Circuit Court for Baltimore County
Case No. C-03-CR-20-002435

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2121

September Term, 2022

EMMANUEL ROOSEVELT GREGORY

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore County of attempted first degree murder and related offenses, Emmanuel Roosevelt Gregory, appellant, presents for our review a single issue: whether the court erred in denying his motion for new trial. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Larry Brown, who testified that at approximately 6:00 p.m. on August 7, 2020, he arrived at his residence on Ingleside Avenue in Gwynn Oak. At approximately 7:00 p.m., Mr. Brown went outside to speak with his neighbor Andrea Turpin, who was "frantic." While speaking with Ms. Turpin, Mr. Brown saw a man sitting on the front steps of Mr. Brown's residence. When Mr. Brown told the man that he "can't be . . . coming around here doing this stuff," the man replied: "I will fucking kill you." Mr. Brown then "picked [the man] up . . . , slammed him on the ground[,] and held him there." When Mr. Brown let the man go, the man produced a gun and shot Mr. Brown in his stomach, leg, arm, and hands. The conversation and shooting were recorded by Mr. Brown's surveillance camera, and portions of the recording were played for the jury. The State also called Ms. Turpin, who identified Mr. Gregory in court as the shooter. The State also produced evidence that during an interview with police following the shooting, Mr. Gregory stated: "[Y]ou might as well lock me up . . . . I am a cold-blooded killer, I guess."

The State also produced evidence that at the site of the shooting, police recovered three "fired shell casing[s]." Police also recovered a "fired projectile" from the hospital where Mr. Brown was taken following the shooting, and a "Springfield XD forty caliber handgun" from Mr. Gregory's residence. The State also called Christopher Monturo of the "Coroner's Office, Crime Laboratory," of Hamilton County, Ohio. Mr. Monturo, who was

accepted as an expert in firearms and toolmark identification, analysis, and comparison, testified that the casings and projectile were fired by the handgun recovered from Mr. Gregory's residence.

Following trial, Mr. Gregory filed a motion for new trial. In an accompanying memorandum, Mr. Gregory stated, in pertinent part:

> The [State's] evidence was legally insufficient as a matter of law with respect to the chain of custody concerning the firearms evidence. . . . .
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> The handgun/firearm was seized by Detective [Jason] Metz and submitted to the Baltimore County Police Department's crime lab. According to Detective Metz, firearms technician Thomas processed the weapon. Testimony also revealed that the firearm was subsequently sent to Ohio. Mr. Montero testified that he did not know who in fact sent him the weapon. He processed the weapon. He prepared a report. He subsequently testified during the course of trial.
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> Detective Metz testified that he had no idea how the gun got to Ohio. [H]is testimony was that a technician by the name of Mr. Thomas processed the weapon. Detective Metz further testified that this processing was done in the Baltimore County crime lab.
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> There was no specific evidence offered by the [S]tate detailing how the gun ended up in Ohio. Counsel objected during the course of the testimony of Mr. Montero. The basis for the objection was chain of custody. There was a bench discussion and the testimony proceeded. Again, there was no specific evidence offered by the [S]tate detailing how the gun ended up in Ohio. There was mention of Federal Express. Yet, no one from Federal Express testified. No documentation from Federal Express was offered. No one from the Baltimore County Police Department testified as to what exactly happened.
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> In this case, there was a significant gap in the chain of custody. As a matter of fact, several links in the chain were missing. Consequently, the [S]tate has failed to establish an essential element, beyond a reasonable doubt, with respect to the possession of the firearm.

At the hearing on the motion, the prosecutor stated that during trial, he "honestly believed" that "Laura Polarski . . . , , supervisor of the biology lab, was the individual who sent [the items] from Baltimore County to Ohio." Following trial, the prosecutor discovered "[t]hat, in fact, Jason Birchfield, who is a supervisor of the Firearms Identification Unit, [and] does the firearms analysis for Baltimore County, was actually the individual who did that." The prosecutor then "sent [defense counsel] a detailed e-mail explaining . . . what had happened." The prosecutor entered into evidence "a six-page chain of custody for [the] evidence," and the related "Fed Ex . . . receipt and tracking information."

Defense counsel subsequently argued, in pertinent part:

> We have about ten different people that are indicated in these documents that I think Mr. Gregory has a right to cross examine. Again, it all goes to the weight. And you know as well as I do, Judge, if you have three witnesses as to a specific factual item, they're going to give you three different stories. And that's what we have.
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> And it's not [the prosecutor's] fault, but we initially tried this case based on the assumption that Mr. Smith, hypothetically, is the person who is responsible for these evidentiary items. And it turns out it wasn't Mr. Smith. [It] might have been Mr. Brown. This again, hypothetical names. And it turns out it wasn't Mr. Brown either. Today, we actually have a document that purports to be the chain of custody report. This is all fine and dandy.
>
> My question is who prepared this? When did they prepare it? How did they prepare it? What were the circumstances? Who did they consult with? Who did they talk to? Again, it all goes to the weight because my premise is . . . we have sloppy, sloppy police work.
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> Again, it all goes to the weight of the evidence. Because if the gun, if the jury says oh, well, we're not going to believe or accept or deal with any

evidence associated with the gun or the firearms or anything that was sent to Ohio.

