

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2051

September Term, 2019

DOUGLASS DORSEY

v.

STATE OF MARYLAND

Reed,
Wells,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: March 16, 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.

A jury sitting in the Circuit Court for Baltimore City found Douglass Dorsey, appellant, guilty of murder in the first degree and related firearms offenses. After the court sentenced him to life imprisonment plus an additional concurrent term of 20 years, Dorsey noted this appeal, raising three issues, which we have rephrased slightly:

1. Did the trial court err in allowing the State to present inadmissible and prejudicial hearsay evidence through the testimony of a police detective?
2. Did the trial court err in admitting two surveillance videos without proper authentication?
3. Did the trial court err in admitting body worn camera video in which both an eyewitness and the detective are heard identifying the shorter of the two suspects seen on CCTV video as “Donny Dorsey”?

Finding no reversible error, we shall affirm.

BACKGROUND

On a Saturday afternoon in June 2018, Baltimore City police officers received a call of a shooting in the 1600 block of Baker Street in west Baltimore near the Gilmor Homes housing development. Upon arriving, they encountered a crowd of people surrounding a man, later identified as Michael Johnson, lying on the ground, bleeding heavily from several gunshot wounds. Johnson was transported to the University of Maryland Shock Trauma Center but died from his wounds.

Police evidence technicians recovered 11 spent cartridge cases from the vicinity. Those cartridge cases were of two different calibers, .22 long and 9 mm Luger, indicating

that two different semiautomatic weapons had been used.¹ The autopsy disclosed that Johnson suffered from three gunshot wounds and one additional graze wound. All of his wounds indicated that he had been shot from behind while he was attempting to run away from his assailants.

There were a number of surveillance cameras in the neighborhood, some belonging to the Baltimore City Police Department² and others belonging to private establishments. Police detectives recovered surveillance videos from the City Watch system as well as from One Stop Grocery and Baltimore Station, a church. The surveillance video from Baltimore Station depicted two men wearing hoodies, one of whom resembled Dorsey, chasing after Johnson who appeared to be running very fast. The surveillance video from One Stop Grocery depicted the same two men wearing hoodies, at approximately the same time.

Police officers canvassed the surrounding neighborhood but were unsuccessful in finding the two assailants. They eventually found a witness, Roy Bost, who had been near the scene at the time of the murder. Bost was arrested on unrelated charges (possession of CDS) and was interviewed by police detectives. That interview was recorded.

¹ As the State's firearms expert testified at trial, a semiautomatic weapon ejects the cartridge case after firing, whereas a revolver retains the case until it is manually ejected when the weapon is reloaded. Thus, the presence of the empty cartridge cases on the ground indicated that semiautomatic weapons had been used. No weapons, however, were recovered.

² A police detective assigned to the City Watch Center testified that there are more than 500 closed-circuit television cameras operated by the Police Department.

In the recorded interview, Bost said that on the day of Johnson’s murder, he saw Dorsey and a man nicknamed “Smoke,”³ hurriedly enter a vacant house to retrieve guns that were stored there. According to Bost, both Dorsey and Smoke were wearing hoodies. After retrieving the guns from the vacant house, the two men each put a weapon “inside his dip,” entered a black car, and drove off. Several minutes later, Bost heard gunshots.

The following day, Bost overheard Dorsey and Smoke bragging about chasing down Johnson and killing him. Bost claimed that Johnson had been killed in retaliation for him previously having killed a man named “Binky” and that Dorsey and Smoke were supposed to be paid \$1,500 each for the murder. Bost identified Dorsey from a photographic array as “the shooter.”

The Grand Jury for Baltimore City indicted Dorsey, charging him with murder in the first degree, conspiracy to commit murder in the first degree, use of a firearm in the commission of a crime of violence, and wearing, carrying, and transporting a handgun on his person. A four-day jury trial was held the following year. The jury found Dorsey guilty of all charges. After the court imposed a sentence of life imprisonment for the murder and

³ “Smoke” was the nickname of Mark Gross, who was murdered 16 days after Johnson’s murder in this case.

additional concurrent sentences for the other offenses,⁴ Dorsey noted this timely appeal.⁵ Additional facts will be set forth where pertinent to the discussion of the issues.

