

Circuit Court for Baltimore City  
Case No. 118262014

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 879

September Term, 2019

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TAVON BRADLEY

v.

STATE OF MARYLAND

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Nazarian,  
Gould,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: August 7, 2020

\*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 Baltimore City, Tavon Bradley, appellant, was convicted of first-degree assault; use of a firearm in a crime of violence; possession of a regulated firearm by a disqualified person; wearing, carrying or transporting a firearm; reckless endangerment; and discharging a firearm within Baltimore City. On appeal, he contends that the court erred in admitting a video of the assault because, he claims, the State failed to authenticate the video. For the reasons that follow, we shall affirm.

### **BACKGROUND**

At trial, the State presented evidence that around 3 a.m. on August 18, 2018, the victim was shot outside of the Waverly Tavern in Baltimore following a fight in the street involving approximately 30 people. The primary evidence implicating Mr. Bradley in the shooting was a video of the incident that was obtained from surveillance cameras that were located outside of the Waverly Tavern. Detective Alexandros Haziminas testified that he obtained the video by going into the Waverly Tavern and speaking with the manager, who allowed him to access the video system. The video system consisted of a “DVR box” that was mounted into the ceiling and several monitors that were located behind the bar. Neither the monitors nor the DVR box was accessible to general patrons of the bar.

After Detective Haziminas observed that the video cameras outside the bar were recording, he rewound the video for several minutes and was able to see himself entering the bar from the street outside from two different camera angles. Having confirmed that the cameras were working properly, he then rewound the video to 3:00 a.m. and observed a large crowd of people outside on the street, which was consistent with what had been

described in the 911 calls reporting the incident. Detective Haziminas then went to the video system's menu; selected the date, time, and camera angles that he wanted to record; plugged a USB into the video system; and downloaded approximately an hour and twelve minutes of footage from two different cameras. Specifically, he testified that he downloaded video from a time starting slightly before the incident “just to see what led to the incident itself” and ending at a time slightly after the incident. After downloading the video from the video system, he took the USB back to his office, reviewed the video on the USB, confirmed that the video that he saw at the store had been “fairly and accurately copied” to the USB, and then transferred the video from the USB to a DVD, which was the exhibit ultimately offered by the State at trial.

Officer Sean Mahoney, one of the officers who responded to the 911 call, was shown a clip from the DVD during his testimony and was able to identify himself and other officers in the video. He further testified that the portion of the video from after the incident “accurately depict[ed] the events as [he] observed them that night.” Additionally, prior to the video being admitted into evidence, the parties entered a stipulation of fact with respect to the video, and several still photographs that had been obtained from the video, which read as follows:

The parties hereby stipulate that the individual wearing a black T-shirt with white design, black shorts and white shoes shown in the Waverly Tavern surveillance video and the still photographs attached identified by Officer Nicholas Sauerwald as Tavon Bradley is, in fact, the defendant Tavon Bradley.

Following Detective Haziminas's testimony, the State moved to admit the video into evidence. Defense counsel objected, claiming there was a “lack of authentication”

because there was “no testimony that the cameras were properly working . . . at 3:00 a.m.”; “there’s nobody from the bar here”; and “there’s no paperwork associated with it.” The court overruled the objection finding that there was sufficient evidence from which the jury could find that the video was what it purported to be.

### DISCUSSION

Mr. Bradley’s sole contention on appeal is that the trial court erred in admitting the video because it was not properly authenticated under *Washington v. State*, 406 Md. 642 (2008). Specifically, he asserts that the State failed to present evidence demonstrating that the video “was the product of a system or process which produced accurate and reliable results.” The State counters that the video was properly authenticated and that the issues raised by Mr. Bradley go to the weight to be given the video, not its admissibility. We agree with the State.

Authentication of evidence is governed by Md. Rule 5-901(a), which focuses on whether there is enough evidence to support the proponent’s claims about it:

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.

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) (citation omitted) (emphasis in original). “The threshold of admissibility is, therefore, slight.” *Id.* We review a circuit court’s decision that evidence is properly authenticated for abuse of discretion. *Donati v. State*, 215 Md. App. 686, 709 (2014).

