

Circuit Court for Dorchester County  
Case No. C-09-CR-21-000082

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1200

September Term, 2022

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DA'YON SHYMERE LOFLAND

v.

STATE OF MARYLAND

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Wells, C.J.  
Friedman,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: September 10, 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 MD. RULE 1-104(a)(2)(B).

Da'yon Shymere Lofland was convicted in the Circuit Court for Dorchester County for the murder of Da'Jour Sorrell. Lofland appeals his conviction asserting several errors in his trial. For the reasons that follow, we affirm.

### **FACTUAL BACKGROUND**

The facts of this case are convoluted. There are just too many assailants, attacking too many victims, with too many guns, firing rounds of too many calibers, to easily keep the facts straight. We have pared the facts down to the minimum necessary for resolution.

On April 5, 2021, five men—Justin Boyce, Elijah Jordan, Troy Rose, Keiford Copper, and Da'yon Lofland—decided to kill Anthony Harris. They armed themselves with handguns and set off in search of Harris. On the way to find Harris, however, they ran into Da'Jour Sorrell at a street corner in Cambridge. Sorrell was shot and killed, and his body was left on the ground. By the time police arrived, the five assailants had fled the scene. Boyce was found near the crime scene, drunk and high.

The police searched the scene for forensic evidence and recovered shell casings from a 9-millimeter semiautomatic handgun. They also dug out three bullets—two from cars and one from a wall—that had been fired by a .38 caliber handgun.<sup>1</sup> As a result, police

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<sup>1</sup> Many people do not distinguish between a round and a bullet. Rounds are made up of brass shell casings, gunpowder, and lead bullets. BRIAN J. HEARD, FORENSIC BALLISTICS IN COURT: INTERPRETATION AND PRESENTATION OF FIREARMS EVIDENCE 67-68, 81 (2013). A semiautomatic gun ejects its shell casings as a round is fired. *Id.* at 12. By contrast, a revolver retains the shell casings as a round is fired and the casings must be removed by hand. BRIAN KEVIN, GUNS & AMMUNITION 18 (1980). Moreover, an expert witness can determine whether a given gun is likely to have fired a given bullet. *Abruquah v. State*, 483 Md. 637 (2023). Finally, the diameter of a round must match the diameter of the gun's barrel. These diameters are measured either in millimeters or fractions of an inch

believed there had been at least two shooters, with at least two different caliber handguns. An autopsy was performed on Sorrell's body and no bullets were recovered. As a result, police did not know which gun fired the bullets that killed Sorrell. The police also determined that surveillance cameras had recorded the events. The surveillance photos obtained from the City of Cambridge showed assailants accosting Sorrell, but the photos were too blurry to make individual identifications.

The police eventually began to identify the five assailants. A few days after the shooting, after he had sobered up, Boyce admitted involvement in the shooting and implicated Lofland, Rose, and Jordan. Copper was arrested a few weeks later for possession of a 9-millimeter handgun. When questioned, he too admitted involvement in the shooting and implicated Lofland, Rose, and Jordan. Critically, Copper was again arrested a few months later and again charged with illegal possession of a handgun, this time a .38 revolver. Finally, the police were also able to place Lofland at the scene of the murder because he wore a GPS monitoring device at the time. The State's Attorney for Dorchester County charged Lofland and Rose with Sorrell's murder.

At trial, the State's evidence that Lofland had been at the scene of Sorrell's murder was relatively strong and included the evidence of the GPS monitor and the blurry surveillance photos provided by the City of Cambridge. The main evidence of Lofland's role in the murder—whether he was one of the shooters or a mere bystander—came from two of the other assailants: Boyce and Copper.

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(reported in decimals). HEARD, *supra*, at 71-72. Thus, the guns and the rounds described in this case include one or more 9-millimeters, one or more .38s, a .22, and maybe a .40.

Boyce testified that on the day of the murder, four of the five men were armed before they met up with Copper and that they all went out after Harris together. Boyce specifically testified that Lofland had a 9-millimeter handgun, while Rose carried a .38 caliber handgun. Boyce testified that before they found Harris, he got black-out drunk, took several Xanax, and claimed to have had difficulty remembering the rest of the events. Boyce, however, testified that he did remember Lofland starting the attack by asking Sorrell, “what did I say I was going to do when I [see] you[?]” Boyce testified that he next heard gunshots but did not know who was shooting.<sup>2</sup>

Copper testified that he was unarmed but that the other four men had guns, Lofland had a “black nine” [9-millimeter] handgun<sup>3</sup>, Rose had a silver revolver,<sup>4</sup> and Jordan had a silver twenty-two [.22 caliber] handgun. Copper testified that the five men had gone looking to kill Harris, but that when they came across Sorrell, Lofland started shooting. Copper testified that afterwards, the five assailants separated and fled and, when he met up with them later, Lofland and Rose were celebrating, saying, “we got him.”

Lofland’s theory of the case was that Boyce and Copper were not credible witnesses, and that their testimony was the only evidence that supported that Lofland was a shooter.