DISCUSSION

I. The Court Properly Permitted Detective Riker to Testify, in General Terms, About the Investigative Procedures He Undertook

Parties' Contentions

Dorsey contends that the circuit court erred in allowing the State to present inadmissible and prejudicial hearsay evidence through the testimony of the lead detective, Detective Jonathan Riker. He relies primarily upon *Zemo v. State*, 101 Md. App. 303 (1994). In essence, he claims that the detective's testimony was "elicited in a sustained and deliberate line of inquiry" that resulted in the admission of otherwise inadmissible inculpatory statements made by others who were not called to testify, thereby denying him "his rights under the Confrontation Clause and the rule precluding hearsay."

The State counters that Detective Riker's testimony set forth in general terms the steps he undertook in his investigation, which we previously have held serves a legitimate non-hearsay purpose. In addition, the State maintains that Detective Riker's testimony did

⁴ The court sentenced Dorsey to life imprisonment for first-degree murder, a concurrent term of life imprisonment for conspiracy to commit first-degree murder, and a concurrent term of 20 years' imprisonment (the first five without the possibility of parole) for use of a firearm in the commission of a crime of violence. The remaining conviction (wearing, carrying, and transporting a handgun on the person) was merged for sentencing purposes.

⁵ The Office of the Public Defender Appellate Division was not notified that an appeal had been taken, and we dismissed the appeal for lack of prosecution. The Public Defender thereafter filed a motion to reinstate the appeal, which we granted.

not contain detailed information about Dorsey, which not only supports the contention that the testimony was for a non-hearsay purpose, but also diminishes any possibility of unfair prejudice. Thus, any error was harmless.

Factual Context

We begin by setting forth context for this claim. The following occurred during the State's direct examination of Detective Riker:

[THE STATE:] Okay. And at some point, do you sometimes listen to calls of, calls based off the intel you receive?

[DET. RIKER:] Yes, ma'am. So we are able to listen to jail calls. People that are previously arrested or in jail, their phone calls are recorded. So we are able to identify people the victim associated with and we started listening to their phone calls and got some intel from them.

[THE STATE:] Okay. Now, without telling us what you got from them, but tell us *why* you think it's important to listen to the calls.

[DET. RIKER:] It gives us background, you know, information, stuff that our intel would maybe not know. We're getting it hands on from the people that are within the, like I say, organization, the drug, you know --

[THE STATE:] Do you anticipate them talking about the murder?

[DET. RIKER:] Of course, yes.

[THE STATE:] And when listening to the calls, without telling us the information, do they confirm what you already knew from intel?

[DEFENSE COUNSEL]: Your Honor, I'm going to object. Approach?

THE COURT: Uh-huh.

(Counsel and the Defendant approached the bench, and the following occurred:)

[DEFENSE COUNSEL]: Your Honor, we're getting in kind of a black hole of hearsay here. So he's got this hearsay that he obviously can't talk about, so then they say, "Well, did you, did you listen to something else to confirm this like amorphous thing that we can't tell you about with another thing that we can't tell you about?"

[THE STATE]: Right, to further investigation to show the steps they took for the investigation. But we know this isn't -- [Defense Counsel] would make the argument that the investigation wasn't thorough, they spoke to witnesses, they didn't tell you anything, well, once they talk, that's an investigation.

That's not the investigation. They -- how it -- and the implication would be if I didn't do this, that there was no other information but, given, or no other anything to lead to an investigation but for the witnesses.

THE COURT: As long as he doesn't say what the intel was --

[DEFENSE COUNSEL]: But the problem is the jury's then left to presume that it's, oh, Douglass Dorsey did it and that's not, in fact, the case. So my 2 choices are, hope that the jury doesn't follow that strong inference which is incorrect, or I've got to open the door totally to a --

THE COURT: It's incorrect that what?

[DEFENSE COUNSEL]: The jail calls, so that JJ Mike got hit because of a -- it didn't say, oh, Mr. Dorsey killed Mike Johnson.^[6]

THE COURT: Got you. Okay.

[DEFENSE COUNSEL]: It is strongly implied to the jury that that is, in fact, what that call says.

[THE STATE]: I could bring it out, but the thing about it is, I want, I do need to show that he had information to -- he had information about the motive through the intel of the calls and it doesn't talk about the intel is about that Mr. Dorsey is a friend of JJ Mike's that he's listening to. If -- there's no other way for me to do it but to be vague, unless I specifically ask about the

⁶ Detective Riker would later testify that the victim, Michael Johnson, had been known as "JJ Mike."

-- I do not -- I think that it's not offered for the truth of the matter. It's offered for investigation, investigative purposes.

