Circuit Court for Baltimore City
Case No. 116312020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1382

September Term, 2017

EARL MILLS, JR.

v.

STATE OF MARYLAND

Friedman,
Beachley,
Fader,

JJ.

Opinion by Fader, J.

Filed: August 1, 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.

A jury in the Circuit Court for Baltimore City convicted appellant Earl Mills, Jr. of attempted first-degree murder, reckless endangerment, conspiracy to commit murder, conspiracy to use a firearm in the commission of a felony or crime of violence, and use of a firearm in the commission of a felony or crime of violence. Mr. Mills contends that the trial court erred in: (1) convicting him of two conspiracy offenses, when the State only presented evidence of a single conspiracy; (2) failing to merge the sentences for reckless endangerment and attempted murder; (3) permitting the prosecutor to conduct a handwriting comparison, and to invite the jury to do the same, during closing argument; (4) admitting hearsay evidence; and (5) finding that video footage was properly authenticated.

The State concedes that the two conspiracy convictions are based on only one agreement. We agree, and so vacate the conviction and sentence for the lesser conspiracy count. We further conclude that, under the circumstances of this case, the court should have merged the conviction of reckless endangerment into the conviction of attempted first-degree murder for sentencing purposes. We therefore vacate Mr. Mills's sentences and remand for resentencing. We otherwise affirm the judgments of the trial court.

BACKGROUND

At approximately 1:20 p.m. on September 27, 2016, the Baltimore Police Department received a report of a shooting in the area of Calhoun and Laurens Streets. Detectives Carl Stambaugh and Nigel Rose responded. When they arrived at the scene, they found a Honda Crosstour with bullet holes that had crashed into a parked vehicle on

the southeast corner of the intersection of Calhoun and Laurens. Police officers also observed numerous shell casings littering the area.[1]

Around the same time, a call went out about a related crime scene on the 1200 block of Woodyear Street, where Charles Jeffries[2] had been found on the sidewalk suffering from what appeared to be gunshot wounds to his thigh and abdomen. Surveillance footage from the time of the incident obtained from security cameras posted on a nearby apartment building showed a white Honda Accord driving westbound on Laurens Street. At the intersection with Calhoun Street, the Accord encountered Mr. Jeffries's Crosstour, which was travelling north. As depicted on the video footage, multiple gunshots coming from the Accord could be heard as it crossed in front of the Crosstour. The Crosstour then accelerated through the intersection, turned, and crashed into a parked car. Four men exited the Crosstour and ran away.

Three different accounts provided by Rodney Burgess, a passenger in the Crosstour, played a critical role at trial. First, Mr. Burgess gave a recorded statement to the police on October 4, 2016. In that statement, which was played for the jury, Mr. Burgess provided the following information:

---

[1] Later testimony by the crime scene technician who collected the evidence showed that 26 cartridge casings were collected. No latent fingerprints were recovered from the cartridges.

[2] The victim's last name is sometimes spelled Jefferies—e.g., in the trial transcript and in Mr. Mills's briefs—and sometimes Jeffries—e.g., in the statement of charges, the indictment, the verdict sheet, and the State's briefs. We adopt the latter spelling.

- On September 27, 2016, he and his cousin, Mr. Jeffries, were driving from the Avenue Market on Pennsylvania Avenue when they realized that "some guys" were following them. Mr. Jeffries was driving.

- Mr. Burgess then heard several shots and saw "[a] bullet at the windshield." He pulled Mr. Jeffries from the car and pushed him between other cars so that he could not be seen. His other cousin, who was sitting in the back of the vehicle, had already left.

- Once everyone was out of the vehicle, they began to run, turning onto Woodyear Street. The people who were following them continued to shoot at them.

- After the shooters left, Mr. Burgess returned to find Mr. Jeffries still on the ground and injured. While waiting for help to arrive, Mr. Burgess called his mother and Mr. Jeffries's girlfriend.

- Mr. Burgess recognized the shooter "from being in the area." He knew him as "Earl."

- Mr. Burgess had not seen a gun, but the shots were fired from a white car.

