

Circuit Court for Baltimore City
Case No. 121280030

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1561

September Term, 2022

CHRISTOPHER MOONEY

v.

STATE OF MARYLAND

Reed,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: October 13, 2023

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

This appeal stems from criminal charges related to the non-fatal shooting of Mr. Joshua Zimmerman. After a trial held in October 2022, a jury in the Circuit Court for Baltimore City convicted the appellant, Mr. Christopher Mooney, of second-degree assault, reckless endangerment, possession of a regulated firearm by a prohibited person, illegal handgun possession, illegal possession of ammunition, and discharging a firearm in Baltimore City. The jury found Mooney not guilty of attempted first-degree murder, attempted second-degree murder, and first-degree assault.

For the second-degree assault, the court sentenced Mooney to 10 years in prison. For sentencing purposes, the court merged the reckless endangerment conviction into the second-degree assault conviction. As to the possession of a regulated firearm by a prohibited person conviction, the court sentenced Mooney to a consecutive 15 years in prison with the first five years to be served without the possibility of parole. For the illegal handgun possession, the court sentenced Mooney to three years of incarceration to be served consecutive to the other counts. As to the illegal possession of ammunition and discharging a firearm in Baltimore City convictions, the court sentenced Mooney to “one year as to each charge, . . . concurrent with the other charges, for a total aggregate sentence of 28 years to the Division of Correction[.]”

This timely appeal followed. Mooney presents one question for our review:

Whether the trial court erred by admitting the State’s key piece of evidence (a video-State’s #1A) without the required authentication?

For the following reasons, we shall affirm the judgments of the circuit court.

BACKGROUND

The State adduced the following evidence at trial. On the evening of September 3, 2021, Zimmerman went to a medical marijuana dispensary in the Hampden neighborhood of Baltimore City. After Zimmerman left the dispensary, he sat in his truck and saw Mooney walking down the street. At trial, Zimmerman explained that he suspected that Mooney was having sexual relations with Zimmerman’s child’s mother, who was Zimmerman’s girlfriend around the time of the shooting.

Outside of the dispensary, Mooney said: ““what’s up[.]”” Zimmerman responded and said: ““you’re a bitch[.]”” Zimmerman testified about what happened next: “I cracked my door and I’m looking out and I didn’t see him. As soon as I sat back that’s when the gunshots happened. . . . That’s when I got shot.” Mooney stopped behind Zimmerman’s truck and shot a gun into the back of the truck. One of the bullets struck Zimmerman’s back, around his spine, while he sat in the truck. The bullet, however, did not penetrate Zimmerman’s body.

A nearby residence had an exterior camera that captured video footage of the shooting. Detective Victor Liu of the Baltimore City Police Department recovered that video, and the State introduced that video into evidence at trial as State’s Exhibit 1A, over Mooney’s counsel’s objection. The video was published to the jury, and Zimmerman testified about what he observed on the video. This Court has reviewed the video, which is one minute and 51 seconds long. The video shows the following events. Mooney walked by Zimmerman, who was sitting in the driver’s seat of his parked SUV.

Mooney then stopped behind the vehicle, turned around, shot into the back of the vehicle, and then fled the scene as Zimmerman exited the driver’s seat of the vehicle.

Zimmerman called 911, and when the police arrived, he told them that he “got shot by Christopher Mooney.” Zimmerman was then taken to the hospital where he was treated for his injuries. He obtained photographs of Mooney through Facebook and provided those photographs to police.

On the night of the shooting, Detective Liu responded to the scene and observed that Zimmerman’s truck had “the glass shot out.” Detective Liu observed bullet holes on the back of the truck. He recovered shell casings around the vehicle. A bullet was recovered from the driver’s seat and another bullet was “lodged in the bulkhead of the vehicle.”

Detective Liu obtained the Facebook photos provided by Zimmerman and “cross referenced” them “with . . . the arrest viewer and MVA to develop” Mooney’s identity as the suspect. The parties stipulated that Mooney had “been convicted of a crime for which he is prohibited from possessing a regulated firearm under the laws of this State.”

We shall include additional facts as relevant to our discussion.

DISCUSSION

On appeal, Mooney claims that the trial court erred in admitting the video of the shooting (State’s Exhibit 1A) because the foundational requirements for authentication were not met. According to Mooney, Zimmerman could not authenticate the video under the pictorial testimony method of authentication because Zimmerman was not a witness to the entirety of the video. Moreover, Mooney claims that even if the State had

attempted to introduce the video through Detective Liu’s testimony (under the silent witness method of authentication), Detective Liu’s testimony would have been insufficient to authenticate the video.