[DEFENSE COUNSEL]: I just -- that's my objection.

THE COURT: That's what you -- sorry?

[DEFENSE COUNSEL]: My objection is just stacking these amorphous hearsay statements --

THE COURT: I understand, but are you -- if she elicits that piece of information that he heard, what he heard on the jail call was that JJ was killed because --

[DEFENSE COUNSEL]: Binky.

THE COURT: -- of Binky --

[DEFENSE COUNSEL]: Right.

THE COURT: -- and she's saying that that's not hearsay because it's going to what he -- it's not being offered for the truth of the matter asserted. It's going to his investigation and what that caused him to do next. So are you, would you be objecting if she elicited that from the detective?

[DEFENSE COUNSEL]: Yes, but I'll submit.

The State's direct examination of Detective Riker then resumed. Among other things, Detective Riker testified that he learned, from listening to one of the jailhouse telephone calls, that Johnson had been killed in retaliation for killing a man known as "Binky." Detective Riker then explained that his investigation led him to Bost, who had testified immediately before Detective Riker.

The prosecutor then asked Detective Riker what happened after Bost implicated Dorsey and Bost unequivocally identified Dorsey in a photographic array.⁷ The detective replied, “Again, we furthered our investigation. I . . . brought back another witness to follow up on another witness, show more photo arrays, and from there, we were able to – [.]” The defense objected and moved to strike “any testimony about other witnesses, photo arrays, other things like that.” The court overruled that objection.

Detective Riker testified that he learned from Bost that Dorsey’s nickname was “Savage.” After Dorsey was arrested, a crime lab technician took photographs of him. One of those photographs depicted a tattoo of the word “Savage” on Dorsey’s left bicep.

Analysis

Two decisions of this Court frame our analysis because they illustrate when evidence may or may not be admitted for a non-hearsay purpose: *Frobouck v. State*, 212 Md. App. 262, *cert. denied*, 434 Md. 313 (2013), and *Zemo*, 101 Md. App. 303. We begin with *Zemo*.

Zemo was charged with breaking and entering a gasoline station and related offenses. *Id.* at 305. During a jury trial on those charges, the lead detective in the case was permitted to testify that *Zemo* had been given *Miranda* warnings and that, in light of those warnings, *Zemo* “chose to remain silent.” *Id.* Compounding matters, the detective was then permitted to testify, over objection,

⁷ A double-blind procedure was used, but the interview was video recorded, and Detective Riker was able to observe Bost’s demeanor while he viewed the photographic array.

that he received evidence about the crime from a confidential informant, that the informant’s information put him on the trail of [Zemo] and other suspects, that other parts of the informant’s information were corroborated and turned out to be correct, and that, acting on the informant’s information, he arrested [Zemo].

Id. at 306.

On direct appeal, we reversed. We rejected the State’s contention that the detective’s testimony had been offered for a non-hearsay purpose, namely, to explain “why [the detective] went where he went” and “to lay out the course of the investigation[.]” *Id.* at 309-10. We held that the “only possible import of such testimony was to convey the message that the confidential informant 1) knew who committed the crime, 2) was credible, and 3) implicated [Zemo]” and that purporting to admit that testimony for a non-hearsay purpose violated both the Confrontation Clause and the rule against hearsay. *Id.* at 306. We further noted that the contested testimony was not simply a “passing or random interjection of some arguably prejudicial material into a trial,” but rather, amounted to “a sustained and deliberate line of inquiry that can have had no other purpose than to put before the jury an entire body of information that was none of the jury’s business.”⁸ *Id.*

In *Frobouck*, the defendant was charged with manufacturing marijuana. 212 Md. App. at 266. During a jury trial on that charge, a deputy sheriff, who had gone to Frobouck’s leased premises after the landlord discovered a suspected marijuana growing operation, was asked why he went there. *Id.* at 281. The deputy replied that he had been

⁸ We also held that the improper admission of the detective’s testimony about Zemo’s post-*Miranda* silence provided an independent ground for reversal. *Zemo*, 101 Md. App. at 314-18.

“dispatched there for a suspected marijuana grow.” *Id.* Frobouck raised a hearsay objection, which the circuit court overruled, declaring that the deputy’s statement was offered for “a non-hearsay purpose,” as “a statement or assertion that the deputy received to take some further action.” *Id.* Frobouck was convicted, and he appealed, claiming that the circuit court had erred in admitting the deputy’s statement.