Shortly after giving this statement, Mr. Burgess was taken to a photo array, a recording of which was also played for the jury at trial. The photo array was administered by Detective Michael Boyd, an officer who was not otherwise involved in the shooting investigation. Mr. Burgess identified Mr. Mills as the shooter and wrote, "This the boy that shoot" under Mr. Mills's photo. He signed his identification of Mr. Mills with the name "Rodney Lee."[3]

Second, in March 2017, Mr. Burgess signed an affidavit for Mr. Mills's counsel in which he acknowledged being present in the vehicle at the time of the shooting but claimed to have had his head down. He also claimed that the interviewing detectives, not he, had

[3] After Mr. Burgess identified Mr. Mills as the shooter, a warrant was issued for Mr. Mills's arrest and a search and seizure warrant was issued for Mr. Jeffries's vehicle. Mr. Jeffries refused to meet with the police or to have any involvement with the case.

identified the shots as having come from a white Honda owned by "Earl," that he did not know Mr. Mills, and that he did not pick anyone out of the photo array even after the detectives prompted him by pointing at the picture of Mr. Mills. Mr. Burgess asserted that he did not know who had shot at Mr. Jeffries.

Third, Mr. Burgess told yet another story at trial, where he acknowledged that Mr. Jeffries was his cousin but denied any recollection of the shooting and any knowledge of Mr. Mills. He also denied giving a statement to the police or meeting with prosecutors.

Mr. Mills elected not to present any witnesses at trial. During closing argument, the State, over objection, presented images of Mr. Burgess's signature on the affidavit he signed for Mr. Mills's counsel and the "Rodney Lee" signature on the photo array. The State asserted that the signatures were identical and asked the jury to come to that conclusion.

After he was convicted, Mr. Mills moved for a new trial, which the court denied. The court sentenced Mr. Mills to a total of life plus 15 years in prison—a life sentence for attempted first-degree murder, a concurrent life sentence for conspiracy to commit murder, ten years concurrent with that conspiracy sentence for use of a firearm in the commission of a crime of violence, five years consecutive to the attempted murder charge for reckless endangerment, and ten years consecutive to the reckless endangerment charge for conspiracy to use a handgun in commission of a felony or crime of violence. This appeal followed.

DISCUSSION

I. THE STATE PRESENTED EVIDENCE OF ONLY ONE CONSPIRACY.

Mr. Mills first contends that the trial court erred in convicting him of, and imposing separate sentences on, two different conspiracies, one to commit murder and one to use a firearm in the commission of a felony or crime of violence. Mr. Mills argues that the evidence established only a single conspiracy, "to hunt down and shoot the occupants of the Honda Crosstour," and so the evidence cannot support both convictions.

The State concedes that the record contains evidence of only "one conspiracy to shoot multiple people." We agree. "A criminal conspiracy is 'the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.'" *Savage v. State*, 212 Md. App. 1, 12 (2013) (quoting *Mason v. State*, 302 Md. 434, 444 (1985)). "The 'unit of prosecution' for conspiracy is 'the agreement or combination, rather than each of its criminal objectives.'" *Id.* at 13 (quoting *Tracy v. State*, 319 Md. 452, 459 (1990)) (footnote omitted). Accordingly, "'[a] single agreement . . . constitutes one conspiracy.'" *Id.* (quoting *United States v. Broce*, 488 U.S. 563, 570-71 (1989)). The Double Jeopardy Clause prohibits the conviction and sentencing of a defendant for multiple conspiracies unless the State proves the existence of multiple conspiracies. *Id.* at 26.

Although the State concedes that there was only evidence of a single conspiracy, and that the sentences for both convictions cannot stand, the State suggests that, rather than vacate one of the convictions, "the matter should be remanded to the circuit court with

instructions to merge the two conspiracy convictions." The State neither cites any authority for that proposition nor makes any argument in support of it. The State has thus waived that argument.

Moreover, under the circumstances presented here, we agree with Mr. Mills that the proper remedy is to vacate the lesser conviction and sentence. *See, e.g.*, *Jordan v. State*, 323 Md. 151, 161-62 (1991) (remanding for the court to vacate the lesser conspiracy conviction in a similar circumstance); *Savage*, 212 Md. App. at 31, 42 (remanding to vacate one of two conspiracy convictions when the State had not advanced a two-conspiracy theory at trial); *Berry v. State*, 155 Md. App. 144, 174 (2004) (same). Accordingly, we vacate Mr. Mills's conviction and sentence for conspiracy to use a firearm in the commission of a crime of violence.