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<sup>2</sup> The implication that the State was attempting to draw was that Lofland had previously threatened to kill Sorrell when he next saw him, and when the opportunity arose, reminded Sorrell of his threat, and carried it out.

<sup>3</sup> Copper testified that Boyce and Lofland both had “black nine[s]” [9-millimeters]. However, Boyce testified that he had a forty [.40 caliber], which was recovered from a trash can near the scene. There was no evidence that that gun was fired.

<sup>4</sup> Copper didn’t further identify this revolver, but the State suggested that it was a .38 caliber revolver.

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The defense also suggested that Copper was the shooter. In support of that theory, the defense made much of the fact that, after Sorrell's murder, Copper was arrested twice for possession of handguns, first with a 9-millimeter and later with a .38 caliber revolver, either or both of which, the defense seemingly argued, he could have used in Sorrell's murder.<sup>5</sup>

To refute the defense's argument that Copper's .38 caliber revolver (the gun that had been found by the police in Copper's possession several months after the shooting) could have been the same weapon used in Sorrell's murder, Sergeant Lance Lloyd testified that Copper's .38 had been tested at the police lab, compared to the .38 caliber bullets found at the scene, and determined not to be a match. Sergeant Lloyd was adamant that Copper's .38 was not the .38 used in Sorrell's murder.

Except that wasn't exactly true. At the close of evidence, the defense asked for the lab report that purportedly excluded Copper's .38 as the .38 used in Sorrell's murder. The State backtracked. Now the State said that Copper's .38 had been tested but could not be ruled in or out as having been used in Sorrell's murder. Under the circuit court's supervision, the parties entered into a joint stipulation, which was read to the jury:

[O]n November 21, 2021[,] a .38 caliber revolver was recovered on a traffic stop from Keiford Copper. That gun can neither be excluded or included as being used on the night of April 5, 2021[,] at Camelia Ave and Greenwood Ave[, which were the date and location of Sorrell's murder].

This stipulation suggested that Copper's .38 had been tested but that the results were inconclusive. That wasn't exactly true either.

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<sup>5</sup> The defense also argued that Copper had received favorable consideration from the State on the gun charges in exchange for testifying against Lofland and Rose.

The jury returned a verdict by which it found Lofland guilty of the murder of Sorrell.<sup>6</sup> After the verdict, defense counsel again asked whether there was a lab report regarding Copper's .38. This time, the State revealed that it had not tested Copper's .38 at all, stating incongruously that there were no bullets to test because Copper's .38 was a revolver.<sup>7</sup> As a result, Lofland filed a motion for new trial, which the circuit court denied. This timely appeal followed.

### DISCUSSION

Lofland raises six issues in this appeal.<sup>8</sup> We think only his sixth issue, in which he argues that the circuit court abused its discretion in denying his motion for a new trial, merits an extended analysis.

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<sup>6</sup> The jury also convicted Lofland of conspiracy to murder Harris.

<sup>7</sup> We say incongruously because the fact that Copper's .38 was a revolver meant that there were no shell casings to compare, see *supra* note 1, but there were three .38 bullets found at the scene, which as the circuit court pointed out, could and should have been compared.

<sup>8</sup> We address Lofland's other arguments here:

- Lofland's *first* argument is that the evidence was insufficient to show that he had deliberate premeditation to kill Sorrell (presumably as opposed to Harris). We disagree. Boyce testified that immediately before he heard gunshots, he heard Lofland ask Sorrell "what did I say I was going to do when I [see] you[?]" This testimony alone provided sufficient evidence from which a reasonable jury could find deliberate premeditation beyond a reasonable doubt.
- Lofland's *second* argument is that a body camera video that showed Sorrell's corpse was not relevant, and even if it was, it was more prejudicial than probative. As a result, he argues, it should not have been admitted. We observe that this video helped establish the time and place of the shooting, and that the shooting coincided with the GPS activity on Lofland's ankle monitor. The video also helped established that there was a gun next to Sorrell's body, which corroborated Copper's testimony that he saw Sorrell

“reach[ ] for something.” As a result, the video was relevant. *See Reid v. State*, 305 Md. 9, 21 (1985) (affirming court’s decision to admit photographs with graphic nature because the photographs were “more clear than words.”). Moreover, given the probative value, we can’t say that the circuit court erred in finding that it was more probative than prejudicial. Thus, the circuit court did not err by admitting the body camera video.