As a threshold matter, the State responds by asserting that Mooney’s appellate claim is unpreserved because Mooney’s argument “is not the same one he raised at trial.” In the alternative, the State argues that Zimmerman’s testimony provided a sufficient foundation to authenticate the video footage under the pictorial testimony method of authentication.

“When an appellant claims evidence was erroneously admitted based on lack of authenticity, we review the trial court’s decision for abuse of discretion.” *Sykes v. State*, 253 Md. App. 78, 90 (2021). “Pursuant to Maryland Rule 5-901(a), authentication of evidence . . . is a condition precedent to its admissibility, and the condition is satisfied where there is sufficient evidence ‘to support a finding that the matter in question is what its proponent claims.’” *Id.* at 91 (quoting Md. Rule 5-901(a)). “[T]here must be sufficient evidence for a reasonable juror to find that the [evidence] is authentic by a preponderance of the evidence.” *State v. Sample*, 468 Md. 560, 598 (2020).

Photographs and videos “may be authenticated under several theories, including the ‘pictorial testimony’ theory[.]” *Reyes v. State*, 257 Md. App. 596, 630 (2023) (quoting *Washington v. State*, 406 Md. 642, 652 (2008)).¹ “[T]he pictorial testimony

¹ “A ‘videotape is considered a photograph for admissibility purposes[.]’ and both videotapes and photographs are ‘subject to the same general rules of admissibility[.]’” *Reyes*, 257 Md. App. at 630 (quoting *Washington*, 406 Md. at 651).

theory of authentication allows photographic evidence to be authenticated through the testimony of a witness with personal knowledge[.]” *Washington*, 406 Md. at 652. Under that method of authentication, videos are admissible “to illustrate testimony of a witness when that witness testifies from first-hand knowledge that the [video] fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time.” *Id.* at 652 (quotation marks and citation omitted).

During Zimmerman’s testimony, the following occurred when the State first attempted to move State’s Exhibit 1A into evidence:

[THE STATE:] Again, this is for identification purposes only, 1A. Do you recognize this image, sir?

[ZIMMERMAN:] Yes, sir.

[THE STATE:] Okay. And what is this an image of?

[ZIMMERMAN:] It’s an image of my truck. Um, the dispensary, a few houses, parking lot, but that’s my truck right there with me in it (indicating)?

[THE STATE:] Okay. And is this an accurate depiction of the night?

[ZIMMERMAN:] Absolutely.

[THE STATE:] Okay. And it’s a true depiction of what you recall?

[ZIMMERMAN:] Yes.

[THE STATE:] It doesn’t look like there’s been any alterations or edits --

[ZIMMERMAN:] Absolutely.

[THE STATE:] -- to it?

Okay. And do you know what this is in the background, this building over here (indicating)?

[ZIMMERMAN:] Um, it used to, uh, a mechanical spot.

[THE STATE:] Okay.

[ZIMMERMAN:] But I don't know what it is now, I forgot.

[THE STATE:] Gotcha. But this is the -- this is what you know to be the 3900 block of Falls Road?

[ZIMMERMAN:] Yes, sir.

[THE STATE:] Okay. I will play a little bit for you as well. (Playing 1A for the witness.)
And does there appear to be any edits or changes to the video as I played it for you?

[ZIMMERMAN:] No.

[THE STATE:] Okay. And where -- are you in this video?

[ZIMMERMAN:] Yes, sir, I'm in the truck.

[THE STATE:] Where are you?

[ZIMMERMAN:] I'm in the truck.

[THE STATE:] You're in the truck. . . .
Your Honor, the State would move into evidence State's Exhibit 1A.

Defense counsel objected to the admission of the exhibit, and a bench conference occurred. The court determined that the State had to ask additional questions to lay a proper foundation for the exhibit:

[DEFENSE COUNSEL]: I mean, there's no way to know if that video's been altered. It's somebody else's Ring

camera. These aren't still photographs of what happened.

THE COURT: Has he watched it?

[DEFENSE COUNSEL]: I mean --

THE COURT: I don't think that's necessarily --

[DEFENSE COUNSEL]: And that was other --

THE COURT: -- a difference between still photographs and, um, video. If he's able to authenticate it, he's able to authenticate it, but I don't.

[DEFENSE COUNSEL]: Right. But I don't know that he watched the whole thing either --

THE COURT: I don't know either.

[DEFENSE COUNSEL]: -- which is what I wanted to voir dire him on.

THE COURT: Yeah.

[THE STATE]: He has watched it in view, in preparation of this trial, he has --

THE COURT: Well, you -- you can ask him all that before, you haven't laid the appropriate foundation for it yet. I don't know if that video --

[THE STATE]: He's authenticated it as to be the date and the time of the incident, it was a true and accurate reflection of that date and time.

