Circuit Court for Prince George's County
Case No. CT200913X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1970

September Term, 2021

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PAUL LAMAR GREEN

v.

STATE OF MARYLAND

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Graeff,
Beachley,
Albright,

JJ.

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Opinion by Graeff, J.

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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.

A jury in the Circuit Court for Prince George's County convicted Paul Lamar Green, appellant, of one count of first-degree murder, two counts of attempted first-degree murder, one count of attempted second-degree murder, five counts of use of a handgun in the commission of a crime of violence, three counts of first-degree assault, one count of home invasion, and one count of wearing, carrying, and transporting a handgun. The court sentenced appellant to life imprisonment for the conviction of first-degree murder of Marc Allen, plus 80 years, concurrent, for the other convictions.[1]

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Was the evidence sufficient to convict appellant of the first-degree murder of Mr. Allen and the attempted murder of Tomari Meredith when no evidence was offered identifying him as the criminal agent?

2. Was the evidence sufficient to convict appellant of attempted murder or assault of Eli Williams when no evidence was offered proving that he fired a gun, nor evidence that any fired shots were aimed at or near the victim?

3. Did the circuit court err in denying appellant's motion to suppress Christina Pixley's extrajudicial identification of him, exacerbated by

[1] The sentence of the court was as follows: a life sentence for the first-degree murder of Mr. Allen; 20 years, concurrent, for the conviction of attempted first-degree murder of Tomari Meredith; nine years, concurrent, for the conviction of first-degree assault of Ashley Page; four years, concurrent, for the conviction of home invasion; five years, concurrent, for the conviction of first-degree assault of Christina Pixley; ten years, concurrent, for the conviction of attempted murder of Eli Williams; and five years, concurrent, for the conviction of first-degree assault of Mr. Williams. Appellant also was sentenced to a total of 25 years, concurrent, for five counts of use of a firearm in the commission of a crime of violence, and 2 years, concurrent, for the conviction of wearing, carrying, and transporting a handgun on his person. The sentence for the conviction of attempted second-degree murder of Mr. Meredith was merged at sentencing.

an in-court identification of appellant after the witness repeatedly stated she could not identify the assailant?

For the reasons set forth below, we shall affirm, in part, and reverse, in part, the judgments of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

In June 2020, appellant was involved in a romantic relationship with Ashley Page. The two had a child together and, at one point, lived together in Ms. Page's apartment, located on Saint Clair Drive, Temple Hills, Maryland. In July 2020, appellant moved out of Ms. Page's apartment, and he lived with his mother, Lakisha Green, at her home in Washington, D.C.

On July 19, 2020, at approximately 1:00 a.m., Ms. Pixley and Mr. Meredith went to Ms. Page's apartment. Ms. Pixley said that there was a fourth person in the apartment, whom Ms. Pixley identified as "Eli."[2] A man wearing a ski mask burst through the front door wielding a firearm.

Mr. Meredith testified that, after the man entered the apartment, he ran to another room with another person whose name he did not know. They jumped out a window. Ms. Pixley and Ms. Page remained inside with the assailant, who was pointing the gun at them and arguing with Ms. Page. Ms. Pixley testified that, at some point in the argument, the assailant said: "Oh, yeah, Ashley."

[2] Ms. Pixley did not know Eli's name at the time of the incident.

Soon after, Mr. Allen, Ms. Pixley's cousin, entered the apartment. The assailant pointed the gun at Mr. Allen, and Ms. Pixley begged for him not to shoot. Mr. Allen then grabbed Ms. Pixley, and they escaped out the front door. They went to Ms. Pixley's apartment, where she attempted to call Mr. Meredith. Ms. Page then called 911.[3]

Ms. Pixley testified that, although the ski mask concealed most of the assailant's face, she could see his eyes and forehead. She testified initially that she did not know who the assailant was, but she later testified that she knew the assailant was appellant based on his voice, the features of his face that were uncovered, and the manner in which he entered the apartment and talked to Ms. Page by name. A few days prior to the shootings, she had seen appellant when he came to Ms. Page's apartment, when Ms. Page was not there. Appellant asked if his daughter could see the dog. Ms. Pixley was not extremely familiar with appellant, but she knew he was the father of Ms. Page's child, and she recognized his voice from hearing him talk on the phone with Ms. Page.

