

Circuit Court for Baltimore City
Case No. 119308008

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1003

September Term, 2023

DEVON MURRAY

v.

STATE OF MARYLAND

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Nazarian, J.

Filed: June 5, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After trial by jury in the Circuit Court for Baltimore City, Devon Murray was found guilty of first-degree assault and reckless endangerment for shooting at his former boss at an auto mechanic shop. On appeal, Mr. Murray argues that the court erred by finding that surveillance footage of the shooting was authenticated sufficiently and that the State's introduction of his MVA photo did not constitute a discovery violation. We see no error and affirm.

I. BACKGROUND

On September 25, 2019, Ola Aranmolate called 911 to report a shooting at his mechanic shop in Baltimore. When police arrived, Mr. Aranmolate told them that someone had walked into his shop and shot at him. He identified the shooter as “the guy that worked for [him]” and stated that his name was Devon. Mr. Aranmolate said that he could not remember the shooter's last name, but he found paperwork with the last name and gave it to police.

Mr. Aranmolate then agreed to be interviewed by police at another location. During the interview, police showed him a photograph of Mr. Murray. Upon seeing the photo, Mr. Aranmolate identified Mr. Murray as the employee who shot at him.

When the State called Mr. Aranmolate at trial, though, he refused to identify Mr. Murray as the shooter. He insisted that the shooter was not in the courtroom even though Mr. Murray was present. The State then confronted Mr. Aranmolate with the same photograph of Mr. Murray that police showed him during the interview and Mr. Aranmolate admitted that the person in the photo was the shooter:

[MR. ARANMOLATE:] Yeah, that's the guy.

[THE STATE:] Okay. And this is the photo that—

[MR. ARANMOLATE:] They show[ed] me, yes.

[THE STATE:] Okay. And this is the guy—when you say this is the guy, the guy that did what?

[MR. ARANMOLATE:] The guy that shot at me.

Right after, and over defense counsel's objection, the State confronted Mr. Aranmolate with a copy of Mr. Murray's Motor Vehicle Administration ("MVA") photo. The State asked whether the person in the MVA photo was the same as the person in the photo that police showed him and Mr. Aranmolate responded "[n]o."

The State then asked Mr. Aranmolate whether he recognized the man sitting at the defense table (Mr. Murray) and Mr. Aranmolate responded affirmatively, stating that he and Mr. Murray "work[ed] together" and that Mr. Murray was "a good boy" and "like [a] son to [him]." On the State's request, the court allowed the State to treat Mr. Aranmolate as a hostile witness, but Mr. Aranmolate never identified Mr. Murray at trial as the shooter.

Later on, the State called Detective Durel Harriston as a witness, the detective who administered the photo identification at the police station. The State showed Detective Harriston the MVA photo of Mr. Murray and asked "what did Mr. Aranmola[]te identify that individual in the picture as being?" Detective Harriston testified that Mr. Aranmolate identified the individual as the shooter.

The State also introduced a video of the incident taken from the surveillance footage at Mr. Aranmolate's shop. Mr. Aranmolate testified that the name of the video system was

Revel,¹ that the date and time stamps of the system were working correctly on the day of the incident, and that he was the only person who had access to the video system. He testified further that he understood how the system worked and knew the location of the cameras. Moreover, he was able to identify himself in the video. Over defense counsel’s objection to the video’s authentication, the court admitted the security footage. The video of the incident, which contained four camera angles that ran simultaneously, showed a man firing two shots in Mr. Aranmolate’s direction.

At the end of the trial, the jury found Mr. Murray guilty of first-degree assault and reckless endangerment but acquitted him of first- and second-degree attempted murder and use of a firearm in the commission of a crime of violence. The court sentenced Mr. Murray to two concurrent terms of fifteen years’ incarceration without the possibility of parole for the first five years.

We supply additional facts as necessary below.

II. DISCUSSION

Mr. Murray raises two issues on appeal:² *first*, whether the court abused its

¹ The trial transcript reflects the system name as “Revel (phonetic),” but the name of the video system is “Revo.”

