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IN THE
COURT OF APPEALS OF INDIANA

Michael R. Hamilton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2022

Court of Appeals Case No.
21A-CR-2519

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

The Honorable Stanley E. Kroh,
Magistrate

Trial Court Cause No.
49D29-2104-F4-12308

Najam, Judge.

Statement of the Case

[1] Michael R. Hamilton appeals his conviction for burglary, as a Level 4 felony, following a bench trial. He presents a single issue for our review, namely,

whether the trial court abused its discretion when it admitted into evidence a video recording. We affirm.

Facts and Procedural History

[2] On April 14, 2021, Marvin Fredrick came home from work around 4:00 p.m. and ate dinner with his wife, Maria. After dinner, Marvin went outside “to mess with” a BB gun he had bought earlier that day. Tr. at 37. When he was done, Marvin put the BB gun down in a “back room” of the house, and then he went upstairs to take a nap. *Id.* at 38. After his nap, Marvin came back downstairs with the intention to take the BB gun outside again. But Marvin could not find the BB gun, and he asked Maria if she had moved it. She said no. When they could not find the BB gun after searching the house, they checked the recording from a surveillance camera at the rear entry to the house “to see if [he] came in with it or did not come in with it” when he had been outside with the gun earlier. *Id.* at 39. That surveillance video showed that, at approximately 8:00 p.m. that evening, an unknown man entered the house through the back door and, about thirty seconds later, left the house holding the BB gun.

[3] The Fredricks contacted the police, and an officer with the Indianapolis Metropolitan Police Department (“IMPD”) came to the house. Marvin had “copied [the surveillance video] on [his] phone and put it on the computer and then put it on a memory stick.” *Id.* at 40. Maria gave the memory stick to the officer. Later, Officer Jonathon Willey, who was familiar with Hamilton,

watched the surveillance video and identified Hamilton as the man who broke and entered the Fredricks' home and stole the BB gun.

- [4] The State charged Hamilton with burglary, as a Level 4 felony. During the ensuing bench trial, Hamilton objected to the admission of State's Exhibit 1, which was a copy of the surveillance video showing Hamilton leaving the Fredricks' home with the BB gun. The copy had been made by someone using a hand-held videorecording device to record a playback of the video on a screen. The trial court admitted State's Exhibit 1 over Hamilton's objection. And the court found Hamilton guilty as charged. The court sentenced Hamilton to eight years, with two years suspended. This appeal ensued.

Discussion and Decision

- [5] Hamilton contends that the trial court abused its discretion when it admitted into evidence State's Exhibit 1. The decision to admit or exclude evidence lies within the sound discretion of the trial court, and we will not disturb the trial court's decision absent a showing of an abuse of that discretion. *Oaks v. Chamberlain*, 76 N.E.3d 941, 946 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

- [6] Hamilton first contends that State's Exhibit 1 was inadmissible under Indiana Evidence Rule 1002, the "best evidence rule," which provides in relevant part that an original recording is required in order to prove its content "unless the[]

rules [of evidence] or a statute provides otherwise.” It is undisputed that a duplicate of the original surveillance video was admitted as State’s Exhibit 1. However, Hamilton ignores Evidence Rule 1003, which provides that “[a] duplicate is admissible to the same extent as an original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.”¹

[7] Hamilton points out that the copy of the video is different from the original in that the copy does not show a “full screen” view of the video, including the time date and stamp shown in the original video. Appellant’s Br. at 12. However, Maria testified that the copy was a true and accurate copy of the recording she gave the police officer, and Marvin testified that the time and date stamp on the original recording showed the date as April 14, 2021, at approximately 8:00 p.m. Hamilton does not explain how the absence of the time and date stamp on the copy undermines the exhibit’s authenticity in light of the testimony that the copy was, in all other substantive respects, the same as the original recording. And Hamilton has not shown that the admission of the copy rather than the original surveillance video was unfair to him. Thus, State’s Exhibit 1 was admissible under Evidence Rule 1003.

¹ Hamilton asserts that the copy is inadmissible under Indiana Evidence Rule 1004(a), which provides in relevant part that a copy of a recording is admissible if the original is not available at trial. As Hamilton correctly notes, the State did not explain why the original recording was not offered as evidence. However, because we hold that the copy was admissible under Evidence Rule 1003, we need not address Hamilton’s contention under Evidence Rule 1004(a).

[8] In addition, we agree with the trial court that the copy of the recording was admissible under the “silent witness” theory, or Indiana Evidence Rule 901(b)(9), which provides that “evidence about a process or system” may be authenticated or identified with “[e]vidence describing a process or system and showing that it produces an accurate result.”