II. THE SENTENCES FOR ATTEMPTED MURDER AND RECKLESS ENDANGERMENT SHOULD BE MERGED.

Mr. Mills next argues that the trial court erred in failing to merge, for sentencing purposes, his convictions of reckless endangerment and attempted first-degree murder. He contends that even if the State intended the crime of attempted murder to relate to shooting at Mr. Jeffries and the crime of reckless endangerment to relate to shooting in the presence of bystanders, that was not made clear to the jury. The State counters that the crimes of reckless endangerment and attempted murder arose from two distinct acts, the shooting of Mr. Jeffries in his vehicle, on the one hand, and the endangerment of the neighborhood residents by shooting on a busy street as Mr. Jeffries and the other men fled their crashed vehicle, on the other.

Based on the facts in the record, we agree with Mr. Mills. The jury was never told that the crime of reckless endangerment was based on a distinct act from Mr. Mills's actions in shooting at Mr. Jeffries. When a person is charged with two offenses, one of which is a lesser-included offense of the other, there is a presumption that the lesser offense merges into the greater. *Thompson v. State*, 119 Md. App. 606, 621-22 (1998). "The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law" and protects a convicted defendant from more than one punishment for the same offense. *Brooks v. State*, 439 Md. 698, 737 (2014). A trial court's failure to merge convictions for sentencing purposes when required to do so comprises reversible error. *Britton v. State*, 201 Md. App. 589, 598-99 (2011).

In conducting a merger analysis, "we initially apply the 'required evidence test.'" *Kyler v. State*, 218 Md. App. 196, 225 (2014) (quoting *Sifrit v. State*, 383 Md. 116, 137 (2004)). If that test "is satisfied, merger follows as a matter of course." *Sifrit*, 383 Md. at 137. "The required evidence test focuses upon the elements of each offense; if all the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter." *Kyler*, 218 Md. App. at 225-26 (quoting *Kelly v. State*, 195 Md. App. 403, 440 (2010)). If, however, "each offense contains an element which the other does not, there is no merger under the required evidence test . . . ." *Id.* at 226 (quoting *Moore v. State*, 198 Md. App. 655, 684 (2011)).

Where convictions for reckless endangerment and attempted murder are based on the same conduct, they merge for sentencing purposes. *McClurkin v. State*, 222 Md. App. 461, 489-90 (2015) (vacating sentence for reckless endangerment because "the circuit court should have merged [defendant's] conviction for reckless endangerment into his conviction for attempted first-degree murder"). That is because "mov[ing] from reckless endangerment, where one is simply indifferent to the threat to the victim, to one of the more malicious crimes where death or serious bodily harm is affirmatively desired or specifically intended—such as attempted murder . . .—primarily involves ratcheting the *mens rea* up to the next level of blameworthiness." *Id.* at 489 (quoting *Williams v. State*, 100 Md. App. 468, 490 (1994)). The question is thus whether the conviction for reckless endangerment was based on the same conduct as the conviction for attempted murder—i.e., shooting at Mr. Jeffries—or whether it was instead based on the endangerment of people other than Mr. Jeffries.

When there is a legitimate ambiguity regarding the basis of the jury's verdict, we are required to resolve the ambiguity in the defendant's favor. *Nicolas v. State*, 426 Md. 385, 408 n.6 (2012). In determining whether such ambiguity exists, we look to the charging document, jury instructions, verdict sheet, and evidence introduced at trial. *Morris v. State*, 192 Md. App. 1, 39-44 (2010). Here, none of these sources demonstrate clearly that the crimes of reckless endangerment and attempted murder arose from distinct acts. The indictment charged Mr. Mills with recklessly endangering Messrs. Jeffries and Burgess. The State elected not to proceed on the charges related to Mr. Burgess, leaving only Mr.

Jeffries. However, the jury did not see the charging document and the verdict sheet does not specify a victim of the reckless endangerment. The evidence at trial tended to show that the shooter targeted Mr. Jeffries and fired a gun at his vehicle numerous times. Although it was the middle of the afternoon and people were in the neighborhood, there was no testimony that anyone else (other than the occupants of Mr. Jeffries's vehicle) was in the line of fire or in danger of injury.

Jury instructions similarly did not specify the alleged victim(s) of the reckless endangerment or limit the charge to conduct other than that directed at Mr. Jeffries, stating only that the "defendant acted recklessly if he was aware that his conduct created a risk of death or serious physical injury to another person . . . ."[4] Although the State is correct that the jury instruction on reckless endangerment did not specifically direct the jury to consider that count *only* as to Mr. Jeffries, that does not advance the State's argument. The issue is not whether the jury was told that Mr. Jeffries was the only victim they could consider, but whether the jury was told that there had to be at least one victim other than Mr. Jeffries. It was not.