“[F]or purposes of admissibility, a videotape is subject to the same authentication requirements as a photograph.” *Jackson*, 460 Md. at 116 (citing *Washington v. State*, 406 Md. 642, 651 (2008)). “Photographs and videotapes may be authenticated through first-hand knowledge, 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). The latter “silent witness method” of authentication “allows for authentication by the presentation of evidence describing a process or system that produces an accurate result.” *Washington*, 406 Md. at 652 (citations omitted).

In *Washington*, the case on which Mr. Bradley primarily relies, the Court of Appeals addressed whether a surveillance video that captured a shooting outside a bar and placed the defendant at the scene was properly authenticated. 406 Md. at 648-49. At trial, the bar owner testified that the video surveillance system consisted of eight cameras, six cameras located inside the bar and two cameras located outside the bar, which recorded “24 hours a day.” *Id.* at 646. When the police notified the bar owner that they wanted to review surveillance footage from the night of the shooting, he called a “technician” to compile the footage and transfer the data to a CD that the bar owner turned over to police. An officer transferred the CD to a VHS tape, which a detective viewed and used to identify the defendant as a suspect. *Id.* The bar owner did not testify about the editing process and the technician was not called as a witness. *Id.* at 655. Critical to the Court’s analysis was the fact that “[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.* Under those circumstances, the

Court held that the State had failed to “establish that the videotape and photographs represent[ed] what they purport[ed] to portray” in part, because the bar owner did not know how the surveillance footage was taken from the system and compiled onto a disc in a single viewable format and the detective “saw the footage only after it had been edited by the technician.” *Id.*

Here, however, the video was not created by an unknown person using an unknown process. Rather, Detective Haziminas, testified extensively about how he obtained and compiled the video. Specifically, he described the video system used by the bar; confirmed that the surveillance video was unlikely to have been altered by a patron prior to his arrival; testified that the cameras were functioning properly based on their having recorded both his entry into the bar and the large group of people that were congregated in the street outside the bar at 3:00 a.m.; described exactly what video footage he downloaded and how he downloaded it; and indicated that he reviewed the footage that he downloaded and confirmed that it fairly and accurately portrayed what he had observed on the video monitor before transferring it to the DVD.

There were also other indicia of the video’s accuracy and reliability, including Officer Mahoney’s testimony that he could see himself in the video and that it was consistent with what he had personally observed on the night of the incident and the parties’ stipulation that Mr. Bradley was, in fact, depicted in the video. Moreover, there was no evidence suggesting that the video camera was not working properly or that the video had been altered in any way. Consequently, we believe this case is more like *Jackson* wherein the Court of Appeals found that an ATM surveillance video had been sufficiently

authenticated where the bank’s protective services manager testified to the process that he used to obtain the video at issue, which entailed accessing a software application from which he could select the branch, date, time, and cameras; exporting still images from the video to the police detective for confirmation that the images depicted the desired date and time; and after receiving confirmation, submitting a request with date, time, branch and camera specifications to a Bank of America team who downloaded the video and mailed it directly to the detective. *Jackson*, 460 Md. at 118-19. Specifically, the Court held in *Jackson* that the bank manager’s testimony was sufficient to demonstrate “process of reproduction, the reliability of that process, and whether the reproduction was a fair and accurate representation of what the witness had viewed[.]” *Id.* at 119.

Although Mr. Bradley correctly notes that no witness testified about the specific manner of operation of the surveillance system or the system’s general reliability, testimony regarding those facts is not a condition precedent for authentication. *See Dep’t of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 26 (1996) (declining to “adopt any rigid, fixed foundational requirements necessary to authenticate photographic evidence under the ‘silent witness’ theory.”). Rather, to satisfy the evidentiary requirement for authentication, the proponent of the evidence need prove only that the evidence is “sufficient to support a finding that the matter in question is what its proponent claims.” *Washington*, 406 Md. at 651 (quoting Md. Rule 5–901(a)). Moreover, the fact that there may have been more camera angles that Detective Haziminas failed to download affected the weight to be given

to the video evidence, not its admissibility. Consequently, we find no abuse of discretion in the court’s decision to admit the surveillance video.

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