The “silent witness” theory, as first adopted by this Court, permits the admission of photographs as substantive evidence, rather than merely as demonstrative evidence, so long as the photographic evidence is also relevant. *Bergner v. State*, 397 N.E.2d 1012, 1014-15 (Ind. Ct. App. 1979).¹ Addressing solely the question of foundation, the *Bergner* Court hesitated to set forth “extensive, absolute foundation requirements,” and instead required a “strong showing of the photograph’s competency and authenticity.” *Id.* at 1017. Thus, the *Bergner* Court warned against the problems of distortion of images and the possibility of alteration of images in a manner that misrepresents the images taken. Where images were taken by automatic devices, the *Bergner* Court stated, “there should be evidence as to how and when the camera was loaded, how frequently the camera was activated, when the photographs were taken, and the processing and chain of custody of the film after its removal from the camera.” *Id.*

* * *

The Indiana Supreme Court recently addressed the “silent witness” theory, and observed that “the foundational requirements . . . are vastly different [than] the foundational requirements for demonstrative evidence.” *Knapp v. State*, 9 N.E.3d 1274, 1282 (Ind. 2014) (citations and quotations omitted). In cases involving the “silent witness” theory, a witness need not testify that the depicted image is an accurate representation of the scene on the day on which the image was

taken, and “often could not so testify since he or she was not necessarily there to observe the scene on that day.” *Id.* (citations and quotations omitted). Rather, the witness must provide testimony identifying the scene that appears in the image “sufficient to persuade the trial court . . . of their competency and authenticity to a *relative certainty*.” *Id.* (emphasis in original) (citations and quotations omitted).

Wise v. State, 26 N.E.3d 137, 141-42 (Ind. Ct. App. 2015), *trans. denied*.

[9] Here, both Marvin and Maria testified that State’s Exhibit 1 was an accurate copy of the surveillance video they had obtained from their security system on April 14, 2021, albeit lacking the time and date stamp. Marvin explained the surveillance system in place at their house as follows:

Q. So tell me a little bit about these cameras. Where do you have cameras around your home?

A. We’ve actually got five cameras. We’ve got the Ring on the front door. We’ve got another camera viewing the front door. And we’ve got the camera viewing the back door, we’ve got a camera viewing the driveway, and we’ve got a camera viewing the backyard.

Q. How do you access the camera footage?

A. There’s several ways. You can access it by using our phones, or we can go straight to the security device and watch it through that on a TV.

Q. How did you do it that day?

A. Well, we actually did it several ways. I was looking on my phone at first to see when I came inside with it. And I seen this

guy coming in -- around to the back door. And he just comes in the house, and he's in the house about 30 seconds, and then he comes back out and he has my gun in his hands, and he leaves.

* * *

Q. Okay. When you saw this camera footage, did you make a copy of it for the police?

A. Yes, we did.

Q. How did you create that copy?

A. How did I create it?

Q. Yes.

A. By using my phone.

Q. What -- what did -- how?

A. My phone, I can actually copy or record the footage or whatever. And I just copied it on my phone and put it on the computer and then put it on a memory stick.

Q. Okay. And did you give that to your wife?

A. Yes. She turned it in to the -- the officer who came to the house that day.

Q. Do you know if your camera system was working properly that day?

A. Yes, it was.

Q. Okay. And how far back does your camera save footage?

A. About three months.

Q. Okay. Have you ever had problems with that camera system not working properly?

A. No.

Tr. at 39-40. Further, the trial court asked Marvin how he knew that what was depicted in the video was “accurate.” *Id.* at 43. Marvin responded that the video showed the back door and deck of his house, and Marvin stated that they had

a video of [the burglar] on the front porch trying to get in our front door. And then he -- he goes around the house and comes to the back door. And he just walked right in the door, like I say. And then like 30 seconds later, he comes back out and he’s got my [BB] gun in his hand.

Id. at 44. Finally, Marvin testified that the original video showed the date and time consistent with the time when his BB gun went missing.

[10] We hold that Marvin’s testimony identifying the scene that appears in the surveillance video, along with his testimony regarding how the surveillance system works and the time and date stamp on the original video, is sufficient to persuade the trial court of the video’s “competency and authenticity to a relative certainty.” *Knapp*, 9 N.E.3d at 1282 (citations and quotation marks omitted, emphasis removed). We reject Hamilton’s contention that the fact that the edges of the copied video are cropped to exclude the time and date stamp constitutes a “significant inconsistenc[y]” between the original and the

copy. Appellant's Br. at 15. And to the extent Hamilton contends that the quality of the copy of the video is relevant to our determination under the silent witness theory, he does not explain how the poor quality of the copy undermines the Fredricks' testimony establishing the authenticity and accuracy of the exhibit.² Indeed, Officer Willey testified that State's Exhibit 1 was the same copy of the surveillance video that he had used to identify Hamilton as the man who stole the Fredricks' BB gun. The trial court did not abuse its discretion when it admitted State's Exhibit 1 into evidence at Hamilton's trial.

[11] Affirmed.

Vaidik, J., and Weissmann, J., concur.

² Hamilton does not, for instance, deny that he is readily identifiable in the copy of the video admitted as State's Exhibit 1.