Mr. Meredith testified that the person who entered the apartment was wearing the same clothes that he saw appellant wearing a few hours earlier. On July 18, 2020, at approximately 11:00 p.m., Mr. Meredith was walking a family member's dog outside Saint Clair Drive when he came across Ms. Page and her boyfriend, appellant, arguing on the sidewalk. Appellant was wearing a "[b]lack shirt, [white] Air Forces, and some black

[3] The 911 calls were played for the jury in open court, but the record does not contain the recording or a transcript of what was said in that call, or the call subsequently made by Ms. Pixley. The parties below discussed portions of the tapes, including Ms. Page stating that appellant pointed a gun at her while in the apartment, but we cannot confirm what was said to 911 on the record before us.

jeans." Mr. Meredith knew Ms. Page through Ms. Pixley, and he recognized appellant from prior FaceTime calls with Ms. Page. Mr. Meredith identified appellant at trial as the person who came into the apartment with a gun.

After Mr. Meredith jumped out of the window, he ran to the front of the building and met with Mr. Allen. As he was running, he heard two gunshots. Mr. Allen and Mr. Meredith then went to Ms. Pixley's apartment.

Approximately 15 minutes after the incident at Ms. Page's apartment, Mr. Meredith and Mr. Allen walked to a nearby restaurant located on Branch Avenue to get food. On their way back, Mr. Meredith was shot in his right arm and fell to the ground. Mr. Allen was shot twice in the back. Mr. Meredith testified that he heard approximately five gunshots coming from behind them, but he did not see anyone run or drive away. Mr. Meredith called Ms. Pixley and told her that they had just been shot. Mr. Meredith and Mr. Allen returned to Ms. Pixley's apartment. Ms. Pixley called 911 at approximately 2:20 a.m. Mr. Allen died from his injuries.

On August 10, 2021, a virtual hearing was held on appellant's motion to suppress the extrajudicial identification of him by Ms. Pixley. As discussed in more detail *infra*, defense counsel argued that the procedure involved with the photo array was unduly suggestive. The court found that the procedure was not unduly suggestive, and it denied appellant's motion to suppress Ms. Pixley's extrajudicial identification.

Trial was held from September 13, 2021, through September 20, 2021. In addition to the testimony of the victims, as set forth *supra*, the State called Corporal Patrick

Whittington, who testified that he responded to Saint Clair Drive on July 19, 2020, and located three, 9mm firearm shell cartridges on the exterior of the building. He subsequently went to appellant's home in Washington, D.C. and recovered one, 9mm cartridge casing, a "Polymer80 kit," and an identification card belonging to "Paul Green."[4]

The State also called Matthew Forest, a crime scene investigator for the Prince George's County Police Department. He recovered 9mm shell casings from inside and outside the Footaction store located near the restaurant at the intercection of Branch Avenue and Iverson Street.

Jamie Smith, a firearms examiner for the Prince George's County Police Department, testified that all the shell casings found outside Saint Clair Drive came from the same firearm. The shell casings found near Branch Avenue also came from a 9mm firearm, but they lacked sufficient individual characteristics to determine if they were from the same firearm as the shell casings recovered from Saint Clair Drive.

Detective Jose Chinchilla testified that surveillance footage showed a dark-green Infiniti circling the parking lot near where Mr. Meredith and Mr. Allen were shot. A similar dark-green Infiniti, owned by appellant's mother, was found at appellant's home in Washington, D.C.[5] Gunshot residue was found on the passenger-side door of the Infiniti.

[4] Corporal Wittington testified that a Polymer80 kit is a gun-making kit, which provides a lower grip that can be drilled out to make a functional firearm.

[5] Appellant's mother, Ms. Green, and appellant's stepfather, Darrell Ward, testified at trial that the video surveillance of the vehicle alleged to have been involved looked different from Ms. Green's Infinity.

Detective Chinchilla identified a photo that police took of the door in Ms. Page's apartment where Mr. Meredith and Mr. Williams ran, showing that the door was damaged.

Detective Aven Odhner testified that appellant's cell phone was tracked using cell tower "pings," which placed his phone near Ms. Page's apartment and Branch Avenue when the shootings took place. Ms. Page and Mr. Williams did not testify at trial.