We affirmed, reasoning that the deputy’s statement was “not offered to prove the truth of the matter asserted—that there was a ‘marijuana grow’—but, rather, to explain briefly what brought the officers to the scene in the first place.” *Id.* at 283. We distinguished *Zemo*, observing that in *Frobouck*, there was no “sustained and deliberate” line of questioning that served “no legitimate purpose.” *Id.* (quoting *Zemo*, 101 Md. App. at 306). Further, we did not conclude that in questioning the deputy, the prosecutor “intended to put before the jury the testimony of someone who was not testifying in this case.” *Frobouck*, 212 Md. App. at 283.

This case lies somewhere between *Zemo* and *Frobouck*. Although Detective Riker’s direct examination contained more than a passing remark as in *Frobouck*, it fell short of the “sustained and deliberate” line of questioning serving “no legitimate purpose” that we disapproved in *Zemo*. *Zemo*, 101 Md. App. at 306. More importantly, unlike *Zemo*, key parts of the challenged testimony did not directly implicate Dorsey and were deliberately fashioned to avoid doing so. For example, Detective Riker testified that the jailhouse call only stated that the victim, Johnson, was killed in retaliation for him allegedly killing Binky. Without mentioning Dorsey, the detective testified that his investigation led to

Bost. Bost testified immediately before Detective Riker and the detective did not repeat Bost's testimony.

We understand the crux of Dorsey's complaint. Detective Riker's hearsay testimony seemed to bolster the testimony of Bost, an admittedly suspect witness on whom the State relied heavily. But the jury was tasked with judging Bost's credibility. The jury was free to believe all, part, or none of his testimony. Consequently, based on this record, we conclude that the prosecution used Detective Riker's testimony to explain how his investigation led him to Bost, who was the one that implicated Dorsey and was available to testify.

II. The Court Properly Admitted the Surveillance Videotape Evidence

Parties' Contentions

Dorsey contends that the circuit court erred in admitting two surveillance videos that, he claims, were not properly authenticated. Relying upon *Washington v. State*, 406 Md. 642 (2008), Dorsey asserts that the police officer through whose testimony they were admitted

offered no information about when, how or by whom the surveillance systems were installed; how they functioned, such as whether the cameras were motion-activated, fixed, or guided by a person; whether the footage was saved automatically or manually; whether the footage was retained on the system indefinitely or was manually or automatically erased after a period of time; what software was used to store, view and download video from the cameras; the general reliability of the surveillance systems; their maintenance history; if they were properly functioning the day of the murder; any assurances that there had been no alteration of the videos or tampering with the equipment between the day of the murder and when he downloaded the videos; whether the videos downloaded to the secure server were capable of manipulation; or the chain of custody of the flash drive and CD he created.

The State counters that authentication does not require “exhaustive testimony bearing on technical matters if the moving party presents other foundational proof sufficient to enable the court to find that the video is what it purports to be.” Such foundational proof, it claims, was provided by the testimony of Detective Lee Brandt. Thus, asserts the State, the threshold required for authentication was satisfied in this case, and, in any event, any objection Dorsey is raising to the authentication of the surveillance videos goes merely to their weight, not their admissibility.

Factual Context

We begin our analysis by setting forth the facts relevant to this claim. Detective Brandt, from the Cyber and Electronics Crime Unit of the Baltimore City Police Department, testified that he recovered surveillance video recordings from Baltimore Station, a church located at 1611 Baker Street, and One Stop Grocery, located at 1702 North Calhoun Street. Before admitting the disputed surveillance video recordings, the court questioned Detective Brandt, and the following occurred:

THE COURT: So when you went to the store, right, did you have occasion to determine if the equipment was working properly?

[DET. BRANDT]: Yes.

THE COURT: How did you do that?

[DET. BRANDT]: It’s a normal process that I do. I go through -- introduce myself to the owner, manager, whoever, rep. I advise them what I’m there to do. And then when I get to the system, I run a check on the system. First, I make sure, you know, it’s powered on, that it’s recording. I look at the date and timestamp for accuracy.

THE COURT: Meaning what?

[DET. BRANDT]: Every system has a date and timestamp of what the system is, so I look to make sure because that being controlled by human input, there could be a time off. I've had it like one case where it was years off, so I note any differences on a form that I do of the date and timestamp different from real time while I'm there.

THE COURT: Okay.