² Mr. Murray phrased his Questions Presented as:

1. Did the trial court abuse its discretion by admitting surveillance footage from the complaining witness’[s] auto shop when the witness failed to sufficiently authenticate the video because he could not testify to the general reliability

Continued . . .

discretion in finding that the surveillance footage of the shooting was authenticated sufficiently; and *second*, whether the introduction of Mr. Murray’s MVA photo constituted a discovery violation. We hold that there was sufficient testimony to authenticate the surveillance footage and that the introduction of Mr. Murray’s MVA photo did not constitute a discovery violation because the State disclosed the photo to defense counsel under its continuing obligation to provide supplemental discovery.

A. The Court Did Not Abuse Its Discretion In Finding That The Surveillance Footage Of The Shooting Was Authenticated Properly.

Mr. Murray argues *first* that the trial court abused its discretion when it admitted surveillance footage of the shooting where the custodian, Mr. Aranmolate, “could not testify to its general reliability, how to access the footage, or how police received the footage.” The State counters that the threshold for authenticating evidence is “slight” and

of the footage, how to access the footage, or even how the police received the footage?

2. Did the trial court err when it found that public records are not subject to discovery rules and admitted into evidence an MVA photo of Mr. Murray that the State belatedly disclosed to defense counsel on the first day [of] trial and relied on heavily throughout its case to reinforce the identification of Mr. Murray as the shooter?

The State phrased its Questions Presented as:

1. Did the trial court soundly exercise its discretion in admitting surveillance video from the shooting?

2. Did the trial court properly find that the State did not commit a discovery violation and if not, was any error harmless beyond a reasonable doubt?

that “[t]he trial court soundly exercised its discretion in concluding that the State adduced sufficient foundational proof”

“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). Accordingly, “[w]e review the trial court’s authentication of evidence for an abuse of discretion.” *Covel v. State*, 258 Md. App. 308, 322 (2023), *cert. denied*, 486 Md. 157 (2023). “A trial court abuses its discretion when ‘no reasonable person would take the view adopted by the trial court,’ or when the ruling is ‘clearly against the logic and effect of facts and inferences before the court.’” *Prince v. State*, 255 Md. App. 640, 652 (2022), *cert. denied*, 482 Md. 746 (2023) (*quoting King v. State*, 407 Md. 682, 697 (2009)).

The authentication requirement generally “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Md. Rule 5-901(a). The trial judge “‘need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the *jury* ultimately might do so.’” *Jackson v. State*, 460 Md. 107, 116 (2018) (*quoting United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006)). Moreover, the jury need only find that the evidence is authentic “by a preponderance of the evidence,” meaning that that the evidence “is more likely than not” what the proponent purports it to be. *See State v. Sample*, 468 Md. 560, 598 (2020). “The threshold of admissibility is, therefore, slight.” *Jackson*, 460 Md. at 116.

There are two methods of video authentication in Maryland: “‘the pictorial testimony method, where video evidence is admitted through the testimony of a witness

with firsthand personal knowledge, and the silent witness method, when a witness can speak to the reliability and authenticity of the system used to procure the video.” *Covel*, 258 Md. App. at 323 (*quoting Washington v. State*, 406 Md. 642, 652 (2008)). Under the “silent witness” theory, “a party can authenticate video evidence through the ‘presentation of evidence describing a process or system that produces an accurate result.’” *Prince*, 255 Md. App. at 652 (*quoting Washington*, 406 Md. at 652). “Testimony under this theory may include 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 entire system.’” *Reyes v. State*, 257 Md. App. 596, 630–31 (2023) (*quoting Jackson*, 460 Md. at 115–16). But “[t]here is no strict rubric for admitting evidence under the silent witness theory,” *Covel*, 258 Md. App. at 323 (*citing Jackson*, 460 Md. at 116), nor are there “any rigid, fixed foundational requirements.” *Jackson*, 460 Md. at 117 (*quoting Department of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 26 (1996)).

The record here supports the trial court’s finding that the testimony authenticated the surveillance footage from Mr. Aranmolate’s mechanic shop. Mr. Aranmolate testified that he was the only person who had access to his shop’s video system and that no one could tamper with the system unless he called an engineer to help fix a problem. He testified as well that he understood how the system worked and knew the type of equipment that was used, identifying the name of the system as Revel.³ He testified, moreover, that he knew the locations of the cameras. And when the State showed him the surveillance

³ See footnote 1.

footage, Mr. Aranmolate confirmed that he recognized the location in the video as being captured by his camera and he identified himself in the video. Furthermore, he testified that the date and time of the system were working correctly on the day of the incident. Mr. Aranmolate did not dispute the accuracy of the surveillance footage or claim that it was tampered with in any way, nor did any other witness. Under these circumstances, the court did not err in determining that the State met the “slight” threshold for authenticating evidence.

