that go to the identity of the individual who committed this crime.
>
> So, the Court finds even if we were to analyze this under the prior crimes exception, that this falls within a specially relevant exception enumerated in Maryland Rule 5-404(b).

> Secondly, the Court must determine whether the defendant's involvement in the other crimes, wrongs, or acts has been established by clear and convincing evidence. These are admissions and statements repeated over and over again by the defendant. The Court finds that they have been proven by clear and convincing evidence. Finally, the Court must weigh the necessity for and probative value of the other crimes evidence against any undue prejudice likely to result from its admission; and with that in mind, exercise its discretion to admit or exclude the evidence.
>
> As stated, I am using my discretion and I determine that of course these statements are prejudicial, but they are incredibly and entirely relevant and probative. And the relevance and probative nature of this evidence outweighs the prejudice.

We will not decide an issue "unless it plainly appears by the record to have been raised in *or* decided by the trial court[.]" Md. Rule 8-131(a) (emphasis added). To be sure, Appellant's counsel did not raise an objection based on Md. Rule 5-404(b) at trial. Nevertheless, the trial court decided that the statements at issue would be admissible under Md. Rule 5-404(b). As a result, this issue is preserved for our review under Md. Rule 8-131(a).

Md. Rule 5-404(b) provides as follows:

> Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

Recently, the Supreme Court of Maryland reaffirmed the standard for determining the admissibility of evidence of other bad acts under Md. Rule 5-404(b):

> [E]vidence of a defendant's other bad acts is admissible if (and only if): (a) the evidence is offered for a non-propensity purpose that is relevant to a genuinely disputed issue in the case; (b) the defendant's involvement in the other bad acts is established by clear and convincing evidence; and (c) the

> need for and probative value of the evidence is not substantially outweighed by any unfair prejudice likely to result from its admission.

Browne v. State, 486 Md. 169, 178 (2023). *See also State v. Faulkner*, 314 Md. 630, 633-35 (1989).

First, we determine whether the statements had special relevance. "When other bad acts evidence has substantial relevance to a contested issue other than propensity, it is said to have 'special relevance.'" *Browne*, 486 Md. at 190 (quoting *Harris v. State*, 324 Md. 490, 500 (1991)). Here, a central dispute at trial was whether Appellant committed the shooting that took place on March 28, 2020. The statements that this was not Appellant's "first body" were offered for a non-propensity purpose with special relevance: to establish Appellant's identity as the shooter.

Second, for similar reasons to those stated *supra* in Section I.a. — related to authentication of the jail calls — the State also proved Appellant's involvement in the other bad acts by clear and convincing evidence. As the trial court noted, "[t]hese are admissions and statements repeated over and over again by [Appellant]."

Third, the court "carefully weighed" "[t]he necessity for and probative value of the 'other crimes' evidence" "against any undue prejudice likely to result from its admission." *Faulkner*, 314 Md. at 635. This analysis "requires the trial court to engage in a Rule 5-403 balancing" because, "[t]o some degree, all evidence admitted under Maryland Rule 5-404(b) is prejudicial." *Cousar v. State*, 198 Md. App. 486, 516 (2011). The court did not abuse its discretion in balancing the probative value of the statements against the danger of unfair prejudice. *See* Md. Rule 5-403. The court properly concluded that "these statements

are prejudicial, but they are incredibly and entirely relevant and probative." Indeed, the statements amounted to an admission that Appellant was responsible for the murder that took place on March 28, 2020.

For all these reasons, the court did not err in admitting calls 1, 4, and 8 under Md. Rule 5-404(b).

c. The admissibility of call 9, which contained non-hearsay.

Appellant claims that the court erred in admitting inadmissible hearsay contained in call 9. More specifically, Appellant challenges the statements made by an "Unidentified Speaker" in call 9. In that call, the unidentified speaker tells Appellant that another individual would cause Appellant to be indicted because that individual "put up a fucking picture from the, from the fucking shit and you can see what [Appellant] had on." Appellant tells the unidentified speaker: "I thought I told you to get rid of that shit off my Instagram." The unidentified speaker responds, in part, by saying: "I deleted all of that. I don't know how she got it. . . . But she posted it and she deleted it."

Md. Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(a) defines a statement as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." "Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule." *Wallace-*

Bey v. State, 234 Md. App. 501, 536 (2017). "Whether evidence is hearsay is an issue of law reviewed *de novo*." *Bernadyn v. State*, 390 Md. 1, 8 (2005).