[DET. BRANDT]: And then based off the information provided by the detective, he'll request a date, a specific timeframe, and/or specific cameras that he needs. I'll then use -- using the proprietary software the system recover that video accordingly. Ninety-nine percent of your systems nowadays are all USB flash drive download, so I'll put them to a USB flash drive, return to the office. I put it on a secure server where homicide detectives had a read-only access so they can download a working copy or view it, but I still maintain control of the original.

THE COURT: Okay. So when you -- so the detectives told you a date and time to look for it, correct?

[DET. BRANDT]: Yes, ma'am.

THE COURT: Do you recall what that date and time was?

[DET. BRANDT]: If I have -- he texted me the screenshot of his notepad where he wrote down the date and time that he needed.

THE COURT: Okay.

[DET. BRANDT]: Unfortunately, I got a new work phone, so it's on my old phone.

THE COURT: Okay. But it matched what he told you?

[DET. BRANDT]: Yes, ma'am.

THE COURT: So you went and you re-winded (sic) the equipment to that date and time?

[DET. BRANDT]: (Indiscernible - 4:40:40). Basically on the export feature of the system, you'll put in -- there will be a little calendar, you select the calendar date. Below that will be a timeframe, select a timeframe accordingly, and then you have the options of all cameras or Camera 1, 2, 3.

THE COURT: Did you watch it before you downloaded it?

[DET. BRANDT]: What I'll do is I'll look at it to make sure, like I said, its recording. What I'll do is when I download the video, the flash drive, I have a department-issued laptop. I place the flash drive in there. I play it to make sure that it's working from the --

THE COURT: Right there in the store?

[DET. BRANDT]: Yes, ma'am.

THE COURT: Okay.

[DET. BRANDT]: So that way I don't have to come back or inconvenience the owners, so I'll make sure it plays in the beginning. I'll kind of skip through it to the very end to make sure I got all as requested.

THE COURT: Okay. Now this CD that the State is trying to introduce, did you watch the CD? Have you seen the contents of the CD?

[DET. BRANDT]: Yes, ma'am. I actually made that copy of the CD for her.

THE COURT: Okay. And you've seen it?

[DET. BRANDT]: Yes, ma'am.

THE COURT: Does the CD match -- the contents of the CD match the contents that you saw when you downloaded on that day in the store?

[DET. BRANDT]: It's the exterior view camera for Baker Street. It's the exterior view camera of the outside sidewalk area.

THE COURT: And I'm saying does that tape accurately reflect what you saw on the store equipment on that day?

[DET. BRANDT]: Yes, ma'am.

THE COURT: Okay. All right.

On cross-examination, Detective Brandt explained that the “store on Calhoun Street had a Geovision” whereas the “church on Baker Street [was] a Hikvision” but that “they’re both PC-based systems, so they’re fairly similar, so the process would be the same at both locations.” Then, in response to the State’s questioning, Detective Brandt explained that he checks the general reliability of the surveillance video systems by looking at the monitor displays and that, if he detects a problem, he does not retrieve any video.

After that questioning, the court found, “based on the detective’s answers that a proper foundation -- once a proper foundation is laid, this tape, this CD, can be authenticated through this detective.” The court then granted the defense a continuing objection, and a flash drive containing the surveillance video recordings at issue subsequently was admitted into evidence.

Analysis

Maryland Rule 5-901(a) provides⁹:

(a) General provision. 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.

Rule 5-901(b) sets forth “[b]y way of illustration only, and not by way of limitation,” a number of examples of “authentication or identification conforming with the requirements of” the rule. Those illustrative examples include “testimony of a witness with knowledge

⁹ A minor amendment to the Committee note appended to Rule 5-901 became effective October 1, 2021. 207th Rules Order (filed Jul. 8, 2021). Throughout this opinion, all rules and statutes cited are those in effect at the time of trial (rules) or the time of the offenses (statutes) unless otherwise indicated.

that the offered evidence is what it is claimed to be”; “circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be”; and “evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.” Md. Rule 5-901(b)(1), (4), (9) (cleaned up).¹⁰

Initially, we note that, in construing “the requirement of authentication” in Rule 5-901(a), a court “need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the *jury* ultimately might do so.” *Jackson v. State*, 460 Md. 107, 116 (2018) (quoting *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006)). Accordingly, the threshold for admissibility is “slight.” *Id.* We review a trial court’s ruling on authentication, like other rulings on admissibility of evidence, for abuse of discretion. *Wheeler v. State*, 459 Md. 555, 560, 566-67 (2018). An abuse of discretion results where a court’s ruling is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *Gray v. State*, 388 Md. 366, 383 (2005)).