Mr. Murray cites *Washington v. State* to argue that the State’s attempt to authenticate the video was deficient because Mr. Aranmolate did not testify to “the process of retrieving the footage, to the manner of operation of the cameras, or to the chain of custody of the footage.” In *Washington*, the State offered into evidence a videotape recording that was made from eight surveillance cameras. 406 Md. at 655. The authenticating witness testified that “[h]e hired a technician to transfer the footage from the eight cameras onto one disc in a single viewable format” but the witness could not identify the technician or the process used to edit the footage. *Id.* The Maryland Supreme Court held that the State did not lay an adequate foundation for authentication because the videotape “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” and “[t]here 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.” *Id.*

This case is distinguishable. Although the surveillance footage from Mr. Aranmolate’s shop contains different camera angles, the camera angles all run simultaneously and there was no testimony that a technician edited the footage into a “single viewable format.” *Id.* Unlike in *Washington* where there was no testimony as to “the reliability or authenticity of the images,” *id.*, Mr. Aranmolate confirmed that the date and time of the video system were working correctly on the day of the incident and that they were shown correctly on the video that the State offered at trial. He testified as well that he recognized the location depicted in the video as his mechanic shop and recognized himself in the video. Mr. Murray is right that Mr. Aranmolate did not testify as to “how he or anyone else accessed or retrieved the footage in this instance,” but testimony as to the retrieval of the footage is not a ““rigid”” or ““fixed”” foundational requirement. *Jackson*, 460 Md. at 117 (*quoting Cole*, 342 Md. 12 at 26); Md. Rule 5-901(a) (The requirement of authentication is satisfied so long as there is “evidence sufficient to support a finding that the matter in question is what its proponent claims.”). And whether video evidence has been authenticated sufficiently is a case-specific determination and “the trial judge must be given some discretion in determining what is an adequate foundation.” *Cole*, 342 Md. 12 at 26. We find that the court did not abuse its discretion in determining that the surveillance footage was authenticated properly.

B. The Introduction Of Mr. Murray’s MVA Photo Was Not A Discovery Violation.

Second, Mr. Murray argues that the court erred by “admitting into evidence an MVA photo of [him] that the State belatedly disclosed to defense counsel” The State

responds that it disclosed its intention to introduce Mr. Murray’s MVA photo pursuant to its continuing obligation to provide supplemental discovery and that “[t]he trial court did not err in failing to find a discovery violation”

On the first day of trial, the State attempted to introduce Mr. Murray’s MVA photo into evidence during Mr. Aranmolate’s testimony. Mr. Murray objected, arguing that he did not receive sufficient notice because the State emailed the photo to defense counsel on the morning of trial.⁴ The court allowed the State to ask Mr. Aranmolate whether he recognized the person in the photograph, but “h[e]ld the ruling sub curia at least as to the whole document coming in.”

On the second day of trial, the State moved to admit Mr. Murray’s MVA photo during its direct examination of Detective Harriston. Mr. Murray objected again on the basis that the State had failed to provide timely notice of its intent to use the photo. The State responded that “[it] did not intend to use [the photo] until the night before the trial when the State was aware.” The court overruled the objection on the ground that Mr. Murray’s MVA photo was not “discovery content” because it was a public record.

“We review *de novo* whether a discovery violation occurred.” *Thomas v. State*, 168 Md. App. 682, 693 (2006), *aff’d*, 397 Md. 557 (2007) (*citing Cole v. State*, 378 Md. 42, 56 (2003)); *Green v. State*, 456 Md. 97, 124 (2017) (“Where, as here, a trial court does not

⁴ Defense counsel also argued that the MVA photo did not fall under the “business record” exception.

expressly determine that a discovery violation occurred, an appellate court reviews the issue without deference.”).