If that is eliminated from their deliberations, which would have been their absolute right under the law, because in my opinion, the weight of this particular evidence is completely suspect.

Denying the motion, the court stated, in pertinent part:

[T]he consideration[s] the Court must look to, are whether or not the verdict is contrary to the evidence. There was some fraud, mistake or irregularity, newly discovered evidence, whether the interest of justice or, would prompt the granting of a Motion for New Trial, or whether the verdict was unjust or improper.

In this Court's estimation, having considered the very thorough, very well briefed arguments by both sides on this Motion for New Trial, none of these apply here. There was overwhelming evidence of the Defendant's guilt. As is increasingly common these days, the offense happened on video and it was clear as day for all who observed, the fact finders and those other participants in this case, exactly what happened.

The jury had the opportunity to view the shooter on the victim's surveillance camera. It occurred on the steps of the victim's home, just outside of the victim's front door, it was still light out in August of 2020 between 6:00 and 7:00 p.m. And it was taken from the vantage point of the victim's home security camera.

The video was clear and sharp, and the jury and the entire courtroom had the opportunity to witness the crime as it was captured for all to see with remarkable clarity. And the participants in the courtroom, including the jury, had the opportunity to view the shooter and compare and contrast that remarkably sharp and up-close video to the Defendant in the courtroom and they were remarkably similar.

* * *

The evidence of the Defendant's guilt was overwhelming, and the jury's verdict was certainly not against the weight of the evidence, nor was the evidence insufficient as a matter of law.

* * *

And as for the chain of custody . . . .

[T]he evidentiary requirement for admissibility is one, of course, of authentication and reliability. In other words, the question is whether the item was authenticated and introduced in the same or substantially the same condition as when seized. And whether there were sufficient safeguards objectively reliable to negate the possibility of tampering. That was established here.

Even with the additional information that has been provided, given the unique case number, the police department evidentiary packaging safeguards with sealing tape and the testimony attendant thereto, and the fact that all of this occurred within the headquarters of the police department within their evidentiary protocols, and with the unique case number, the sealing protocols and the safeguards testified thereto regarding the evidence packaging, including the individual who ultimately received from Fed Ex the item to be analyzed, this Court found, and continues to find with that additional information, that the evidence was properly authenticated, was in substantially the same condition as when seized and those safeguards were objectively reliable to negate the possibility of tampering.

To the extent that the information was not provided in advance and there is any suggestion that that should have been, it is clear and there is no argument that the State attempted to purposely mislead the Defense. In fact, quite the opposite.

The State, upon immediately recognizing that they gave the wrong name of the individual who sen[t] the item to Ohio, another individual also that works within headquarters in the police department and operates under those same safeguards and protocols, the State immediately notified the Defense and continued its continuing obligation to disclose information to the Defense, as the State always should.

They did not attempt to suppress this information, despite the timing. But rather, made a full and complete disclosure, acknowledging that the mistake was inadvertent, and this Court finds as much.

Additionally, the transposition of the names, which this Court finds was the case in this case, appeared to be harmless as to its weight on the evidence. There is nothing to suggest, and the Court can see no reason, why had that name been properly done it would have impacted the ultimate finding in this case or the evidence in this case.

Mr. Gregory contends that the court erred in so concluding, because "if the members of the jury had been given a reason to question the validity of the firearms evidence based on how it had been handled, then the verdicts in this case may have been different." Mr. Gregory requests that we apply not the "abuse of discretion standard of review," but "the alternative standard" enunciated by the Supreme Court of Maryland in *Merritt v. State*, 367 Md. 17, 31 (2001) ("when an alleged error is committed during the trial, when the losing party or that party's counsel, without fault, does not discover the alleged error during the trial, and when the issue is then raised by a motion for a new trial, we have reviewed the denial of the new trial motion under a standard of whether the denial was erroneous" (citations omitted)).

We agree with Mr. Gregory that the standard of review enunciated in *Merritt* is the appropriate standard of review in this case. But, the Supreme Court of Maryland further stated that "in . . . criminal cases where . . . error did occur, the matter of prejudice [is] reviewed under the harmless error standard," and "when the error involves the admission . . . of evidence," a "reviewing court must . . . be satisfied that there is no reasonable possibility that the evidence complained of . . . may have contributed to the rendition of the guilty verdict." *Id.* at 31 (internal citation and quotations omitted). Here, Mr. Gregory does not dispute the court's conclusions that "it was clear as day for all who observed" the recording taken by Mr. Brown's surveillance camera "exactly what happened," that "the jury[] had the opportunity to view the shooter and compare and contrast that remarkably sharp and up-close video to [Mr. Gregory] in the courtroom," and that the shooter and Mr. Gregory "were remarkably similar." Also, Ms. Turpin testified unequivocally that Mr.

Gregory was the person who shot Mr. Brown. Finally, Mr. Gregory told police that he is "a cold-blooded killer." In light of this evidence, we are satisfied that there is no reasonable possibility that the State's misidentification of the person who sent the ballistics-related evidence to Mr. Monturo may have contributed to the rendition of the jury's verdict, and hence, the court did not err in denying the motion for new trial.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.