“[F]or purposes of admissibility, a videotape is subject to the same authentication requirements as a photograph.” *Jackson*, 460 Md. at 116 (citing *Washington*, 406 Md. at

¹⁰ The method described in Md. Rule 5-901(b)(9) is known as the “silent witness method of authentication.” *Washington v. State*, 406 Md. 642, 652 (2008).

651). “Photographs and videotapes may be authenticated through first-hand knowledge, or, as an alternative, as ‘a “mute” or “silent” independent photographic witness because the photograph speaks with its probative effect.’” *Id.* (quoting *Washington v. State*, 179 Md. App. 32, 44 (2008), *rev’d on other grounds*, 406 Md. 642).

“‘[S]o long as sufficient foundational evidence is presented to show the circumstances under which [they were] taken and the reliability of the reproduction process,’ photographs [and videotapes] may be admissible as probative evidence.” *Id.* at 116-17 (quoting *Washington*, 406 Md. at 652). There are no “rigid, fixed foundational requirements” for admitting evidence under the “silent witness” method. *Id.* at 117. The authenticating witness may establish the foundational basis “through testimony relative to ‘the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system.’” *Id.* (quoting *Washington*, 406 Md. at 653).

Detective Brandt described how he determined that the video recording equipment was working properly by verifying that it was “powered on” and that it was recording, and then playing the recording to ensure its accuracy. He then examined “the date and timestamp for accuracy” by comparing them to an external reference standard and noting any discrepancies on a form he filled out contemporaneously with recovery of the video recordings. He further explained that he used “the proprietary software” of the video recording system to recover video segments as requested by the lead detective, downloaded those segments to a universal serial bus (“USB”) drive, and, upon returning to his home office, transferred those video segments to “a secure server where homicide detectives had

a read-only access so they can download a working copy or view it,” but without losing control of the original recording. He then explained that he copied a compact disc (“CD”) from the downloaded recordings and viewed it to ensure that it matched the original.

Based on that testimony, the trial court found that the disputed video recordings were properly authenticated. Because that finding is not “well removed from any center mark” that we can imagine, *Nash*, 439 Md. at 67, we hold that the trial court did not abuse its discretion in doing so. Detective Brandt’s testimony more than satisfied the State’s “slight” burden to establish authentication of the disputed video recordings. Dorsey’s complaints regarding the lack of evidence concerning

when, how or by whom the surveillance systems were installed; how they functioned, such as whether the cameras were motion-activated, fixed, or guided by a person; whether the footage was saved automatically or manually; whether the footage was retained on the system indefinitely or was manually or automatically erased after a period of time; what software was used to store, view and download video from the cameras; the general reliability of the surveillance systems; their maintenance history; if they were properly functioning the day of the murder; any assurances that there had been no alteration of the videos or tampering with the equipment between the day of the murder and when he downloaded the videos; whether the videos downloaded to the secure server were capable of manipulation; or the chain of custody of the flash drive and CD he created

go to their weight, not their admissibility. The Court of Appeals has never held that such a barrage of highly technical information, presumably offered through expert testimony, is required to authenticate a photograph or videotape, and we decline Dorsey’s suggestion that we apply Rule 5-901 in such a rigid fashion.

III. Dorsey Waived Objection to Officer’s Body Worn Camera Footage and, Besides, Any Error in its Admission was Harmless Beyond a Reasonable Doubt

Parties’ Contentions

Finally, Dorsey contends that the circuit court erred in failing to take any curative action when, during playback of Officer Yampierre’s body-worn camera footage to the jury, Officer Yampierre and Detective Riker, while viewing closed-caption video recordings from the crime scene, commented that it “looks like Donny Dorsey” and “it’s my guy.”

The State counters that this claim is (doubly) waived because Dorsey failed to articulate in his brief any grounds for inadmissibility of the comments, and because he failed to request curative measures at trial. The State maintains that, in any event, any purported error was harmless.

Factual Context

We begin by setting forth the context. During the State’s direct examination of Officer Yampierre, portions of his body-camera video from the date of the crime were played for the jury. Initially, defense counsel objected on hearsay grounds, but the prosecution assured him that it would only play brief excerpts that did not contain any comments directed toward Dorsey, and with that understanding, playback resumed.