## DISCUSSION

### I.

### Sufficiency of the Evidence

We review challenges of evidentiary sufficiency by determining "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." *State v. McGagh*, 472 Md. 168, 184 (2021). "We do not measure the weight of the evidence; rather, our concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457 (1997).

A valid conviction may be based solely on circumstantial evidence. *Wilson v. State*, 319 Md. 530, 536 (1990); *see also Allen v. State*, 158 Md. App. 194, 249 (2004) (stating that "circumstantial evidence is qualitatively as sufficient as direct evidence to support a conviction."), *aff'd*, 387 Md. 389 (2005). "Although circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture." *Smith v. State*, 415 Md. 174, 185

(2010). This standard applies to all criminal cases because generally, "proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *State v. Suddith*, 379 Md. 425, 430 (2004) (quoting *State v. Smith*, 374 Md. 527, 533–34 (2003)).

> Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question "is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence."

*Id.* at 447 (quoting *Smith*, 374 Md. at 557). Thus, the limited question for our review is "not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Allen*, 158 Md. App. at 249 (citing *Fraidin v. State*, 85 Md. App. 231, 241, *cert. denied*, 322 Md. 614 (1991)).

**A.**

**First-Degree Murder of Mr. Allen and Attempted Murder of Mr. Meredith**

Appellant contends that there was insufficient evidence to convict him of the first-degree murder of Mr. Allen and the attempted first-degree murder of Mr. Meredith. He asserts that there was no evidence "that he was the person who fired the bullets that injured Mr. Meredith and killed Mr. Allen," and the jury could reach that conclusion only "with impermissible speculative leaps."

The State contends that the evidence was sufficient to support appellant's conviction. It argues that the shootings were the cumulation of an attack that began in Ms. Page's apartment, supported by evidence, including: (1) 9mm cartridge casings near the

location of the shooting, which was the same class as the cartridges recovered near Ms. Page's apartment; (2) a round of 9mm ammunition and other gun paraphernalia in appellant's home, along with his identification card; (3) video surveillance of a green Infiniti, similar to the one owned by appellant's mother, in the area where the victims were shot shortly after Ms. Page's 911 call; (4) gunshot residue located on the passenger side of appellant's mother's Infiniti, consistent with the discharge of a firearm; (5) cell phone evidence placing appellant's phone in the area of the shooting during the time it occurred; and (6) Ms. Pixley's 911 call after Mr. Meredith and Mr. Allen were shot. The State asserts that the evidence permitted the jury to infer that appellant, "using his mother's car, circled the area until he found [Mr.] Meredith and [Mr.] Allen, and then shot them."

A person can be convicted of first-degree murder based on evidence showing a willful, deliberate, and premeditated killing. *See* Md. Code Ann., Crim. Law Art. ("CL") § 2-201(a)(1) (2021 Repl. Vol.). To be found guilty of attempted first-degree murder, the evidence must show that an accused "attempted to commit first degree murder with the requisite intent required for conviction of first degree murder," but the attempt did not result in the death of the victim. *Jenkins v. State*, 146 Md. App. 83, 131 (2002). As appellant notes, however, the State had to show that he was the person who shot the victims. *State v. Simms*, 420 Md. 705, 722 (2011) ("[I]n criminal cases, the State must prove 'criminal agency (including [the defendant's] presence at the scene where pertinent)' beyond a reasonable doubt.") (quoting *Schmitt v. State*, 140 Md. App. 1, 30 (2001)).

Appellant's sole contention on appeal is that there was no evidence of agency, i.e., that he was the person who fired bullets that injured Mr. Meredith and killed Mr. Allen.

Here, the evidence, although circumstantial, was sufficient to support the jury's verdict, finding that appellant was the person who shot Mr. Meredith and Mr. Allen. The evidence showed that appellant had a romantic, and somewhat contentious, relationship with Ms. Page. The State argued that appellant was obsessive. Appellant conceded that the evidence was sufficient to show that he was the person who entered Ms. Page's apartment wielding a firearm. Based on Mr. Meredith's testimony that he and another man ran to a bedroom in the back of the apartment and escaped out a window, and evidence indicating that the door had been kicked open, the jury could infer that appellant kicked in the door to the back room in an attempt to find the two men. Mr. Meredith subsequently heard gunshots, and the police then found 9mm shell casings outside Ms. Page's apartment.