Indeed, the closest the State came to identifying the reckless endangerment count as requiring proof of reckless behavior toward individuals other than Mr. Jeffries was in

[4] The parties and the court were clearer outside the presence of the jury. In discussing prospective jury instructions at the bench, the court stated that it would tell the jury that Mr. Jeffries "is the only victim they are to consider except for Count 5, reckless endangerment," because that count involved "reckless endangerment as to everyone else. There is nothing reckless about shooting at [Mr. Jeffries]." The jury, however, was not privy to that statement.

closing argument, when the State argued that reckless endangerment "just requires that somebody was placed [in] some sort of serious bodily injury" by the defendant's reckless act: "Ladies and Gentlemen, if you find nothing else, firing shots in the middle of the day in a neighborhood where people are coming around is reckless." Thus, the State raised the prospect that other individuals may have been endangered by Mr. Mills's conduct. But what neither the State nor the court ever did was tell the jury that the reckless endangerment count required them to find reckless conduct toward someone other than Mr. Jeffries or, stated differently, that the danger to Mr. Jeffries could not by itself support the reckless endangerment count.

The jury's verdict on the charge of reckless endangerment is thus ambiguous as to whether it was based on the danger posed to Mr. Jeffries alone, and thus properly subsumed within the greater attempted murder count, or to others. Under the circumstances, the trial court was required to merge Mr. Mills's convictions for attempted murder and reckless endangerment for sentencing purposes.

If we were simply to vacate Mr. Mills's sentence for reckless endangerment, we would alter the sentencing "package" devised by the trial court. *See Twigg v. State*, 447 Md. 1, 26-28 (2016). Following the reasoning of the Court of Appeals in *Twigg*, we will instead vacate all of Mr. Mills's sentences and remand this case to the circuit court for resentencing on all remaining counts.

III. THE TRIAL COURT DID NOT ERR IN ALLOWING THE STATE TO ARGUE TO THE JURY REGARDING SAMPLES OF MR. MILLS'S HANDWRITING THAT WERE IN EVIDENCE.

Mr. Mills next challenges the trial court's overruling of his objection to the State's references during closing argument to similarities between two handwriting samples that were in evidence. Specifically, he argues that the trial court erred in allowing the State (1) to tell the jury that Mr. Burgess's signature on the affidavit he signed for Mr. Mills's counsel and the "Rodney Lee" signature on the photo array were the same, and (2) to invite the jury to make the same comparison.

The Court of Appeals has repeatedly said that attorneys are "afforded considerable leeway in closing argument, and that regulation of closing arguments falls within the sound discretion of the trial court." *Frazier v. State*, 197 Md. App. 264, 283 (2011). In general, "'counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom.'" *Mitchell v. State*, 408 Md. 368, 380 (2009) (quoting *Wilhelm v. State*, 272 Md. 404, 412 (1974)). Moreover, even if counsel makes improper remarks during closing argument, reversal would only be required if the comments "'actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.'" *Spain v. State*, 386 Md. 145, 158 (2005) (quoting *Degren v. State*, 352 Md. 400, 431 (1999)).[5]

---

[5] The State raises a preservation issue, contending that Mr. Mills did not timely object to the remarks he claims were improper. In our view, however, defense counsel's general objection to the prosecutor's comment, "So let's take those two signatures and see if they are made by the same person," sufficiently put the trial court on notice of his argument and preserved the issue for appellate review.

We find no merit in this challenge. Contrary to Mr. Mills's contention, the State did not improperly make reference to evidence that was not before the jury or make the prosecutor himself a witness. Instead, the State identified and discussed two pieces of evidence that were before the jury—the two signatures. The prosecutor did not identify himself as a handwriting expert or claim any special insight or skill; he made argument based on evidence in the record. It was left to the jury to compare the handwriting on the properly admitted documents, along with the other evidence in the record, to make a factual determination regarding whether Mr. Burgess had identified Mr. Mills as the shooter. *See Parker v. State*, 12 Md. App. 611, 616 (1971) (the jury may compare handwriting on properly admitted documents and find, as a fact, that they were written by the same person or draw other inferences of fact from those comparisons); *see also Sass v. Andrew*, 152 Md. App. 406, 436 (2003) (concluding that it is the jury's responsibility, when a witness insists he did not execute a document, to assess the witness's credibility and resolve the factual dispute as to whether he signed the documents); Md. Code Ann., Cts. & Jud. Proc. § 10-906 (2013 Repl.; 2017 Supp.) ("Evidence of a disputed writing is admissible and may be submitted to the trier of the facts for its determination as to genuineness."). No line was crossed here. And even if any line had been crossed, we fail to see how the jury could have been misled in light of the other evidence presented regarding Mr. Burgess's identification of Mr. Mills and his denials.