Here, the unidentified speaker's statements were not "offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Indeed, "'a statement that is offered for a purpose other than to prove its truth is not hearsay at all.'" *Ashford v. State*, 147 Md. App. 1, 76 (2002) (emphasis omitted) (quoting *Hardison v. State*, 118 Md. App. 225, 234 (1997)). Moreover, an out-of-court statement is not hearsay when "it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true." *Graves v. State*, 334 Md. 30, 38 (1994).

The trial court recognized that these statements may constitute non-hearsay and asked the prosecutor to explain why the statements were non-hearsay:

> [THE COURT:] All of these statements are hearsay. Or potentially not hearsay but because they are not admitted for the truth of the matter asserted, if that's your argument please tell me that.
>
> * * *
>
> [THE STATE]: I would argue, Your Honor, that she is not offering as to the truth of the matter asserted. She's offering it as notification to the defendant that this has happened and to put him on notice and so that he is aware of what potentially [sic] evidence, because she says, look, you know they're looking at your Instagram account. This is what's going on.

The unidentified speaker's statements in call 9 were not offered to prove the truth of the matter asserted, i.e., that another individual had, in fact, posted and deleted a picture of Appellant. Nor were the statements offered to prove that the unidentified speaker had actually deleted pictures of Appellant. Instead, the statements were introduced to show

Appellant's consciousness of guilt based on his request for the unidentified speaker to delete his Instagram pictures. As a result, the court did not err in admitting call 9.[3]

II. SURVEILLANCE VIDEO

Appellant next contends that the trial court abused its discretion by admitting the surveillance video footage from the New City Mart and Bob's Bar. According to Appellant, these videos were not sufficiently authenticated.

Photographic evidence that "is recorded on equipment that operates automatically, . . . may be authenticated under the 'silent witness' theory[.]" *Reyes v. State*, 257 Md. App. 596, 630 (2023). "Videos admitted under the silent witness theory must have probative evidence in themselves, meaning they must be edifying regardless of the witness' testimony." *Covel v. State*, 258 Md. App. 308, 323 (2023). "The foundational basis may be established through testimony relative to 'the type of equipment or camera used, its general

[3] Even if the statements amounted to hearsay, the court properly admitted the statements under the hearsay exception for statements made by an agent. *See* Md. Rule 5-803(a)(4) (providing that the following is not excluded by the hearsay rule: "[a] statement by the party's agent . . . made during the agency . . . concerning a matter within the scope of the agency"). *See also Broadway Servs., Inc. v. Comptroller of Maryland*, 478 Md. 200, 216 (2022) (holding that the "two fundamental elements for the creation of an agency relationship" are "some manifestation or indication by the principal to the agent that he or she consents to the agent's acting for his or her benefit" and "consent by the agent to act for the principal" (cleaned up)). The evidence established that the unidentified speaker agreed to act as Appellant's agent, at his request, to delete Appellant's Instagram posts for Appellant's benefit. The statements at issue were made during the agency and concerned a matter within the scope of the agency.

Although the trial court also admitted these statements under the hearsay exception for statements made by a co-conspirator (*see* Md. Rule 5-803(a)(5)), it is well settled that this Court may affirm on any ground adequately shown by the record. *See State v. Phillips*, 210 Md. App. 239, 270 (2013).

reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system.'" *Jackson v. State*, 460 Md. 107, 117 (2018) (quoting *Washington v. State*, 406 Md. 642, 653 (2008)). *See also* Section I.a., *supra* (setting forth the standard of review for authentication).

Two Supreme Court of Maryland decisions guide our analysis on this issue: *Washington v. State*, 406 Md. 642, and *Jackson v. State*, 460 Md. 107. In *Washington*, the State introduced surveillance video and still photographs of a shooting that occurred outside of a bar. 406 Md. at 646. The State introduced that evidence during its direct examination of the bar owner, who "did not know how to transfer the data from the surveillance system to portable discs." *Id*. at 655. The bar owner "hired a technician to transfer the footage from the eight cameras onto one disc in a single viewable format." *Id*. At trial, the State relied on the "silent witness" theory of authentication, and the court admitted the evidence over defense counsel's objection. *Id*. at 646-47. The Supreme Court of Maryland held that the State failed to authenticate the video because "[t]he videotape recording, made from eight surveillance cameras, was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD, and then to a videotape." *Id*. at 655.

