

Circuit Court for Baltimore City  
Case No. 115230020

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1516

September Term, 2016

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ALLAN JACKSON

v.

STATE OF MARYLAND

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Eyler, Deborah S.  
Kehoe,  
Rodowsky, Lawrence F.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Rodowsky, J.

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Filed: October 11, 2017

\*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.

Appellant, Allan Jackson, was found guilty by a jury, sitting in the Circuit Court for Baltimore City, of assault in the first degree and of theft of at least \$1,000. He was sentenced to twenty-five years in prison. On this appeal, he raises the sufficiency of the evidence to prove that the assault was a first degree assault and he challenges the admissibility in evidence of a bookkeeping record and of an ATM surveillance video.

### **Background Facts**

The victim was Donald Daggett, a widower who lived alone on the premises of his business. His business, conducted as Double D Tire, LLC, is recycling old tires for energy. He has been so engaged for about forty years. Daggett rents the business and residence location which is a lot that is part of an eighty-nine acre tract. The post office address of the tract is 601 W. Patapsco Avenue in Baltimore City. A mobile home, on a permanent foundation, is his residence.<sup>1</sup> The mobile home is not visible from Patapsco Avenue.

Several days before April 29, 2015, Daggett was visited at his mobile home by an occasional employee of the tire business, James Elmer Roy. Roy was accompanied by the appellant, whom Daggett had never seen previously. Daggett had repeatedly told Roy that Daggett did not like strangers coming to his mobile home because it was secluded. When Roy arrived with Jackson, Daggett, in no uncertain terms that Jackson heard, berated Roy for bringing Jackson to the mobile home.

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<sup>1</sup>We infer from photographs in evidence that there is no freestanding office, warehouse, or garage. Apparently tires are stored in old trailers (of the type manufactured to be part of a tractor/trailer rig) that line each side of an open area approach to the residence.

On the evening of April 29, 2015, Daggett was seated in his kitchen when he saw a person in his "yard," the bare earth area between trailer rigs in front of Daggett's mobile home. The person, whom Daggett later identified to the police as Jackson, came to the door, which Daggett opened. The person at first asked where he could find two people who were unknown to Daggett. When asked by Jackson who was in the mobile home, Daggett told him no one—and immediately realized his mistake. Daggett tried to shut the door, but Jackson pushed on it, knocking Daggett to the floor.

Before Daggett could get up, Jackson had him "in a choke hold," with a knife in his other hand, demanding money and threatening to kill Daggett. The knife had a blade five or six inches long, held in the right hand. Daggett testified that Jackson had him "in [a] choker, he [Jackson] said ['I can choke you out,'] he had me something like this (indicating) where it was choking me out and I told him that I didn't have any [money] and he released a little bit off of it so I could breathe ...."

Daggett gave up fourteen to fifteen dollars in cash, his bank card, its PIN number, and the keys to his van, which Jackson took from in front of the mobile home.

A statement of the tire business's account at PNC Bank for April 2015, includes four ATM withdrawals that were made around midnight of April 29-30, 2015. The withdrawals in total exceeded \$1,000. Daggett testified that they were unauthorized.

The van was recovered by the police. In it were the ATM customer receipts for two of the four unauthorized withdrawals. They reflected that the unauthorized withdrawals had been made from the ATM at the Bank of America, Brooklyn-Curtis Bay branch at

3601 S. Hanover Street. Still photos from a surveillance video at that location, capturing the area toward the side of the ATM, show a man in a sleeveless undershirt and shorts whose general physical characteristics are like those of Jackson. The view is from the back of that person. The face of the person presenting Daggett's card is obscured by a hoodie in the photos from the ATM.

Additional facts will be stated, as required, for the discussion of particular issues.

### **Questions Presented**

Jackson presents the following questions for our review:

- "I. Whether the trial court committed reversible error in allowing the charge of first degree assault to go before the jury when there was evidence [of] only one brief physical altercation and no evidence the defendant caused or attempted to cause a serious physical injury.
- "II. Whether the trial court committed reversible error when it admitted an annotated business record of a third-party bank without requiring certification by an employee of the bank or testimony of a knowledgeable witness.
- "III. Whether the trial court committed reversible error when it admitted into evidence two bank surveillance videos without any testimony as to who created the videos, what process was used to create the videos, or how one of the videos was even related to the present case."