- Lofland’s *third* argument is that the circuit court erred by admitting hearsay evidence that Harris was a suspect in another crime (which purportedly formed the motive for Lofland, Rose, and their confederates to want to kill Harris). Although Lofland objected to one specific question on this topic, he failed to object later when the same evidence was introduced through Boyce’s testimony. As a result, Lofland cannot now complain about the hearsay. *See Williams v. State*, 131 Md. App. 1, 26 (2000) (“[w]hen evidence is received without objection, a defendant may not complain about the same evidence coming in on another occasion even over a then timely objection.”).
- Lofland’s *fourth* argument is that the circuit court erred in admitting a photograph of him holding a gun that he claims had no connection to the murder. We see no merit to this contention. Even if this gun was not used in the murder, it supported the State’s theory that the four men gathered several guns for use in their plan to murder Harris. We see no error in the admission of the photograph.
- Lofland’s *fifth* argument is that the surveillance video obtained from the City of Cambridge was not properly authenticated. We are not persuaded. Here, Detective Bryant Simmons testified that he was able to locate the city cameras that covered the area of the shooting through a unified video system to which the police had access. Detective Simmons testified that he downloaded and reviewed the video. He testified that once the video was downloaded, it could not be altered, and it was downloaded in “real time and normal zoom.” Detective Simmons also testified that the time stamp on the video was accurate. A witness need not have firsthand knowledge of the event to authenticate a video. *Jackson v. State*, 460 Md. 107, 116 (2018) (citations omitted). Our courts have consistently held that “so long as sufficient foundational evidence is presented to show the circumstances under which it was taken and the reliability of the reproduction process,” photographs and video may be admitted. *Jackson*, 460 Md. at 116-17 (citing *Washington v. State*, 406 Md. 642, 652 (2008)). As a result, we conclude that Detective Simmons’ testimony was sufficient to authenticate the surveillance video.

On a motion filed within 10 days after a verdict, a circuit court may order a new trial if to do so is “in the interest of justice.” MD. R. 4-331(a). We review the denial of such a motion on a very deferential abuse of discretion standard. *Williams v. State*, 462 Md. 335, 345 (2019). Under the circumstances of this case, we hold that the circuit court did not abuse its discretion in denying the motion. We explain.

The State had an affirmative obligation to test Copper’s .38 and to provide Lofland with a report of its findings. *See State v. Williams*, 392 Md. 194, 210 (2006) (requiring the State to discover “anything, and everything” concerning an essential witness’ credibility); *see also* MD. R. 4-263 (d) (5), (6). It didn’t. Further, the State didn’t properly disclose its failure to test Copper’s .38, because the stipulation did not reveal that the reason that Copper’s .38 could neither be ruled in or out was because the State did not test it. Our challenge, therefore, is to determine whether the circuit court abused its discretion by deciding that the State’s errors did not harm Lofland to the point that the interest of justice demanded a new trial.

We believe that Lofland suffered two harms:

*First*, there was a chance that, if it had been tested, Copper’s .38 would have been consistent with the .38 caliber bullets found at the scene. We don’t know what the likelihood of that would have been. But we do know that even if Copper’s .38 was consistent with the bullets found at the scene, it wouldn’t have absolved Lofland of participation in the crime. That’s because nobody testified that Lofland, himself, was using a .38 caliber handgun. All of the testimony—and it admittedly wasn’t much—was that there were two shooters, one with a .38 caliber, and one with a 9-millimeter, and that



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Lofland was shooting with a 9-millimeter. Thus, as the circuit court noted, even if Copper's .38 was used during the shooting, that would not have changed Lofland's purported involvement. It would only have given Lofland a tool with which to cross-examine Copper and undermine Copper's credibility with the jury. And while that chance could have been valuable to Lofland because Copper was the most important witness against him, it was only a chance.<sup>9</sup>

*Second*, because the State failed to properly disclose that it had failed to test Copper's .38, Lofland was deprived of the opportunity to argue that the State did a rushed or sloppy job of investigating this crime. Unfortunately for Lofland, however, it would have been the only fact in support of that argument. In reality, there is nothing else in the record to suggest that the police investigation was rushed or sloppy. And there were many facts in the record that would have undermined this claim. Thus, although Lofland lost a fact in support of a potential defense strategy, we cannot say how important that loss was.

Fortunately, we don't have to quantify exactly what Lofland lost. We need only determine if the circuit court abused its discretion by finding that a new trial was not required "in the interests of justice." MD. R. 4-331(a). That is an easier task. Defendants

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<sup>9</sup> As a side note, although Boyce was intoxicated at the time of the shooting, which arguably impaired his credibility with the jury, his testimony that Lofland had a 9-millimeter and that Lofland took the 9-millimeter with him in their search for Harris referenced events that occurred before Boyce became intoxicated. Additionally, when Boyce cooperated with the police, the investigation was in its early stages. Moreover, Boyce's statements were later corroborated by texts messages between Rose and Lofland, Lofland's GPS monitor, and the surveillance footage from the city cameras. So, although Copper was an important witness against Lofland, he was not the only witness against Lofland.

are not entitled to a perfect trial, just a fair one. *Gutierrez v. State*, 423 Md. 476, 499 (2011). Our extensive review of the record reveals that, at most, Lofland could have had the chance at one more fact to try to discredit Copper, and one fact to argue that the police investigation was sloppy. We are not persuaded that the circuit court abused its discretion by finding that a new trial was not required to mitigate those losses. We, therefore, hold that the circuit court did not abuse its discretion in denying Lofland's motion for a new trial.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR DORCHESTER COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**