

In Re: A.S.
Circuit Court for Prince George's County
Case No. JA 18-0548

In Re: J.M.
In the Circuit Court for Prince George's County
Case No. JA 18-0550

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 655
September Term, 2019
IN RE: A.S.

CONSOLIDATED

No. 676
September Term, 2019
IN RE: J.M.

Meredith,*
Wells,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: January 14, 2021

*Meredith, Timothy E., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

*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.

Juveniles A.S. and J.M., appellants, were charged with being involved in an incident wherein they committed assaults in the second-degree upon other youths. A.S. and J.M. (along with two other juvenile defendants) were tried together by the Circuit Court for Prince George's County sitting as the Juvenile Court. After they were found involved and each appealed, their cases were consolidated for appeal.

In this appeal, each appellant asserts that the trial court erred in admitting a surveillance video recording of them participating in the second-degree assault. Although the defendants objected to the admission of the recording for lack of authentication, the trial court concluded that the recording was adequately authenticated when one of the victims, L.C.-R., testified, after he viewed the recording, that he saw himself and his friend, D.G., being beaten by their assailants, whom he identified as the defendants seated in the courtroom.

QUESTION PRESENTED

A.S. asks: "Whether the juvenile court abused its discretion by admitting into evidence a video recording which the State was unable to authenticate sufficiently?"¹

¹ The State contends that A.S.'s appellate claim is unpreserved because his counsel failed to object at the time the evidence was offered at trial. We conclude that A.S.'s counsel adequately preserved the right to challenge the admission of the exhibit because counsel argued insufficient authentication by way of a motion in limine, and, when the recording was offered during the trial, continued participating in the extensive arguments that the video recording had not been adequately authenticated. It was clear to the trial judge that A.S. continued to oppose the admission of the video recording.

J.M. asks: “Did the juvenile court err in admit[ing] an alleged video recording of the incident where the State failed to authenticate the evidence?”

As explained herein, we conclude that the trial court did not err in finding that there was sufficient authentication to admit the surveillance video recording. We will affirm the judgments of the circuit court.

PROCEDURAL BACKGROUND

At the outset of the trial, the court considered motions in limine to exclude video footage of the alleged incident on the basis of authenticity. *See* Maryland Rule 5-901(a) (“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.”). The State replied that it would “have both victims here who also can testify that [the video recording] is a fair and accurate example of the events that occurred.” The State also explained that it had provided the defense attorneys two versions of the same video, but the State’s “I.T. department” slowed down one version “just for ease to view the events, honestly, in real time versus the sped up version” of the original surveillance recording. The court granted the motion as to the “slowed down” version of the recording, but, based upon the State’s proffer that its witnesses could testify that the unaltered recording was a fair and accurate depiction of the incident, the court denied the motion in limine as to the original version of the video. Nevertheless, the court told the parties that, “if and when it gets attempted to be submitted, defense still has a right to argue authenticity or the admission[.]”

The recording, marked as State’s Exhibit 1, was not admitted during the testimony of the first victim (D.G.). But victim L.C.-R. testified that what was shown in State’s Exhibit 1 was “[w]hen we went into the apartments and [respondents] started hitting us.” The trial court concluded that L.C.-R. was “a witness with first-hand knowledge,” and his testimony that the video depicted the scene at the time of the assaults sufficed to authenticate the video, which was admitted as State’s Exhibit 1.

STANDARD OF REVIEW

“[T]he circuit court’s decision to admit relevant evidence is reviewed for an abuse of discretion.” *Williams v. State*, 457 Md. 551, 563 (2018). *Accord Wheeler v. State*, 459 Md. 555, 560-61 (2018).

ANALYSIS

In *Washington v. State*, 406 Md. 642, 651-52 (2008), in an opinion authored by Judge Irma S. Raker, the Court of Appeals addressed authentication of a video recording and explained:

Maryland Rule 5–901(a), identical to the Federal Rule of Evidence 901(a), governs the authentication of evidence in both civil and criminal trials. Md. Rule 5–901(a) provides as follows:

“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.”