### **DISCUSSION**

#### **I.A.**

As a threshold matter, the State contends Jackson's first issue is not preserved. After three days of trial, the case went to the jury on nine counts. At the conclusion of the State's case, the record reflects the following:

"[Defense counsel]: Yes, Your Honor, I would make ... a motion for judgment of acquittal, Your Honor, at the end of the State's case.

"THE COURT: On all counts?

"[Defense counsel]: Yes, Your Honor.

"THE COURT: On what basis?

"[Defense counsel]: Without argument, Your Honor."

The motion was denied and the defense presented no evidence. Jackson again moved for a judgment of acquittal on all counts "[w]ithout argument." In denying the motion, the court in part said:

"[A]nd again because of the knife and the threats to kill, there would certainly be evidence to support first degree assault and the lesser-included offense of second degree assault."

The State submits that there has been a clear violation of Maryland Rule 4-324, "Motion for judgment of acquittal." In pertinent part it requires: "The defendant shall state with particularity all reasons why the motion should be granted." Rule 4-324(a). Jackson asserts that Rule 8-131(a) governs, dealing with "Scope of review." It provides in part: "Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Because the trial court decided his motion, Jackson asserts that the sufficiency issue is preserved.

The plain language of Rule 4-324 and Maryland precedent make clear that where an appellant fails to satisfy the requisites of Rule 4-324, the appellate courts are generally "preclude[d] ... from entertaining a review of the sufficiency of the evidence[] in a criminal case tried before a jury[.]" *Haile v. State*, 431 Md. 448, 464 (2013) (quoting

*Ennis v. State*, 306 Md. 579, 585 (1986)). Among the requirements for sufficiency issue preservation under Rule 4-324 is that an appellant must "state with particularity all reasons why the motion should be granted." Md. Rules, Rule 4-324. *See also State v. Lyles*, 308 Md. App. 129, 135 (1986) (A defendant is "required to state with particularity all reasons why his motion for judgment of acquittal should be granted."); *Byrd v. State*, 140 Md. App. 488, 494 (2001) (Defense counsel's mere assertion that the evidence was insufficient to submit the evidence to the jury left the issue of insufficiency unpreserved for appellate review.); *Fraidin v. State*, 85 Md. App. 231, 244-45, *cert. denied*, 322 Md. 614 (1991) ("Under Md. Rule 4-324(a), a defendant is further required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient."); *Parker v. State*, 72 Md. App. 610, 615 (1987) ("[M]oving for judgment of acquittal on the grounds of insufficiency of the evidence, without argument, does not preserve the issue for appellate review.").

Jackson's notion is that Rule 8-131(a) supersedes Rule 4-324(a). The former, however, is a general rule, applicable to any issue sought to be raised on appeal while the latter is specific, particularized to motions for judgment of acquittal. In rule and statutory construction, the particular governs over the general. Further, Jackson's contention, if correct, effectively would eviscerate Rule 4-324(a). If a Rule 4-324 motion is made, but not decided, there ordinarily would be no final judgment and no appellate jurisdiction. On the other hand, under Jackson's theory, the mere decision of the motion, no matter how

egregiously it violated Rule 4-324(a), would preserve the sufficiency issue. That interpretation nullifies Rule 4-324 in nearly all cases.<sup>2</sup>

**I.B.**

Even if the issue were preserved, we conclude that the evidence was sufficient to permit a jury to find assault in the first degree. "'Assault' means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." Maryland Code (2002, 2012 Repl. Vol.), § 3-201(b) of the Criminal Law Article (CL). CL § 3-202(a)(1) provides that "[a] person may not intentionally cause or attempt to cause serious physical injury to another." It is assault in the first degree. CL § 3-202(b). "Serious physical injury" is defined to include "physical injury that ... creates a substantial risk of death[.]" CL § 3-201(d)(1).

