

Circuit Court for Baltimore County
Case No.: C-03-CR-20-002109

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 961

September Term, 2022

LEON E. BROOKS-ANDERSON

v.

STATE OF MARYLAND

Leahy,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**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 bench trial in the Circuit Court for Baltimore County, Leon E. Brooks-Anderson, appellant, was convicted of theft of property with a value between \$25,000 and \$100,000 from his former employer, Loomis Armored U.S., a cash-transport company. At trial, the State played one video of Brooks-Anderson taking bags filled with cash out of a cage and organizing them on a cart, and another of him loading bags from the cart to the truck. In addition to the video played at trial, the State’s witnesses testified, over Brooks-Anderson’s objection, about portions of the security footage that were not played at trial or made available to either Brooks-Anderson or the State. On appeal, Brooks-Anderson contends that the circuit court erred in allowing this testimony because it violated the best-evidence rule. We disagree.

“Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court.” *Donati v. State*, 215 Md. App. 686, 708 (2014). We therefore review those decisions for an abuse of that discretion.

The best-evidence rule, as set forth in Maryland Rule 5-1002, states: “To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.”¹ The contents of the original may be “proved by evidence other than the original” if the original has been lost or destroyed. Md. Rule 5-1004(a). Thus, the rule “states a *preference* for original documents, but does not foreclose use of secondary evidence after a proper foundation has been laid showing good and sufficient reasons for the failure to produce the

¹ “Photograph” includes video tapes and motion pictures for purposes of this rule. Md. Rule 5-1001(b).

primary evidence.” *Gordon v. State*, 204 Md. App. 327, 347 (2012) (cleaned up). Indeed, any reason short of “intentional destruction to gain an unfair advantage” will suffice to allow use of secondary evidence. *State v. Cabral*, 159 Md. App. 354, 385 (2004) (“Carelessness, recklessness, ordinary negligence, and even gross negligence are all satisfactory explanations for the absence of an original.” (cleaned up)).

Here, the State was never in possession of any Loomis video footage other than that played at trial. One of the State’s witnesses described the nature of the surveillance video system at Loomis and testified that the camera software retained video for “90 plus days,” which is “industry standard.” Although none of the witnesses personally witnessed the events on the missing footage, they all personally reviewed the footage itself. Ultimately, however, the witnesses were only asked to download and save the portions of footage given to the State and played at trial. In the course of their investigation, employees of Loomis determined that footage was all that was pertinent to the case, and they had failed to retain other footage that did not show anything out of the ordinary. After the retention period lapsed, the remaining footage ceased to exist. There is nothing in the record to suggest that the decision to retain only some of the footage was made “intentional[ly]” with the purpose of “gain[ing] an unfair advantage.” *Id.* (cleaned up). The trial court, therefore, did not abuse its discretion in allowing testimony of individuals who had viewed the footage as secondary evidence.

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