In order to satisfy the evidentiary requirement for authentication, the proponent of the evidence must show that the evidence is “sufficient to support a finding that the matter in question is what its proponent claims.” Md. Rule 5–901(a).

A videotape is considered a photograph for admissibility purposes. It is admissible in evidence and is subject to the same general rules of admissibility as a photograph. *Dep't of Public Safety v. Cole*, 342 Md. 12, 20, 672 A.2d 1115, 1119 (1996). Photographic manipulation, alterations and fabrications are nothing new, nor are such changes unique to digital imaging, although it might be easier in this digital age. As noted by Professor Lynn McLain, “[m]ovies and tapes are easily manipulated, through such means as editing and changes of speed, to produce a misleading effect.” 5 LYNN MCLAIN, MARYLAND EVIDENCE § 403.6 at 592 (2001). Courts therefore require authentication of photographs, movies, or videotapes as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine.

The Court of Special Appeals set out the rules for admission of photographs, succinctly stating as follows:

“Photographs may be admissible under one of two distinct rules. **Typically, photographs are admissible to illustrate testimony of a witness when that witness testifies from first-hand knowledge that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.** There is a second, alternative method of authenticating photographs that does not require first-hand knowledge. The ‘silent witness’ theory of admissibility authenticates ‘a photograph as a ‘mute’ or ‘silent’ independent photographic witness because the photograph speaks with its own probative effect.”

Washington, supra, 179 Md. App. at 44, 943 A.2d at 711 (citations omitted). **Thus, the pictorial testimony theory of authentication allows photographic evidence to be authenticated through the testimony of a witness with personal knowledge**, and the silent witness method of authentication allows for authentication by the presentation of evidence describing a process or system that produces an accurate result. *Cole, supra*, 342 Md. at 20–22, 672 A.2d at 1119; *In re Welfare of S.A.M.*, 570 N.W.2d 162, 164–65 (Minn.Ct.App.1997).

(Emphasis added.)

Appellants argue that L.C.-R.'s testimony, identifying the video recording as showing himself being beaten by the defendants, did not provide a sufficient foundation for the court to admit the video into evidence. The trial court disagreed, as do we. Although L.C.-R. had no knowledge regarding the technology that produced either the video recording or the State's copies of the recording, he did identify himself as one of the persons present in the recording. He also recognized the location depicted in the video, and he identified the appellants who were sitting in court as being the attackers shown in the video. He stated that the video showed "[w]hen we went into the apartments and they started hitting us."

In *Washington*, the Court of Appeals held that the State had failed to lay a sufficient foundation to authenticate the surveillance video recording pursuant to the "silent witness" method. That holding does not help appellants. *Washington* involved a shooting in the parking lot of a bar. There were no eyewitnesses. At trial, the State sought to admit a videotape that had been compiled from a CD that had itself been culled from the bar's eight-camera, around-the-clock surveillance system. The State called the bar's owner at trial to explain that, after the shooting, he was contacted by police, and arranged for the surveillance footage to be compiled and transferred to a CD and then to a videotape, but he also acknowledged that he had not himself performed that work. Washington objected, arguing that there was a break in the chain of custody between the original surveillance video provided by the bar owner and the actual videotape the State

sought to admit at trial. As the Court of Appeals summarized the problem, the video at issue in *Washington*

was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD, and then to a videotape. There was no testimony as to the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures. The State did not lay an adequate foundation to enable the court to find that the videotape and photographs reliably depicted the events leading up to the shooting and its aftermath.

406 Md. at 655.

But, in this case, the State did not rely upon the “silent witness” method of authentication. Instead, the State elicited testimony from a witness who was depicted in the recording, and the trial judge found the witness’s testimony adequate to persuade him that the recording was, in the wording of Rule 5-901(a), “what its proponent claims.” We perceive no abuse of discretion by the court in admitting the evidence.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. EACH APPELLANT TO PAY
ONE-HALF OF THE COSTS.**