In *Jackson*, the court admitted surveillance footage that showed the defendant making withdrawals from a bank ATM. 460 Md. at 117-20. The State authenticated that evidence through the testimony of a bank employee who "described the process he used to access the ATM video footage," which involved accessing a computer program and finding the camera footage for the relevant date and time. *Id*. at 117. The employee "testified that

he then 'exported the images into a digital file and emailed them to [the detective].'" *Id*. Then, the employee was "required to submit a specific request with date, time, location and camera specifications to a Bank of America team located in North Carolina, who would 'download the requested video and mail it directly to the detective.'" *Id*. At trial, the employee testified that the video was the same as the one that he had initially observed on the computer program. *Id*. at 118-19. The court recognized that "the State had sufficiently established the foundation for the video footage's authenticity, even if the video's relevance remained conditional on the rest of the State's case." *Id*. at 120. The Supreme Court of Maryland affirmed, holding that there was a sufficient foundation to admit the video because the employee testified about "the process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what the witness had viewed when he submitted a request for the video footage[.]" *Id*. at 119.

The instant case is similar to *Jackson* and distinguishable from *Washington*. Here, Detective Johnson testified that he obtained video footage from two businesses near the scene of the shooting: New City Mart and Bob's Bar. Detective Johnson described the process he followed to obtain the footage from both locations, beginning with New City Mart:

> Well, our SOP, our standard operating procedure is, we go to the location, ask the business owner where the DVR system is. Once we find out where that's at, we go and we take pictures of the screen, the DVR system, the time and date, and then once I fill out this form, this checklist, I take a picture of that, and also take a picture of the 474 [request] form. And then I email them to myself.

As for the download of the video itself, Detective Johnson testified as follows:

> Once I get into the DVR system, there is a menu screen. And in the menu screen, it's either backup or export. So, in this case, it would be to export the video. I put the time and date and the camera channels the detective requests on there, and I download that into a flash drive. Once I download those into a flash drive, I upload those onto my laptop which I carry with me everywhere I go.

Detective Johnson described a similar process to obtain the footage from Bob's Bar:

> Went to the location, asked them where the DVR system. I go upstairs to the second floor. I take pictures of the DVR, the screen, and the timeframe. And then I take a picture of the checklist, after I fill it out, and then I take a picture of the 474 form.
>
> * * *
>
> Once I get into the DVR system, I look for the menu button, and I look for either backup or export. Once I find the backup or export, I get the time and dates that are asked by the detective, enter those into the DVR system, and I download from the DVR system to a flash drive.

Although New City Mart's system's "time was off by a minute" and Bob's Bar's "system was ahead by two minutes[,]" Detective Johnson confirmed that the New City Mart footage and the Bob's Bar footage had not been tampered. Unlike the business owner's unfamiliarity with the surveillance system in *Washington*, Detective Johnson provided detailed testimony about the process to download the surveillance footage from New City Mart and Bob's Bar. Because Detective Johnson's testimony established a sufficient foundational basis to authenticate the surveillance footage, the court properly exercised its discretion by admitting the footage.

III.

Lastly, Appellant claims that the evidence is legally insufficient to sustain his convictions. According to Appellant, the evidence was insufficient because "the

prosecution presented a circumstantial case to the jury" and "[t]o conclude that [Appellant] was one of the shooters . . . required speculation."

When reviewing the sufficiency of the evidence supporting a criminal conviction, we ask "'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.'" *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Id.* (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)). We will not "retry the case" or "re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010).

The evidence at trial was legally sufficient to establish that Appellant was a shooter who participated in the March 28, 2020 incident, which resulted in the murder of Anthony Covington and wounded three others. Surveillance video captured the shooting and showed that one of the shooters was wearing a blue sweatsuit. Detective Gregorio "recognized that jumpsuit as having been posted the day prior" to the shooting on Appellant's Instagram account. Detective Gregorio testified that a photograph of Appellant wearing the blue jumpsuit was later deleted from Appellant's account. Tony Jones testified that "[Appellant] always had on a blue suit." In addition, Tony Jones recognized that a photo of Appellant from Appellant's Instagram account was "[a] picture of J-Money."

At trial, the State entered into evidence ten calls that Appellant made while he was incarcerated awaiting trial. Appellant used the nickname J-Money on two of the jail calls. In three of the calls, Appellant said that this was not "[his] first body[.]" A reasonable juror could interpret that statement as an admission that he was a shooter during the March 28, 2020, incident. Appellant also discussed how police identified him using a picture that he had deleted from Instagram. A reasonable juror could interpret that statement as evincing consciousness of guilt. *See Rainey v. State*, 480 Md. 230, 259 (2022) (recognizing that "[d]estruction or concealment of evidence . . . may be admissible as circumstantial evidence of consciousness of guilt"). *See also* Maryland Criminal Pattern Jury Instructions 3:01 ("Direct and Circumstantial Evidence") (instructing the jury that "[t]he law makes no distinction between the weight to be given to either direct or circumstantial evidence").

For all these reasons, the evidence was legally sufficient to support Appellant's convictions.

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