Following the confrontation at Ms. Page's apartment, video surveillance showed a green Infiniti circling around the neighborhood. Appellant's mother owned a green Infiniti, which Detective Chinchilla testified to be similar to that shown in the surveillance video. This Infiniti subsequently tested positive for gunshot residue on the passenger side door, indicating the recent discharge of a firearm. In appellant's home, police found a round of 9mm ammunition and other gun paraphernalia. Moreover, cell phone tower data linked appellant's phone to the location of the shooting during the approximate time it occurred.

This evidence permitted the jury to infer that appellant, a jealous boyfriend, hunted down Mr. Meredith as one of the two men who fled Ms. Page's apartment, and once he

saw Mr. Meredith and Mr. Allen, he shot them, injuring Mr. Meredith and killing Mr. Allen. *See Robinson v. State*, 315 Md. 309, 318 (1989) ("There is nothing mysterious about the use of inferences in the fact-finding process. Jurors routinely apply their common sense, powers of logic, and accumulated experiences in life to arrive at conclusions from demonstrated sets of facts."); *Moore v. State*, 73 Md. App. 36, 45 (1987) ("There are few facts, including even ultimate facts, that cannot be established by inference."). When viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to support appellant's convictions of attempted first-degree murder of Mr. Meredith and first-degree murder of Mr. Allen.

**B.**

**Attempted Murder and First-Degree Assault of Mr. Williams**

Appellant next contends that there was insufficient evidence to convict him of attempted murder or first-degree assault of Mr. Williams, asserting that there was no evidence showing that he shot a gun aimed at or near the victim. Accordingly, he argues that these convictions, as well as the corresponding conviction of use of a handgun in the commission of a crime of violence relating to Mr. Williams, should be reversed.

Appellant argues that the only evidence offered related to these convictions was: (1) Mr. Meredith's testimony that he heard two gunshots; (2) Ms. Page's 911 statement that she heard four or five shots;[6] and (3) the recovered 9mm cartridge casings found outside

[6] As indicated, the 911 call is not in the record, and therefore, we cannot confirm what was said in that call.

the apartment, which "were not ballistically matched to any of the other firearms evidence in the case." He notes that Mr. Williams did not testify, and no other witness testified, that appellant fired a gun, went outside, or ever pointed or fired a gun at Mr. Williams. He argues that, "without knowing where Mr. Williams went after he left the apartment, and without any testimony from an eyewitness that anyone was shooting outside, the corpus delicti was not proven beyond a reasonable doubt."

The State argues that the evidence was sufficient to support the conviction, asserting that there were multiple strands of evidence to support the verdict. Such evidence included: (1) testimony that another person jumped out of the window with Mr. Meredith; (2) the kicked-in door of Ms. Page's apartment, which "tended to establish that [appellant] pursued the men to the back of the apartment"; (3) the 911 call from Ms. Page, which reported hearing shots fired at approximately 1:40 a.m.; (4) the presence of 9mm shell casings outside Ms. Page's apartment, which "showed that [appellant] gave chase and shot at the two men"; and (5) the 9mm cartridge casing and Polymer80 kit found at appellant's parents house, where he was living.

As indicated, a conviction for attempted first-degree murder requires a showing of an attempted willful, deliberate, and premeditated killing. *See Jenkins*, 146 Md. App. at 135; *Tichnell v. State*, 287 Md. 659, 717 (1980). A conviction for first-degree assault requires evidence that, as relevant to this case, a person comitted an assult with a firearm or intentionally caused or attempted to cause serious physical injury to another. CL § 3-202(b).

Here, we agree with appellant that the evidence was not sufficient to support his convictions for first-degree assault or attempted first-degree murder of Mr. Williams. Although Mr. Meredith testified that he heard gunshots after he and another person jumped out the window of Ms. Page's apartment, there was no other evidence regarding these gunshots. The record is devoid of evidence showing where the shots were fired, who shot them, or who was in the vicinity of the shots. Under these circumstances, the evidence was insufficient to show that appellant assaulted or attempted to murder the fourth person who was in the apartment, who the State asserts was Mr. Williams.

