

Circuit Court for Baltimore City
Case No.: 119273005

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2507

September Term, 2019

DONALD KHAN

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 11, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following trial in the Circuit Court for Baltimore City, a jury found Donald Khan, appellant, guilty of armed robbery, conspiracy to commit armed robbery, theft of goods with a value between \$100 and \$1,500, conspiracy to commit theft, use of a handgun in the commission of a crime of violence, conspiracy to use a handgun in the commission of a crime of violence, wearing and carrying a handgun, and conspiracy to wear and carry a handgun. The court sentenced appellant to an aggregate of forty years' imprisonment with all but fifteen years suspended.¹

On appeal, appellant contends that the trial court erred by admitting certain surveillance video recordings into evidence because, according to appellant, the State failed to lay a proper foundation for them. For the reasons explained below, we shall affirm.

BACKGROUND

On September 2, 2019, Khan and his two confederates entered a 7-11 convenience store a little before 6:00 a.m., displayed a handgun, and stole money from the cash registers and cigarettes from the cabinets. Two of them wore masks, and they all wore hooded sweatshirts with the hood up. The episode was video recorded by the store's surveillance cameras, and footage from them was shown to the jury. An employee, Peter Ongwesa, said that after the assailants left, he locked the door, and his manager pressed a panic button which summoned the police.

¹ Specifically, the court sentenced appellant to twenty years' imprisonment with all but ten years suspended for armed robbery, twenty years' imprisonment with all but ten years suspended for conspiracy to commit armed robbery to be served concurrently, and to twenty years' imprisonment with all but the first five years suspended for use of a handgun in the commission of a crime of violence to be served consecutively and without the possibility of parole.

The assailants all left the premises in one vehicle, which the police would later learn had been stolen. When a police officer made a U-turn and began following the vehicle, the vehicle sped off. Other police officers also gave chase, eventually stopped the vehicle, and apprehended two of its recent occupants after a brief foot chase. Another police officer located appellant as the sole passenger of an MTA public transportation bus. The officer said that he saw appellant change seats before the officer boarded the bus. Near appellant's original seat was \$182 in cash. Hidden in one of the bundles of cash was a global positioning tracking device that allowed a company called 3SI Security to track the movement of the device, and relay that information to the police in real time. When the police arrested appellant, he was wearing clothing that matched the description given to police by the witnesses and seen in the 7-11 security camera footage.

On the ground near the stopped vehicle from which the assailants fled, the police found, among other things, a 7-11 shopping bag and a backpack filled with packs of cigarettes, and a black pistol.

Appellant did not testify and called no witnesses.

DISCUSSION

As noted above, the jury was shown the surveillance video recordings from the 7-11. Those recordings were admitted into evidence during the testimony of Peter Ongwesa. Ongwesa testified that the video recordings accurately depicted the events that occurred at the 7-11 at the time of the robbery.

Appellant contends that the trial court erred in admitting the surveillance video recordings from the 7-11 because, according to appellant, the State failed to lay a proper

foundation for them. According to appellant, the State was required to, but did not, “lay an adequate foundation assuring the accuracy of the process that produced the [video], and/or describing a process or system that produces an accurate result.”²

We review a trial court’s ruling on authentication for an abuse of discretion. *State v. Sample*, 468 Md. 560, 588 (2020). Maryland Rule 5-901(a) provides that “[t]he 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.” The Rule requires that the trial court “determine that there is proof from which a reasonable juror could find that the evidence is what the proponent claims it to be.” *Sublet v. State*, 442 Md. 632, 678 (2015).

Had no one testified that the video recordings were a fair and accurate depiction of what they purported to be, as Ongwesa did, appellant’s contention that a witness needed to testify “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

² The State argues that appellant’s objection to the admissibility of the video recordings was waived at trial and/or any error in admitting them was harmless, because the same, or similar evidence was received without objection when still photographs made from the video recordings depicting the suspects were later admitted into evidence without objection. We tend to agree. However, because of our disposition of this case, we need not address that issue. “Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.” *DeLeon v. State*, 407 Md. 16, 31 (2008) “Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received.” *Jones v. State*, 310 Md. 569, 589 (1987) *vacated on other grounds*, 486 U.S. 1050, *on remand*, 314 Md. 111 (1988).

entire system” to lay a proper foundation for the admissibility of the video recordings may have had some force. *Washington v. State*, 406 Md. 642 (2008).

However, because Ongwesa testified that the video recordings were what they purported to be, *i.e.*, fair and accurate representations of what occurred at the time of the robbery, the State satisfied its obligation to authenticate the video recordings and the court properly exercised its discretion in admitting the evidence over appellant’s objection.

Consequently, we shall affirm the judgments of the circuit court.

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