

Circuit Court for Prince George's County
Case No.: CT210004X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1766

September Term, 2021

KEON SIMMONS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 28, 2022

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** 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, Keon Simmons, appellant, was convicted of attempted robbery and second-degree assault. At trial, the court admitted into evidence surveillance video showing the incident. On appeal, Simmons contends the court erred when it did so because the video was not properly authenticated. For the following reasons, we shall affirm.

We review the trial court’s finding that the surveillance footage was properly authenticated for abuse of discretion. *Donati v. State*, 215 Md. App. 686, 708 (2014). Videotapes may be authenticated through one of two ways: either (1) the pictorial testimony theory; or the “silent witness” theory. *Washington v. State*, 406 Md. 642, 652 (2008). Here, the State relied on the “silent witness” theory. Under this theory, a party can authenticate a video through “presentation of evidence describing a process or system that produces an accurate result.” *Id.* There are no “rigid, fixed foundational requirements for admission of evidence under the ‘silent witness’ theory[.]” *Jackson v. State*, 460 Md. 107, 117 (2018) (cleaned up).

The State relied on testimony from Lieutenant Paul Schweinsburg to describe the surveillance system. Lieutenant Schweinsburg testified that the footage was recorded using a software called “Eagleview.” He explained that Eagleview maintained recordings using web storage for at least 30 days. Lieutenant Schweinsburg further testified that he calibrated the time on the footage himself by comparing the Eagleview system time to the time on his cell phone. Lieutenant Schweinsburg accessed the recorded footage using a computer application and personally reviewed the video on site the day of the incident. He then downloaded the video to a DVD and marked the disc with his initials. Lieutenant

Schweinsburg was also able to identify the video played at trial as the same surveillance footage. There was no evidence that the cameras were not working properly or that the video had been altered. We conclude this foundation sufficiently authenticated the surveillance footage before it was admitted into evidence.

We disagree with Simmons’s argument that *Washington v. State* compels us to hold otherwise. Unlike the witness there, Lieutenant Schweinsburg knew the process of obtaining the surveillance footage and provided sufficient foundation to admit the footage. The surveillance video here consisted of footage from the viewpoint of one camera; there is no evidence that the footage was “compiled from . . . various cameras[.]” *Cf. Washington*, 406 Md. at 646. The surveillance footage here took the form of a “simple videotape” and required a less detailed foundation than the more complicated footage at issue in *Washington. Id.* at 655. Given that “[t]he threshold of admissibility is . . . slight,” *Jackson*, 460 Md. at 116, and that the tape did not undergo any editing before being viewed by Lieutenant Schweinsburg and used during trial, we find that the State laid a sufficient foundation and that the trial court did not abuse its discretion in admitting the surveillance tape into evidence.

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