Daggett twice referred to Jackson's grip around his throat as a "headlock" and Jackson chooses to use that terminology in his argument. At other times, Daggett said the grip was a "choke hold." We understand that in the former type of grip, the back of the victim's neck is in the crook of the inner elbow of the assailant. In the latter hold, the victim's throat is in the crook of the inner elbow of the assailant. The record shows that Daggett gave the jurors a demonstration of the hold applied by Jackson. We cannot conceive that Daggett crooked his inner elbow around the back of his own neck. We can

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<sup>2</sup>Jackson raises plain error in a footnote, without supporting argument. We deny its applicability in this footnote, without elaboration.

readily conceive of Daggett's wrapping an inner arm across his throat. The nature of the grip was a proper question for the jury.

Jackson points out that Daggett never reported any physical injuries and agreed that he had not suffered any. But, "C.L. § 3-202(a) permits conviction for first-degree assault based on an attempt to cause 'serious physical injury,' not merely a completed injury." *Brown v. State*, 182 Md. App. 138, 179 (2008). Thus, the victim need not suffer a resulting disability or injury.

Here, "*any* rational trier of fact could have found the essential elements of [first degree assault] beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The victim, Daggett, is a senior citizen while Jackson, his assailant, is a young adult. Daggett conducted his business from the mobile home, and Jackson apparently was under the impression that the victim kept a quantity of cash on the premises. Brandishing a knife, Jackson put Daggett in a choke hold and threatened to "choke [him] out" unless he produced the cash. The jury could understand this to mean that Jackson was prepared to choke Daggett into unconsciousness or to death, unless money was produced. Daggett was shut off from oxygen and was able to breathe again only when the choke hold was relaxed "a little bit." It was a risk of death experience in that there is no assurance that Jackson knew that the pressure he was applying would not be fatal to Daggett. From Daggett's standpoint, he survived an attempted murder.



## II

Jackson says that State's Exhibit 19 was erroneously admitted because it was not properly authenticated. It is an accounting by PNC Bank of the Double D Tire LLC account at that bank for the period April 1 through April 30, 2015. The exhibit is in two parts. The first, consisting of four pages, is the regular April monthly statement for the account. It reports, *inter alia*, eighteen deposits, nine checks drawn, and six ATM transactions. The second part, consisting of three pages, is an "Account Transaction Detail Report" for the same account. It reports the "Post Date," "Effective Date," "Amount," "Balance," whether the item is a debit or credit, whether a PIN was used, the "Seq./Ref#," and a "Description."

After the robbery, Daggett went to PNC Bank and told them what happened. He needed to know how much money was taken out of his account and he was furnished Exhibit 19 by the bank. There is highlighting on the monthly statement over four "ATM/Misc. Check Card Transactions" posted April 30, 2015. They are withdrawals totaling \$1,112, all of which were made at a machine located at "\*Brooklyn-Curtis B[ay] Baltimore MD." The accompanying Detail Report has highlighting over five withdrawals, posted and effective April 30, 2015, and totaling \$1,162. Of these, four are the ATM withdrawals totaling \$1,112 from a machine at "\*Brooklyn-Curtis B" for which a PIN was used. Specifically they were for \$203, \$503, \$203 and \$203. The fifth withdrawal, for \$50, did not involve the use of a PIN.

On the day before the court admitted Exhibit 19, it had admitted into evidence State's Exhibit 20. It consists of two customer receipts from the Bank of America ATM at its Brooklyn-Curtis Bay branch. One recorded a withdrawal of \$200 at 11:43 p.m. on April 29, 2015, and the other a withdrawal of \$200 at twenty minutes past midnight on April 30, 2015. These receipts evidenced withdrawals effected by the use of a bank card. Bank of America charged \$3.00 per withdrawal for "ATM Owner Fee," presumably for Bank of America's permitting use of a PNC card in Bank of America's system. These ATM customer receipts were recovered by the police from the van that had been taken by Daggett's assailant. Daggett's van was found half a block from the Bank of America ATM and two blocks from Jackson's residence.