THE COURT: There are other questions you need to ask him, like, has he watched it.

[THE STATE]: Okay.

THE COURT: And is it a fair and accurate representation of what happened. I mean, I'm not trying --

[THE STATE]: Okay.

THE COURT: Ask some more foundational questions.

[THE STATE]: Sure.

The State proceeded to ask additional foundational questions, and then the court admitted the video:

[THE STATE:] Mr. Zimmerman, did you watch this video in preparation?

[ZIMMERMAN:] Excuse me?

[THE STATE:] Did you watch this video in preparation?

[ZIMMERMAN:] Yes, I did.

[THE STATE:] Okay. And after seeing that video was that a true and accurate depiction of the events that occurred that day?

[ZIMMERMAN:] Yes.

[THE STATE:] And there was nothing that was changed or altered?

[ZIMMERMAN:] No.

[THE STATE:] From your recollection thereof?

[ZIMMERMAN:] No.

[THE STATE:] Your Honor, the State at this time would move into evidence State's Exhibit 1A.

THE COURT: Over objection, State's 1A is admitted.

On appeal, Mooney claims that Zimmerman was unable to authenticate portions of the video that Zimmerman did not observe in real time during the shooting. The State

argues that this portion of Mooney’s claim is unpreserved because Mooney’s counsel did not make this specific argument at trial. Although Mooney’s counsel did not specifically argue this contention below, “[p]reservation for appellate review relates to the issue advanced by a party, not to every legal argument supporting a party’s position on such issue.” *Smith v. State*, 176 Md. App. 64, 70 n.3 (2007). At trial, Mooney’s counsel argued that the video was not properly authenticated because the video was captured by “somebody else’s Ring^[2] camera[,]” and “there’s no way to know if that video’s been altered.” That argument is sufficient to preserve Mooney’s appellate claim. *See also* Md. Rule 4-323(c) (“For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.”).

Turning to the substance of Mooney’s argument, Mooney contends that Zimmerman was unable to authenticate the video. Expanding on his claim in his reply brief, Mooney argues as follows: “Because the critical shooting part of the video Zimmerman did not see, that portion could only be admitted under the silent witness theory^[3]” of authentication. In essence, Mooney argues that witnesses can only

² “Ring Inc. provides security products. The Company offers alarms, video doorbells, security systems, cameras, and lighting products.” Bloomberg, *Ring Inc*, <https://www.bloomberg.com/profile/company/0961754D:US#xj4y7vzkg> (last visited Sept. 28, 2023).

³ “[T]he silent witness method of authentication allows for authentication by the presentation of evidence describing a process or system that produces an accurate result.”
(continued...)

authenticate videos under the pictorial testimony method when they observe *every* moment of the video from a perspective that viewed the *full frame* of the video. That argument misses the mark because the requirements for authentication are not as strict as Mooney suggests. *Cf. Jackson v. State*, 460 Md. 107, 116 (2018) (noting that the threshold for authentication is “slight”). Indeed, “the court 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.” *Sykes*, 253 Md. App. at 91 (quoting *Darling v. State*, 232 Md. App. 430, 455 (2017)).

Under Md. Rule 5-901(b)(1), evidence can be authenticated through “[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be.” Here, Zimmerman testified that he had watched the video. He testified that he was the individual depicted in the video. He testified that nothing had been edited on the video. He testified that the video was “a true and accurate depiction of the events[.]” Although Zimmerman’s back was facing Mooney when Mooney shot him, Zimmerman testified from personal knowledge about the location and events of the shooting, as captured on the video. *Cf. Md. Rule 5-901(b)(4)* (illustrating that evidence can be authenticated through “[c]ircumstantial evidence, such as appearance, contents, substance, internal

Washington, 406 Md. at 652. Under the silent witness method of authentication, “[t]he foundational basis may be established through testimony relative to ‘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.’” *Jackson v. State*, 460 Md. 107, 117 (2018) (quoting *Washington*, 406 Md. at 653). Despite Mooney’s framing of this issue on appeal, the State did not attempt to authenticate the video footage through the silent witness method. Instead, the State authenticated the video through the pictorial testimony method during Zimmerman’s direct examination.

patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be”); *Sample*, 468 Md. at 567-68 (holding that “Facebook-related evidence” was sufficiently authenticated through circumstantial evidence); Maryland Criminal Pattern Jury Instructions 3:01 “Direct and Circumstantial Evidence” (instructing the jury that “[i]n reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial”). The limitations on Zimmerman’s peripheral vision during the shooting went only to the weight of his testimony and not to the admissibility of the video.

For all these reasons, the court did not abuse its discretion in admitting the video.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**