Because we are reversing the convictions of attempted first-degree murder and first-degree assult related to Mr. Williams, there is no crime of violence to support the corresponding conviction of use of a handgun in the commission of a crime of violence. Accordingly, we shall reverse that conviction as well. *Hallowell v. State*, 235 Md. App. 484, 510 (2018) ("[G]iven that we are reversing appellant's conviction for second-degree murder, we shall also reverse his conviction for use of a firearm in the commission of a felony or crime of violence."). *See also Mack v. State*, 300 Md. 583, 593 (1984) ("in order to convict an accused of use of a handgun in the commission of a crime of violence it is necessary that the trier of fact find beyond a reasonable doubt that the accused committed a crime of violence.").

## II.

## Suppression of Extrajudicial Identification

Appellant next contends that the circuit court erred in denying the motion to suppress the extrajudicial identification of him by Ms. Pixley. He asserts that the identification procedure was suggestive because she was told that appellant's photograph would be in the photo array, and when appellant's picture was shown, the detective hit the desk and said "him."

The State contends that the circuit court properly found that the photo array was not unduly suggestive. It asserts that the context of the interview showed that Ms. Pixley identified Ms. Page's boyfriend as the assailant "before she reviewed any photographs," and the detective's reference to "Paul" was only confirming what Ms. Page had already told the police. Thus, the photo array was more of a "confirmatory identification [rather] than a selective identification." The State notes that, after viewing the video of the identification procedure, the court found that Ms. Pixley did "not have any hesitation in picking out the photo of [appellant]," and the array featured similar people who did not make appellant appear to stand out.

Finally, the State argues that, even if the circuit court did err, the claim fails for two reasons. First, the identification was sufficiently reliable, given [Ms.] Pixley's prior acquaintanceship with [appellant]." Second, any error was harmless because Ms. Pixley and Mr. Meredith identified appellant in court, and appellant did not appeal these

identifications, ensuring that the admission of an extrajudicial identification would not influence the verdict.

**A.**

**Suppression Hearing**

The parties presented the video of the identification procedure to the judge, including the pre-identification interview between the detectives and Ms. Pixley. After the court reviewed the video, defense counsel played the video as he asked Ms. Pixley about her encounter with the police at the police station on July 19, 2020. Ms. Pixley stated that the Detective told her that they were going to show her pictures of "Paul" to get her out of there quicker, and she expected to see "Mr. Paul's picture" in the photo array. When she identified appellant, she was identifying him as the person she saw the day before the incident. Counsel asked if she noticed when the officer "hit the desk and said, 'Him.'" She stated that she did not know what counsel was talking about, but after looking at the video, she saw that he did do that when appellant's picture was shown.

On cross-examination, Ms. Pixley stated that, prior to viewing the photos, she told the detectives that appellant was the person who came into the apartment that night. She testified that she recognized him because she had seen him before and because he was accusing Ms. Page of sleeping with other people. After Ms. Pixley positively identified appellant's photo, she was instructed to sign and date the back.

In ruling on the motion, the circuit court noted that, "in the video [Ms. Pixley] does not have any hesitation in picking out the photo of [appellant]. She gestures to the other

photos and said '[t]hey didn't have anything to do with it.'" Ms. Pixley told Detective Smith that she had seen appellant the other day "when he did not have the mask on, and he did not look like any of these other people." Ms. Pixley noted that appellant "had a lot of facial hair and a low hair cut." The court found that detectives did not signal to Ms. Pixley in any way to choose appellant's photo, and "the witness herself stated that the detectives didn't tell her who it was." The court stated that it was watching the video carefully and did not see the detective say anything to Ms. Pixley that would have led her to pick any particular photo.

The court noted that "suggestiveness in the context of a photo array arises when the manner itself of presenting the array to the witness or the make up of the array indicates which photo the witness should identify." In reviewing this, the court stated it must consider whether anything in the conduct of the detective "gave some tip to Ms. Pixley as to which photo was the photograph of the [appellant]." The court found, after reviewing the video and testimony, that appellant failed to meet the "initial burden of showing some unnecessary suggestiveness in the procedures employed by the police in this extrajudicial identification process." Thus, it denied appellant's motion to suppress Ms. Pixley's extrajudicial identification.

**B.**

**Analysis**

"Due process protects the accused from the introduction of evidence tainted by 'unreliable pretrial identifications obtained through unnecessarily suggestive procedures.'"