The PNC statement of Daggett's account, Exhibit 19, was admitted through Daggett, over objection. The court found that the exhibit "has all the indicia of a regular statement provided to the business by PNC Bank," as Daggett had testified. Authenticity was also supported by the two customer receipts that linked to Exhibit 19 and to the crime.

In this Court, Jackson principally contends that Exhibit 19 is a document that was prepared by PNC based on its data so that it could not be authenticated by Daggett. He cites *Bryant v. State*, 129 Md. App. 690, 696, *aff'd*, 361 Md. 420 (2000), where this Court said that "[b]usiness records are not admissible until they have been properly authenticated, either through a testifying sponsor or in conformity with Md. Rule 5-902(a)."<sup>3</sup> The

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<sup>3</sup>Maryland Rule 5-902(a) permits authentication through pretrial certification by the record custodian, after notice and an opportunity to object. That procedure was not employed in this case.

evidence issue in the *Bryant* prosecution involved a defective certification under Rule 5-902(a) of a toxicology report. *Id.* at 695. The Court of Appeals, however, made clear that the universe of authentication is not exhausted by two methods, testimony by the records custodian or certification, as Jackson contends.

The Court said:

"Our inquiry, however, does not end with the inapplicability of Rule 5-902. The failure of the cover letter to establish a sufficient foundation for self-authentication pursuant to Rule 5-902 does not exclude authentication of the report by extrinsic evidence. *See* Rule 803(b)(6).<sup>4</sup>

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"<sup>4</sup>While the usual method of extrinsic authentication under Rule 803(b)(6) is by in-court testimony by the records custodian, business records can also sometimes be authenticated by circumstantial evidence of the manner of creation and nature of the document involved. *See Attorney Grievance Comm'n v. Keister*, 327 Md. 56, 74-75, 607 A.2d 909, 918 (1992); *Pine St. Trading Corp. v. Farrell Lines, Inc.*, 278 Md. 363, 373, 364 A.2d 1103, 1110 (1976)."

*State v. Bryant*, 361 Md. 420, 429 (2000).

Maryland Rule 5-803(b)(6) recognizes that the records of a regularly conducted business activity are not excluded by the hearsay rule under certain conditions, "even though the declarant is available as a witness[.]" Here, PNC Bank is declaring that four debits totaling \$1,112 were posted to Daggett's business account on April 30, 2015, based on ATM withdrawals effected by use of the business's bank card and PIN. The conditions, which were met by the nature of the document and extrinsic evidence, are as follows:

"A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made

by a person<sup>[4]</sup> with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, 'business' includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

Md. Rule 5-803(b)(6).

The State correctly points out that Md. Rule 5-803(b)(6) intentionally omits from the corresponding Federal Rules of Evidence, Rule 803(6)(D), the language requiring that all the conditions be "'shown by the testimony of the custodian or another qualified witness[.]'" The Reporter's Note to Md. Rule 5-803(b)(6) advises that the omission was guided by a desire to formulate a rule in accordance with Maryland's common law on the subject:

"The omission of the phrase found in the Federal Rule, 'all as shown by the testimony of the custodian or other qualified witness,' is proposed because the Maryland cases recognize that testimonial foundation evidence is not always required. *See, e.g., Morrow v. State*, 190 Md. 559 (1948); *Beach v. State*, 75 Md. App. 431, 435-39 (1989)[.]"

20 Md. Reg. 24 (July 23, 1993). *See also* 6A L. McLain, *Maryland Evidence – State and Federal* § 803(6):1 (3d ed. 2013) ("In some cases the court may properly conclude from the circumstances and the nature of the document that it was made in the regular course of business. Thus, Md. Rule 5-803(b)(6) omits [the federal language]" (footnote omitted).

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<sup>4</sup>Under the Maryland Rules, "person" includes a corporation, Rule 1-202(t), "except as expressly otherwise provided or as necessary implication requires." When the intent is to limit "person" to a human being, "[i]ndividual" is used. Rule 1-202(l).