IV. THE TRIAL COURT DID NOT ERR IN OVERRULING MR. MILLS'S HEARSAY OBJECTIONS.

Mr. Mills next argues that the trial court erred in overruling objections to two statements that he contends "necessarily conveyed to the jury that extrajudicial statements had been made, the content of which were damaging to [Mr. Mills.]" The specific statements at issue were both made by Detective Stambaugh as he reviewed the course of his investigation.

The first of the challenged colloquies, in which Detective Stambaugh explained the investigative steps he took after reviewing the video of the incident, is:

> BY [PROSECUTOR]: Q. Okay. And once—as a result of any information you received, what did you do?
>
> A. In reference to the information we received, a name was generated. We ran that name through several databases, one of which was Motor Vehicles Administration.
>
> Q. And what name was generated, and what information did you garner?
>
> A. The name—
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled. The question is—not what people told you—the question is what name did you search?
>
> THE WITNESS: Earl Mills.
>
> BY [PROSECUTOR]:
>
> Q. Okay. And as a result of searching the name Earl Mills, what information did you find?
>
> A. Earl Mills was found to, according to MVA, be the co-owner of a white Honda Accord. And he resided at 1330 Stockton Street.

The second challenged colloquy followed Detective Stambaugh's testimony that Mr. Burgess had identified "Earl" as the shooter. Detective Stambaugh then explained that a photo of Earl Mills had been placed in a photo array that Mr. Burgess reviewed:

> BY [PROSECUTOR]: Q. Now, after Detective Boyd showed the photo array, what, if anything, happened?
>
> A. After he was shown the photo array, he advised me that—
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> This is not for the proof of what is being said, it's just so that you can understand the actions that Detective Stambaugh took.
>
> THE WITNESS: I was advised that—that Burgess identified Photo 2 as the individual that—the suspect in the shooting.
>
> BY [PROSECUTOR]:
>
> Q. Okay. And who was the person in Photograph Number 2?
>
> A. Earl Mills.

We agree with the State that even if the statements were hearsay[6] and even if Mr. Mills's objections were preserved, there was no reversible error. Maryland's appellate

---

[6] Mr. Mills, relying on *Geiger v. State*, 235 Md. App. 102, 117-20 (2017), argues that Detective Stambaugh should have said no more than that his next step—searching various databases for Mr. Mills's name—was based on "information received." As to the first statement, the only thing Detective Stambaugh's testimony added was that "a name was generated." It is difficult to see (1) what problematic information that statement supposedly generated, or (2) how less could have been said while still explaining that Detective Stambaugh came to run Mr. Mills's name through databases. Moreover, Detective Stambaugh never actually answered the only question to which Mr. Mills actually objected during the first colloquy because, before Detective Stambaugh could answer, the court rephrased the question to ask only "what name did you search?"

courts have "long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury *without objection* through the prior testimony of other witnesses." *Yates v. State*, 429 Md. 112, 120 (2012) (quoting *Grandison v. State*, 341 Md. 175, 218-19 (1995)). This rule applies to complaints of inadmissible hearsay. *See, e.g.*, *Jones v. State*, 310 Md. 569, 588-89 (1987), *vacated on other grounds*, 486 U.S. 1050 (1988).

Here, as to the first statement, Detective Jay Rose (a different officer from the Detective Nigel Rose who had responded to the scene) had already testified without objection that Mr. Mills's name had been generated during a separate investigation as the owner of a white Honda Accord that Detective Rose had had towed. Detective Rose further testified that the car was later subject to a search and seizure warrant. The jury was thus already aware that Detective Stambaugh had received information about Mr. Mills.

As to the second statement, regarding Mr. Burgess's identification, Detective Boyd had already testified about his administration of the photo array at Detective Stambaugh's request. The jury had also twice heard the recording of the photo array procedure, in which Mr. Burgess identified Mr. Mills's photograph, and had also heard Mr. Burgess's recorded statement to the police identifying "Earl" as the shooter. The State had then introduced the photo array itself through Detective Boyd, allowing the jurors to judge for themselves whether the photo identified was Mr. Mills.

