

Circuit Court for Baltimore County  
Case No. 03-K-18-001143

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 3142

September Term, 2018

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KEISHA TOWAN MANN

v.

STATE OF MARYLAND

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Beachley,  
Shaw Geter,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: May 6, 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 Baltimore County, Keisha Towan Manns, appellant, was convicted of theft of property valued at less than \$1,500. On appeal, she claims that the court erred in admitting certain documents under the business records exception to the hearsay rule, because, she claims the State failed to adequately authenticate them. For the reasons that follow, we shall affirm the conviction.

### **BACKGROUND**

Ms. Manns worked as a cashier at the Wal-Mart in Arbutus between August 2017 and October 2017. In October 2017, James Shaffer, the store’s asset protection manager, discovered that there had been thousands of dollars in cash shortages over the previous few months. To investigate the cash shortages, Mr. Shaffer reviewed the store’s “Daily Record Audit List Reports” (the reports) that were generated for every cash register at the end of each business day. The reports that he reviewed, which were introduced at trial as State’s exhibits 1 and 2, showed “the date, the register number, the operators [who worked] on the register, the name of the operators, the amount of the shortage or overage on that register, and the start and stop time for [each] particular operator on that register.” Although the reports listed the name of every cashier who used a register on a given day and the amount of cash that each register was short, they did not show who was responsible for the cash shortage. However, after reviewing the reports, Mr. Schaffer discovered that Ms. Mann’s unique four-digit operator number had consistently been used to log on to the cash registers that had showed “large shortages [over \$100] over the two-month period.”

Mr. Shaffer then looked at surveillance footage of some of the registers that had the large cash shortages. When doing so, he observed Ms. Manns appear to take money from

the registers on several different occasions.<sup>1</sup> On October 15, 2017, Mr. Schaffer used a live video feed to watch Ms. Manns while she was working and observed her remove money from her cash register and put it in her pocket. He then asked her to come speak with him in an interview room. When he confronted her about the theft that day, Ms. Manns stated that she was sorry and gave him the \$500 which she had taken from the register. Mr. Shaffer informed her that he knew she had taken a lot more money, at which point Ms. Manns walked out of the interview room. Ms. Manns was arrested by Officer Gail Wickless before she could leave the store. After Ms. Manns was arrested, Officer Wickless suggested that she could help herself by starting to pay back the money. Ms. Manns responded, “Oh yeah, I am,” although Officer Wickless testified that she did not necessarily consider that statement to be a confession.

### **DISCUSSION**

Ms. Manns contends that the court erred in admitting the reports under the business records exception to the hearsay rule because the State failed to authenticate them. We disagree. To admit a document under the business records exception to the hearsay rule, the proponent of the evidence must establish that “(A) it was made at or near the time of the act, event or condition, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course

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<sup>1</sup> The surveillance video was not saved and thus, was not introduced at trial. However, the State introduced eight screenshots from the video that showed a cashier appearing to conceal money taken from the register. Those photos were taken from above the register and did not show the cashier’s face. However, Mr. Shaffer testified that he could identify the cashier as Ms. Manns.

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.” *See* Maryland Rule 5-803(b)(6). To admit evidence under the business records exception, the proponent of the evidence must lay a proper foundation. The requisite foundation for admitting a business record can be established in two ways: “by extrinsic evidence (usually live witness testimony) regarding the four requirements of Rule 5-803(b)(6) or by ‘self-authentication’ pursuant to Rule 5-902(b)(11).” *State v. Bryant*, 361 Md. 420, 426 (2000).

In challenging the admissibility of the reports, Ms. Manns’s sole claim is that the State failed to establish that the reports were “made by a person with knowledge or from information transmitted by a person with knowledge.”<sup>2</sup> Specifically, she asserts that Mr. Schaffer did “not understand the process by which [the reports] were generated” because he “could not testify with certainty how the registers worked” and that “[p]rior to the trial court admitting the records, he did not testify how the amount of money actually in the register drawer at the end of the day . . . was counted[.]”

However, to lay the foundation for admissibility of a business record, it is not necessary that the testifying witness have “first-hand knowledge of the matter[.]” *Jackson v. State*, 460 Md. 107, 125 (2018) (citation omitted). Moreover, the Court of Appeals has recognized that courts “regularly admit business records through witnesses who are not

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<sup>2</sup> Mr. Schaffer testified that the reports were created “at the end of each business day”, were “automatically” stored on Wal-Mart’s computer system, and that they were kept by Wal-Mart in the ordinary course of business, thus satisfying the other requirements of Rule 5-803(b)(6).

experts in the technology that produced those records.” *Johnson v. State*, 457 Md. 513, 532 (2018).

Here, Mr. Shaffer testified that he had obtained the reports by printing them directly from Wal-Mart’s computer system. Each report had “Wal\*Mart Stores, Inc. Daily Register Audit Alert List,” the store number, the report number, and the date the report was run on the top of the page. Mr. Schaffer testified that the reports were automatically created by Wal-Mart at the end of each day and that “nobody touches them” after they are created. Moreover, the reports reflected information of which Wal-Mart, as a business, had unique knowledge, including the names of its cashiers, the cashiers’ operator numbers, and the amount of shortage or overage in each of its registers. And, although Mr. Schaffer did not testify about how the amount of cash in the register drawers was calculated prior to the records being admitted, he later testified that it was calculated by “cash office associates” who counted the money at the end of each business day and then entered the amount of shortage or overage into the computer system. Thus, even if we assume that Mr. Schaffer needed to have some knowledge of how the amount of cash in the registers was calculated for the reports to be admissible, any failure by the State to initially lay that foundation was cured by Mr. Schaffer’s subsequent testimony. Based on this evidence, we are persuaded that the court did not err in finding that the reports were sufficiently authenticated and that

they reflected information of which Wal-Mart had knowledge.<sup>3</sup> Consequently, it did not err in admitting the reports under the business records exception to the hearsay rule.

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

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<sup>3</sup> Ms. Manns also briefly asserts that Wal-Mart’s system for managing their cash registers was “imprecise, ineffectual, and unreliable.” But, even if true, that would not mean that the reports were inauthentic or that they were not created by Wal-Mart in the regular course of business. Rather, to the extent that Wal-Mart’s system for recording information about its cash registers was imperfect, that would affect weight to be given the information contained in the reports, not the reports’ admissibility, and was for the jury to resolve.