

Circuit Court for Prince George's County
Case No. CT161348X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2551

September Term, 2017

ANTHONY LAVALLE DICKENS

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 12, 2020

*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 a jury trial in the Circuit Court for Prince George’s County, Anthony Dickens, appellant, was convicted of first-degree murder, use of a firearm in the commission of a felony, and possession of a regulated firearm following a jury trial. On appeal, he contends that the court abused its discretion in denying his motion to exclude two of the State’s witnesses from identifying him in a video of the shooting. For the reasons that follow, we shall affirm.

BACKGROUND

At trial, the State presented evidence that the victim was shot and killed outside of Lucky’s Carryout. On the day of the shooting, Lieutenant Doug Pitts of Capital City Protective Company observed a group of individuals outside of the shopping center where Lucky’s Carryout was located. The individuals appeared to be “aggressive and agitated.” When Lieutenant Pitts approached the individuals, they indicated that they were “just playing around” and dispersed. Lieutenant Pitts testified that he had previously seen Mr. Dickens on four separate occasions and that Mr. Dickens was one of the individuals that he observed outside of the shopping center. Approximately 20 minutes after the group dispersed, a red van pulled up in front of Lucky’s Carryout. A person then exited the van, fired several shots at the victim, got back into the van, and drove away. Lieutenant Pitts was able to observe the shooter and identified that person as Mr. Dickens.

The shooting was also captured on Lucky’s Carryout’s video surveillance system and a copy of the surveillance video was introduced at trial. Two witnesses for the State, who were not present at the time of the shooting, identified Mr. Dickens as the person in the video who exited the red van and shot the victim. The first witness was Corporal Stacey

Gist of the Prince George’s County Police Department. Corporal Gist testified that he had known Mr. Dickens for more than ten years and that he saw Mr. Dickens at the shopping center multiple times per month. According to Corporal Gist, Mr. Dickens had a distinctive walk that he characterized as a “stride” and a “fashion flair” for multi-colored polo shirts. Corporal Gist also noted that Mr. Dickens had gained weight and grown facial hair after the shooting, such that he looked different at trial than the last time Corporal Gist had seen him. Corporal Gist indicated that he was able to recognize Mr. Dickens in the video based on “his walk, shape [and] size” and that he had “been around [Mr. Dickens] enough to know that’s him.”

Mr. Dickens was also identified in the video by Deondre Davis, who testified for the State as part of a plea deal. Mr. Davis had been in jail with Mr. Dickens for approximately ten months and they had shared a cell for some of that time. According to Mr. Davis, Mr. Dickens had told him that he shot the victim because the victim had taken his money during an earlier altercation. Mr. Davis indicated that Mr. Dickens had a “distinctive walk” because of his limp and that he was able to identify him in the video “by his limp.” He also noted that Mr. Dickens had gained weight and grown facial hair since the first time they had met in jail, and that Mr. Dickens had told him that he gained weight so that he would look different than the shooter in the video.

DISCUSSION

On appeal, Mr. Dickens contends that the court abused its discretion in allowing Corporal Gist and Mr. Davis to identify him in the video because the video was “hopelessly obscure.” The State counters that this claim is not preserved. Alternatively, the State

asserts that Mr. Dickens’s claim lacks merit because the video was of sufficient quality that the witnesses’ identifications were helpful to the jury. We agree with the State.

First, Mr. Dickens’s contention is not preserved for appellate review. Prior to trial, Mr. Dickens filed a motion *in limine* to exclude Corporal Gist and Mr. Davis’s identification testimony. The court heard arguments on the motion and reserved ruling. During Corporal Gist’s testimony, the court held a bench conference and indicated that it was going to admit the video, finding that it was not “of such poor quality as to have no evidentiary value.” Defense counsel objected when the State moved to introduce the video into evidence. However, he did not request a continuing objection and did not object when Corporal Gist later identified Mr. Dickens as the shooter in the video. Defense counsel again objected just prior to the State showing the video to Mr. Davis, stating that his objection was “the same with regard to the video.” The court overruled the objection and defense counsel did not renew his objection when Mr. Davis identified Mr. Dickens in the surveillance video.

