

Circuit Court for Prince George's County
Case No. CT161162X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 839

September Term, 2017

TIMOTHY EDWARDS

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 2018

*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.

Following a jury trial in the Circuit Court for Prince George’s County, Timothy Edwards, appellant, was convicted of first and second-degree rape; first, second, third, and fourth-degree sexual offense; first and second-degree assault; use of a firearm in a crime of violence; and wearing, carrying or transporting a firearm. Edwards raises two issues on appeal: (1) whether the trial court erred in denying his motion to suppress a recorded telephone call between himself and the victim, and (2) whether there was sufficient evidence to sustain his convictions for use of a firearm in a crime of violence and wearing, carrying, or transporting a handgun. For the reasons that follow, we affirm.

Edwards first contends that the recording of his telephone conversation with the victim should have been suppressed because it was made in violation of the Maryland Wiretapping and Electronic Surveillance Act, Md. Code (1974, 2013 Repl. Vol.), §§ 10-401 *et seq.* of the Courts and Judicial Proceedings Article (“CJP”) (“the Wiretap Act”). The Wiretap Act makes it unlawful to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication,” *see* CJP § 10-402(a)(1). Nevertheless, it allows for such interception under certain circumstances. As is relevant in this case, the Wiretap Act provides that when acting in a criminal investigation of certain enumerated crimes, including first or second-degree sexual offense, “an investigative or law enforcement officer . . . or any other person acting at the prior direction and under the supervision of an investigation or law enforcement officer” may intercept wire, oral, or electronic communications, provided that the “investigative or law enforcement officer or other

person is a party to the communication” or that “[o]ne of the parties to the communication has given prior consent to the interception.” CJP § 10-402(c)(2)(i)-(ii).

Edwards specifically asserts that the victim intercepted the call without sufficient direction and supervision by the police because they “gave her no questions to ask and no notes to guide the conversation.” The State counters that: (1) the police were not required to direct and supervise the victim because the police, and not the victim, “intercepted” the call as that term is defined in the Wiretap Act, and (2) even if the victim intercepted the call, she did so with sufficient direction and supervision from the police. We need not decide whether the police or the victim “intercepted” the call because, even if we assume that the victim intercepted the call, the interception was still lawful under the Wiretap Act.

In *Seals v. State*, 447 Md. 64 (2016), the Court of Appeals stated that it “would consider a police officer who listens to the [recorded] conversations in ‘real time’ to be supervising the person consenting to the recording” and that contemporaneously listening to the recording was “sufficient, although not necessary, police oversight to meet the supervision exception.” *Id.* at 78. Viewed in a light most favorable to the State, the evidence at the suppression hearing in this case demonstrated that, after obtaining the victim’s consent to record the telephone call, Detective Sukhjit Baath: (1) set up recording equipment in his police vehicle and connected that recording equipment to the victim’s phone; (2) provided general instructions to the victim regarding what information to elicit from Edwards; (3) operated the recording equipment throughout the entire phone call; (4) sat in the police vehicle with the victim during the entire phone call;

and (5) listened to the entire phone call in real time. This is far more than the Court of Appeals found to be sufficient supervision in *Seals*. Consequently, we are persuaded that the victim was “acting at the prior direction and under the supervision of an investigation or law enforcement officer and, therefore, the circuit court did not err in denying Edwards’s motion to suppress.

Edwards also claims that there was insufficient evidence to sustain his convictions for use of a firearm in a crime of violence and wearing, carrying, or transporting a handgun because the State failed to prove that the weapon he possessed was a “handgun.” However, in making his motion for judgment of acquittal, Edwards did not raise this argument, or make any other argument challenging the sufficiency of the evidence with respect to either of those charges. Consequently, this issue is not preserved for appeal. *See Claybourne v. State*, 209 Md. App. 706, 750 (2013) (“It is a well-established principle that our review of claims regarding the sufficiency of the evidence is limited to the reasons which are stated with particularity in an appellant’s motion for judgment of acquittal.”).¹

**JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

¹ Edwards does not request us to exercise our discretion to review this issue for “plain error” pursuant to Maryland Rule 8-131(a), and we decline to do so.