Condition (A), contemporaneousness, could hardly be more rapidly satisfied. The jury could find that State Exhibit 19 was prepared on or shortly after April 30, 2015, because Daggett made a \$50 withdrawal that date, without the use of a bank card, before the statement ending April 30 was run off of the PNC computer at his special request. Condition (B) was satisfied because Bank of America's computer "talked to" PNC's computer before Exhibit 19 was downloaded. As to conditions (C) and (D), it is common knowledge that banks render periodic accountings to their customers.

Jackson makes some attempts to demonstrate a lack of trustworthiness of Exhibit 19. For example, Daggett could not swear that the account number on Exhibit 19 was that of his business. Daggett was testifying on June 2, 2016, over a year after the events. He testified that all of his "cards" were voided after the theft and he was issued new cards.

Appellant points out that a PNC employee did the highlighting that identified the unauthorized transactions. But the whole purpose of Daggett's trip to the bank on April 30 was to find out the extent of the unauthorized use of the bank card. The fact that a PNC employee wielded the highlighter is immaterial. The fact that the highlighter wielder overenthusiastically included a withdrawal that Daggett made that day did not prejudice Jackson. The proof was that only bank card withdrawals made after the robbery were unauthorized and these totaled over \$1,000.

### III

The court admitted a compact video disk and four still frames showing persons at the Bank of America ATM around the turn of April 29-30, 2015, that were made from images recorded by four surveillance cameras at and about the ATM. The exhibits were introduced through Brett Cunningham who since 2008 has been the Protective Services Manager for Bank of America for an area that includes the Brooklyn-Curtis Bay branch. Appellant submits that Cunningham could not or did not authenticate the pictorial images.

This State has adopted the theory of silent witness authentication. "Given an adequate foundation assuring the accuracy of the process producing it, the photograph should then be received as a so-called silent witness or as a witness which 'speaks for itself.'" 3 *Wigmore on Evidence* § 790, at 220 (Chadbourn rev. 1970). See *Washington v. State*, 406 Md. 642 (2008); *Department of Pub. Safety & Correctional Servs. v. Cole*, 342 Md. 12 (1996); *Sisk v. State*, 236 Md. 589 (1964). "A majority of jurisdictions and authorities recognize the viability of the 'silent witness' theory of admissibility." *Cole*, 342 Md. at 21.

Jackson relies on *Washington's* holding that the facts of that case failed to provide an adequate evidentiary foundation for application of the silent witness theory. There, an argument in a bar ended with a shooting outside of it. *Washington*, 406 Md. at 645. The bar was equipped with digital video security cameras, six inside and two outside. *Id.* at 646. When the police asked the bar owner for copies of whatever the cameras had recorded, the owner engaged a technician who came the next day and "print[ed]" a CD compiled

from the eight cameras. *Id.* The information was then transferred to a VHS tape. *Id.* at 646 n.2. The trial court admitted the videotape through the bar owner. *Id.* at 646-47.

The Court of Appeals held:

"In the instant case, the State offered the videotape and still photographs as probative evidence in themselves, and not as illustrative evidence to support the testimony of an eye-witness. The evidence was offered by the State to demonstrate that petitioner was present at Jerry's Bar on the night of the crime. Here, the foundational requirement is more than that required for a simple videotape. The 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. There was no testimony as to the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures. The State did not lay an adequate foundation to enable the court to find that the videotape and photographs reliably depicted the events leading up to the shooting and its aftermath. Without suggesting that manipulation or distortion occurred in this case, we reiterate that it is the proponent's burden to establish that the videotape and photographs represent what they purport to portray. The State did not do so here."

*Id.* at 655.

Appellant says that Cunningham, the Bank of America Protective Services Manager, is no more competent to lay a foundation for the video exhibits than was the bar owner in *Washington*. We disagree.