*Traynham v. State*, 243 Md. App. 717, 732 (2019) (*quoting Moore v. Illinois*, 434 U.S. 220, 227 (1977)). "[W]hat triggers due process concerns is police use of an unnecessarily suggestive identification procedure, whether or not they intended the arranged procedure to be suggestive." *Perry v. New Hampshire*, 565 U.S. 228, 232, n.1 (2012).

"The admissibility of an extrajudicial identification is determined in a two-step inquiry." *Smiley v. State*, 442 Md. 168, 180 (2015). "'The first question is whether the identification procedure was impermissibly suggestive.'" *Id.* (quoting *Jones v. State*, 310 Md. 569, 577 (1987)). "The accused, in his challenge to such evidence, bears the initial burden of showing that the procedure employed to obtain the identification was unduly suggestive." *James v. State*, 191 Md. App. 233, 252, *cert. denied*, 415 Md. 338 (2010). "If the procedure is not impermissibly suggestive, then the inquiry ends." *Smiley*, 442 Md. at 180. "If, however, the procedure is determined to be impermissibly suggestive, then the second step is triggered, and the court must determine 'whether, under the totality of circumstances, the identification was reliable.'" *Id.* (quoting *Jones*, 310 Md. at 577).

Suppression rulings "present a mixed question of law and fact." *Thornton v. State*, 465 Md. 122, 139 (2019). "In assessing the admissibility of an extrajudicial identification, we look exclusively to the record of the suppression hearing and view the facts in the light most favorable to the prevailing party." *In re D.M.*, 228 Md. App. 451, 473 (2016). "We accept the circuit court's factual findings unless they are clearly erroneous, but extend no deference to the circuit court's ultimate conclusion as to the admissibility of the identification." *Id.*

In addressing appellant's claim that the identification procedure was not impermissibly suggestive, we note that the due process analysis does not prohibit "all suggestiveness but only impermissible suggestiveness." *Anderson v. State*, 78 Md. App. 471, 494 (1989). *Accord Morales v. State*, 219 Md. App. 1, 14 (2014) ("[I]t is not a Due Process violation per se that an identification procedure is suggestive. . . . The procedure must be impermissibly suggestive and it is the impermissibility of the police procedure that warrants exclusion.").

"'[T]he scope of identification procedures constituting "impermissible suggestiveness" is extremely narrow.'" *Id.* (quoting *Jenkins v. State*, 146 Md. App. 83, 126 (2002), *rev'd on other grounds*, 375 Md. 284 (2003)). "'To do something impermissibly suggestive is . . . to feed the witness clues as to which identification to make[,]'" *id.* (quoting *Conyers v. State*, 115 Md. App. 114, 121 (1997)), or "where the police, in effect, repeatedly say to the witness: 'This is the man.'" *In re Matthew S.*, 199 Md. App. 436, 448 (2011) (cleaned up). "'All other improprieties are beside the point.'" *Id.* (quoting *Conyers*, 115 Md. App. at 121)).

Appellant contends that the process was suggestive for two reasons: (1) because detectives told Ms. Pixley that appellant's picture would be in the array; and (2) when the photo of appellant was shown, Detective Smith hit the desk and said "him." The court noted, however, that Ms. Pixley began her interview with the detectives by stating that the photo of appellant looked like the assailant. As indicated, it stated that, "in the video [Ms. Pixley] does not have any hesitation in picking out the photo of [appellant]. She gestures

to the other photos and said '[t]hey didn't have anything to do with it.'" The Court found that Detective Smith did not signal when appellant's photo was shown. Based on its review of the video, the court found that the identification procedure was not impermissibly suggestive.

Although appellant asks us to reverse the circuit court's ruling in this regard, he has not included in the record in this Court a copy of the video of Ms. Pixley's interview with detectives. It is incumbent upon the appellant claiming error to produce a sufficient factual record for the appellate court to determine whether error was committed. *Mora v. State*, 355 Md. 639, 650 (1999) (where the record does not include evidence needed to address a claim, the Court should not address it). Without this video, we are unable to determine whether the court erred in its factual findings. This issue is not properly before this Court.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ON COUNTS 14, 16, AND 18 RELATING TO MR. WILLIAMS REVERSED. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE SPLIT 50% BY APPELLANT AND 50% BY PRINCE GEORGE'S COUNTY.**