Ultimately, the comments at issue were played, prompting another defense objection. A bench conference ensued:

[DEFENSE COUNSEL]: This is kind of the part that I didn’t want to get into. They’re like speculating over who it looks like in the video and all

these other stuff, (sic), so at this point, I'm going to object to the actual (indiscernible - 11:39:37).

[PROSECUTOR 1]: (indiscernible - 11:39:41). I wasn't speculating. I see the (indiscernible - 11:39:42) question, but all (indiscernible - 11:39:49) --

* * *

[PROSECUTOR 1]: -- (indiscernible - 11:39:53) speculating in reference to -- if you can be specific as to which you think we're speculating?

[DEFENSE COUNSEL]: Well, I mean, they just -- Riker just said that it looks like Dorsey.

[PROSECUTOR 1]: Say that again.

[DEFENSE COUNSEL]: He just said that looks like Dorsey on the video that you just played for the hearing.

[PROSECUTOR 1]: I don't even know (indiscernible - 11:40:14).

THE DEFENDANT: He said Donny (phonetic) Dorsey.

THE COURT: Huh?

THE DEFENDANT: He said Donny Dorsey.

[DEFENSE COUNSEL]: Yeah, Donald it's what he said. It's almost like Donald Dorsey. So that's why I didn't want it to get into. They're just sitting around talking and guessing about who and what's what, so that's not (indiscernible - 11:40:27) again.

[PROSECUTOR 2]: I didn't hear that part.

THE COURT: I didn't hear it either but it's very hard to hear, so I don't know.

[PROSECUTOR 1]: So and can we just ask before we submit and to the jury, I think (indiscernible - 11:40:40) overall --

THE COURT: Yeah, definitely --

[PROSECUTOR 1]: -- (indiscernible - 11:40:41) --

THE COURT: -- but can we move forward now?

[PROSECUTOR 2]: Yes, Your Honor.

THE COURT: I mean, I don't want to --

[DEFENSE COUNSEL]: That's -- yeah.

THE COURT: -- we're losing them anyway, so.

[DEFENSE COUNSEL]: My concern is just move this along.

THE COURT: Yeah.

The prosecution then resumed direct examination of Officer Yampierre, asking him a single question about weather conditions on the day of the crime, whereupon direct examination (and the attendant playback of the body-camera video) concluded.

Analysis

We begin (and end) our analysis with waiver. After the previously discussed portion of the body-worn camera video was played, defense counsel objected, declaring, “They’re like speculating over who it looks like in the video” and pointing out that “Riker just said that it looks like Dorsey.” After one of the prosecutors claimed, “I didn’t hear that part,” and the court agreed with her, declaring that “it’s very hard to hear,”¹¹ the court suggested

¹¹ The contested remarks are clearly audible when played back in the quiet of an office. We are not, however, in a position to act as fact finders regarding the ability of courtroom observers to hear the contested remarks during playback of the video recording in open court. The trial court was in a far better position than we to know if the remarks could be heard under the conditions present in the courtroom.

that they “move forward now[.]” Defense counsel concurred, stating, “My concern is just move this along.” Shortly thereafter, playback of the body-worn camera video concluded.

Under these circumstances, we agree with the State that this claim is waived.¹² Although defense counsel objected, he did not ask for any curative action beyond what the court had suggested, which was to “move forward” and finish playing the video. The court then did exactly as defense counsel had asked. Therefore, there are no grounds for appeal on this issue. Md. Rule 4-323(a), (c); *Hill v. State*, 355 Md. 206, 219 (1999) (observing that “if there *is* an opportunity to object to an order or ruling when made, the failure to do so (and to inform the court of the relief requested) *may* constitute a waiver”); *Cantine v. State*, 160 Md. App. 391, 407 (2004) (observing that “[w]hen counsel fails to object, or request curative action, the alleged error ordinarily is waived”).

In his Reply Brief, Dorsey requests that, if we to agree with the State that this claim is not preserved, we should recognize plain error. Because the purported error of which he complains is not “compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial,” *Yates v. State*, 429 Md. 112, 130 (2012) (citation and quotation omitted), we decline his request to do so.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS ASSESSED TO APPELLANT.**

¹² We need not, and shall not, address the State’s contention that Dorsey failed to articulate grounds for inadmissibility of the offending comments in his brief, although it appears that a fair reading of his brief would suggest that, at minimum, he contends that the comments were inadmissible on grounds of unfair prejudice. Md. Rule 5-403.