First, it is apparent that Cunningham was following a protocol established by Bank of America for cooperating with the police at least throughout a region headquartered in

North Carolina, and probably nationally. It applies to all unauthorized usages at Bank of America ATMs and not just for the benefit of cardholders with that bank's system.<sup>5</sup>

Each of the bank's financial centers maintains a digital video recorder which apparently directly receives the images from all of the security cameras and retains them for ninety days. When Cunningham was contacted by the police about the Daggett case, he was furnished copies of "some receipts" from the ATM involved. He accessed the images, "export[ed] the images into a digital file, and emailed them" to the detective who verified that that was what she was looking for. The program does not allow one accessing the data to modify it.

Nor does the program allow one to put the data into a "stored drive, via DVD or thumb drive." Cunningham was required to put in a request to a team in North Carolina to download onto a CD two segments of video from the subject branch, based on two transaction times for each of the four exterior views. Specifically, the requests were for April 29, 2015, starting at 11:15 p.m. and ending at 11:35 p.m. and for April 30, 2015, starting at 12:10 a.m. and ending at 12:30 a.m. The team in North Carolina then sent a disk containing the data directly to the detective in charge of the investigation.

Before sending the request to North Carolina, Cunningham reviewed the video segments. Before trial, Cunningham reviewed the disk that was entered into evidence. The exhibit fairly and accurately represented what Cunningham had earlier seen in the stored

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<sup>5</sup>One cannot play the CD in evidence without agreeing to a waiver of claims against Bank of America.



images from the Brooklyn-Curtis Bay exterior cameras. We hold that the disk segment for April 30, 12:10 a.m. to 12:30 a.m. was properly authenticated.

The disk for April 29, 2015, from 11:15 p.m. to 11:35 p.m. was also admitted and played for the jury. No one, the defense, the State or the court, noticed that the running clock on each of the four camera sections of that disk segment did not correspond to the withdrawal time on the ATM receipt for April 29 that recorded a withdrawal at 11:43 p.m. The 11:15 p.m. to 11:35 p.m. segment on the disk shows the same two men at the ATM as are in the still photos and in the post-midnight disk segment. The person whom the State contends is Jackson stands to the side of the frontal camera at the ATM. Exposure to that camera during the withdrawal is the risk of a confederate in a hoodie and, at times, with his lower face concealed.

Appellant submits that the April 29 disk segment is not authenticated. "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." Md. Rule 5-901(a). Jackson says that, because the State claimed that the April 29 disk segment included the receipted withdrawal of 11:43 p.m., which it does not, there has been a failure to authenticate. But, from an authenticity standpoint "the matter in question" is whether the video showed what it purported to show per its running clock, namely, activity that transpired on April 29, 2015, between 11:15 p.m. and 11:35 p.m. at and about the ATM at the Bank of America Brooklyn-Curtis Bay branch. That was satisfied by Cunningham's foundation. As admissible evidence, the April 29 disk segment

was available for argument. It is true that the segment does not support an argument that it shows the 11:43 p.m. receipted withdrawal, but Jackson's argument here is based on lack of authentication, not relevancy. Here, the April 29 disk segment was played for the jury and Jackson did not move to strike.

Significant from a relevancy standpoint is that, in the April 29 segment of the video, the person in the sleeveless undershirt turns his head several times toward S. Hanover Street, presenting to camera No. 2 a three-quarters image of his face. The jury could find that the image depicts Jackson.<sup>6</sup> Further, the bank statement and Daggett's testimony establish that there were two unauthorized transactions, also posted April 30 by PNC, for which the police did not find receipts.<sup>7</sup>

For the foregoing reasons, we affirm.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR BALTIMORE CITY  
AFFIRMED.**

**COSTS TO BE PAID BY THE  
APPELLANT.**

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<sup>6</sup>A photo of Jackson was marked for identification.

<sup>7</sup>Although neither of the video segments includes 11:43 p.m. on April 29, 2015, there are two still frames in evidence, timed at 23:43:36 which show both the person at the ATM and the person resembling Jackson. They were introduced through Cunningham. No one has any explanation why the video from which these stills were made was not introduced into evidence. Our mandate does not preclude Jackson from seeking any appropriate post-conviction relief based on the actual explanation.