“Maryland Rule 4-263 governs discovery in criminal cases in the circuit courts.” *Thomas v. State*, 397 Md. 557, 567 (2007). The Rule provides that the State must provide defense counsel with the opportunity to inspect “all documents . . . , photographs, or other tangible things that the State’s Attorney intends to use at a hearing or at trial.” Md. Rule 4-263(d)(9). The State must “exercise due diligence to identify all of the material and information that must be disclosed under th[e] Rule” and must make the disclosures “within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant” Md. Rule 4-263(c)(1) & (h)(1). Additionally, both the State and Defense are under a “continuing obligation” to supplement their responses to discovery requests with any further material information that is obtained. Md. Rule 4-263(j).

“The obligation of due diligence helps protect the defendant from unfair surprise, but the underlying purpose of Md. Rule 4-263 does not warrant extending the obligation of due diligence to materials beyond the grasp of the State’s Attorney.” *Alarcon-Ozoria v. State*, 477 Md. 75, 101–02 (2021). Accordingly, “the obligation of due diligence does not attach until the material comes within the possession or control of the State’s Attorney, or a person who regularly reports to the State’s Attorney, or has reported to the State’s Attorney in the particular case.” *Id.* at 102, 104 (“The plain text of the rule expressly omits any language that the State should proactively discover materials held by third parties uninvolved in the prosecution or investigation of a case.”).

The Supreme Court of Maryland’s decision in *Alarcon-Ozoria v. State* is instructive. *Id.* In that case, the State contacted a correctional facility five days before trial to request recordings of jail calls made by the defendant, then provided the recordings to the defendant on the morning of trial. *Id.* at 86–87. The defendant argued that the State violated its discovery obligations because “the requirement of due diligence pursuant to Md. Rule 4-263(c)(1) should have obligated the State to investigate the existence of any jail call recordings prior to the week before trial.” *Id.* at 103–04. The State countered that “it could have made an earlier inquiry, but it was not required to do so.” *Id.* at 94. The State asserted further that “its obligation to act promptly in disclosing the jail calls did not materialize until the State gained possession of the material.” *Id.*

The Court agreed with the State, holding that “a jail call recording, held by a correctional facility, does not trigger the State’s mandatory disclosure requirements pursuant to Md. Rule 4-263(c) because the correctional facility is not part of the State’s Attorney Office, nor does it directly or regularly report to the State’s Attorney” *Id.* at 98. The Court held that “the obligation to exercise due diligence, according to the plain text of the rule, did not attach until [the jail call recordings] came into the actual or constructive possession or control of the State’s Attorney.” *Id.* at 100–01. And ultimately, the Court found that no discovery violation occurred because, “[o]nce the State acquired the recordings, it satisfied its due diligence obligation by disclosing the material within several days.” *Id.* at 106.

This case is similar. The State was obligated to use due diligence to disclose Mr. Murray’s MVA photo to defense counsel (pursuant to Maryland Rule 4-263(c) & (d)(9)), but that obligation did not apply until the MVA photo was within the State’s possession or control. Mr. Murray does not argue that the State or anyone who reported to the State had possession or control of the MVA photo prior to the night before the trial. Instead, like the defendant in *Alarcon-Ozoria*, Mr. Murray argues that the State should have obtained the MVA photo earlier. But Maryland Rule 4-263 “omits any language that the State should proactively discover materials held by third parties uninvolved in the prosecution or investigation of a case,” *id.* at 104, and the MVA was an uninvolved third-party in this case, just as the correctional facility was in *Alarcon-Ozoria*.

Mr. Murray contends that “the State violated the plain and unambiguous meaning of Rule 4-263(d)(9)” because “[his] MVA record is both a document and a photograph that the State intended to use at trial, which the State did not disclose in a timely manner.” But in its response to Mr. Murray’s objection at trial, the State asserted that “[it] did not intend to use [the MVA photo] until the night before the trial” And nothing in the record suggests that that the State had an earlier intention to use the photo. Mr. Murray also argues that the court “overruled defense counsel’s objection, apparently under the misimpression that the State did not have to disclose public records under its discovery obligations.” We agree that the discovery rules do not carve out an exception for public records and that the State was required to disclose the MVA photo to defense counsel. But when a party obtains discoverable material after making an initial disclosure, the party may provide

supplemental discovery pursuant to the “continuing obligation to produce discoverable material and information to the other side.” Md. Rule 4-263(j). That’s what the State did here when it obtained Mr. Murray’s MVA photo and disclosed it to defense counsel the next day. We agree with the circuit court that the State did not violate its discovery obligations.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
APPELLANT TO PAY COSTS.**