In sum, the information Mr. Mills now complains was improperly conveyed through Detective Stambaugh had already been conveyed to the jury, without objection, through other testimony. Allowing the statements about which Mr. Mills now complains was not reversible error.

V. THE TRIAL COURT DID NOT ERR IN OVERRULING MR. MILLS'S AUTHENTICATION OBJECTION.

Finally, Mr. Mills avers that the trial court erred—both at trial and at the hearing on his motion for new trial—when it ruled that the surveillance video of the shooting was properly authenticated through the testimony of Detective Jay Rose. In Mr. Mills's view, the absence of testimony by a custodian of records or testimony concerning the reliability of the equipment used to record the videos should have precluded their admission.

Authentication of evidence is governed by Rule 5-901(a), which states, in pertinent part, that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

The admissibility of a video is subject to the same general evidentiary rules of admissibility as a photograph. *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 20 (1996). One way in which video evidence may be admitted is through the "silent witness" theory, which "allows for authentication by the presentation of evidence describing a process or system that produces an accurate result." *Washington v. State*, 406 Md. 642, 652 (2008). "[T]he burden of proof for authentication is slight, and the 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.'" *Dickens v. State*, 175 Md. App. 231, 239 (2007) (quoting *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006). We review a trial court's finding of authenticity for abuse of discretion. *See Gerald v. State*, 137 Md. App. 295, 305 (2001).

We cannot say that the trial court abused its discretion in finding that the video was properly authenticated. There was no real dispute that the surveillance video was what the State claimed it to be. Detective Rose testified that he obtained the video from cameras mounted on an apartment building at 1330 Laurens Street and that he personally observed the cameras and their positioning. Inside the building, an employee let him into the room that contained the "safe-type box that the DVR was in." Detective Rose then watched the "live feed" from the cameras to verify that they were pointed at the street on which the shooting had occurred, checked the date/time stamp on the recordings to determine it was accurate, searched for footage from the time of the shooting (as verified through 911 calls and the arrival of the police at the scene), and then downloaded the pertinent footage from the two cameras to a USB drive. He later checked the footage and determined that it was identical to what he had viewed at the apartment building. That same video was shown to the jury.

This case is thus unlike *Washington*, on which Mr. Mills relies. There, the State produced a video that was a heavily-edited compilation of footage from eight different security cameras. 406 Md. at 646. Critical to the Court's conclusion that the error in admitting the video was not harmless 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*. at 655. Because the "technician" who had created the video did not testify, and the bar owner who testified did not explain the editing process, the State had failed to "establish that the videotape and photographs represent[ed] what they purport[ed] to portray." *Id.*

Here, there was no suggestion that the videos were edited or that the cameras were not in proper working condition. To the contrary, Detective Rose testified that he saw the cameras from which the video was taken, made observations about the accuracy of the feed, and downloaded the footage himself. Although the State did not present a technical witness who could explain in detail the recording system, our courts have declined to "adopt any rigid, fixed foundational requirements necessary to authenticate photographic evidence under the 'silent witness' theory." *Cole*, 342 Md. at 26. Satisfying the evidentiary burden for authentication only requires a showing 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 Rule 5-901(a)). Where, as here, the proponent makes a prima facie showing that the proffered evidence is genuine, the item "comes in, and the ultimate question of authenticity is left to the jury." *Gerald*, 137 Md. App. at 304 (quoting 2 *McCormick on Evidence* § 227 (John W. Strong ed. 1999)). Under the particular

circumstances of this case, we discern no abuse of discretion in the trial court's decision to admit the videos into evidence.

JUDGMENTS AFFIRMED IN PART AND VACATED IN PART. CONVICTION AND SENTENCE FOR CONSPIRACY TO USE A FIREARM IN THE COMMISSION OF A FELONY OR CRIME OF VIOLENCE VACATED. SENTENCES ON ALL OTHER CONVICTIONS VACATED. CASE REMANDED WITH INSTRUCTIONS TO MERGE CONVICTION FOR RECKLESS ENDANGERMENT INTO CONVICTION FOR ATTEMPTED MURDER AND FOR RESENTENCING ON ALL REMAINING CONVICTIONS. COSTS TO BE PAID 60% BY APPELLANT AND 40% BY MAYOR AND CITY COUNCIL OF BALTIMORE.