Our decision in *Wright v. State*, 247 Md. App. 216 (2020) is instructive. In *Wright* the defendant filed a motion *in limine* to exclude the testimony of a detective who had identified him in a surveillance photo and video. He then objected at trial when the video and photograph were introduced during the Detective’s testimony. However, he failed to renew his objection when the Detective identified him from those exhibits later in his testimony. We held that without a contemporaneous objection, the appellant’s claim on appeal regarding the Detective’s identification testimony was not preserved. *Id.* at 227-28.

As the facts of this case are indistinguishable from *Wright*, we hold that Mr. Dickens’s claim is not preserved for appellate review.

Moreover, even if preserved, Mr. Dickens’s contention lacks merit. In *Moreland v. State*, 207 Md. App. 563 (2012), we considered whether the trial court abused its discretion in admitting the lay testimony of a police officer who was not involved in investigating the crime at issue and identified Moreland in a still photograph obtained from surveillance video of a bank robbery. *Id.* at 566-67. The officer testified that he had known Moreland for 40 to 45 years, that the two had grown up and gone to school together, and that although they were not related by blood, he referred to Moreland as his cousin. *Id.* at 567. In concluding that the trial court did not abuse its discretion in admitting the testimony, we held that “‘a lay witness who has substantial familiarity with the defendant, such as a family member or a person who has had numerous contacts with the defendant, may properly testify as to the identity of the defendant in a surveillance photograph.’” *Id.* at 572 (quoting *Robinson v. Colorado*, 927 P.2d 381, 383 (Colo. 1996)). We further held that “‘whether a lay witness’ prior contacts with the defendant are extensive enough to permit a proper identification is a matter of weight for the jury, not admissibility.’” *Id.*

Mr. Dickens acknowledges *Moreland* but contends that it is distinguishable because he is not challenging either witness’s familiarity with his appearance. Rather, he asserts that the surveillance video was “so hopelessly obscure” that those “witnesses were in no better position to identify [him] in the video than the jurors themselves.” This argument is based on *United States v. Jackman*, 48 F.3d 1, (1st Cir 1995) wherein the First Circuit Court of Appeals considered a claim similar to that raised in *Moreland* and held that identification

testimony from a video or photograph “is admissible at least when the witness possesses sufficiently relevant familiarity with the defendant that the jury cannot possess *and when the photographs are not either so unmistakably clear or so hopelessly obscure that the witness is no better-suited than the jury to make the identification.*” *Id.* at 4-5 (emphasis added).

But, even if we were to adopt the reasoning in *Jackman*, we are not persuaded that the surveillance video at issue was so “hopelessly obscure” that Corporal Gist’s and Mr. Davis’s identifications were of no evidentiary value. The trial court considered Mr. Dickens’s contention, reviewed the surveillance footage, and ultimately determined that the video was “of a quality that the jury could find it relevant to identify the shooter.” And having reviewed the video we cannot say that the court’s finding regarding the quality of the video was clearly erroneous.

In *Jackman*, the photographs used to identify the defendant were “somewhat blurred” and “show[ed] only part of the robber’s face.” The Court nevertheless determined that, “because the jury was only able to compare the grainy photographs of the [] robber with Jackman as he appeared at trial and in the videotaped lineup, the identification by the witnesses conceivably was of help to the jury.” *Id.* at 3. This was, in part, because “[u]nlike the jury, they were familiar with the defendant’s carriage and posture.” *Id.* at 4. Here, the facial features of the perpetrator in the surveillance video are similarly blurry. However, both Mr. Davis and Corporal Gist identified Mr. Dickens based on his build and the manner in which he walked, both of which are clearly observable in the video. And both witnesses were more likely than the jury to be able to correctly identify those characteristics,

especially considering the jury’s unfamiliarity with Mr. Dickens’s gait and his change in appearance following the shooting. Consequently, the court did not abuse its discretion in denying Mr. Dickens’s motion to exclude their testimony.

**JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**