

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Marcus Dalton,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 27, 2024

Court of Appeals Case No.
23A-CR-984

Appeal from the Marion Superior Court
The Honorable Mark D. Stoner, Judge

Trial Court Cause No.
49D32-2104-MR-12158

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] Marcus Dalton appeals his conviction, following a jury trial, for murder.¹ He contends that the trial court abused its discretion in admitting certain video evidence. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] On April 14, 2021, Indianapolis Metropolitan Police Department (IMPD) officers were dispatched to an alley between Tuxedo and LaSalle Streets on reports that someone had been shot. Officers discovered Demetri Swann, who was deceased. Swann sustained eight gunshot wounds to his leg and back.
- [3] IMPD homicide Detective Larry Craciunoiu was the first to arrive at the scene and began talking to neighbors, including J.S., who lived at a residence just west of the alley on 9th Street (the Residence). J.S. advised the detective that he may have video that would have captured some of the events of that evening. J.S. showed IMPD Detective Michael Condon a video from his home DVR surveillance system, which J.S. accessed from his cell phone. J.S. and Detective Condon stood in the driveway area of the Residence, and Detective Condon noticed a black Pontiac G6 parked directly in front of the Residence. While watching the video, Detective Condon noticed that J.S.'s demeanor changed

¹ Dalton does not challenge his conviction for class A misdemeanor carrying a handgun without a license.

when he observed his minor son, D.S., on the video. J.S. suddenly became hesitant to continue talking with police. Police seized J.S.'s cell phone so that he would not be able to delete or alter the video in any way.

[4] While Officer Condon still stood in the driveway of the Residence, he observed Dalton exit the Residence wearing a backpack. Because Detective Condon believed Dalton to be a suspect based upon his observation of the video, Detective Condon detained Dalton and seized the backpack. Dalton admitted to being in the alley when Swann was shot but denied shooting him. The backpack contained three 9-millimeter handguns and a red bandana. Shortly thereafter, officers obtained and executed a search warrant at the Residence. Officers seized the DVR surveillance system from the basement of the Residence.

[5] Detective Condon requested the aid of video forensics Detective Jason Leitze to extract video from the DVR seized from the basement of the Residence. Detective Leitze used a process called “hashing,” which puts digital evidence through a hash algorithm to assign a unique identifier character code, similar to a fingerprint, to ensure that files copied to various locations are the “exact same” files that were originally extracted. Tr. Vol. 3 at 64. Detective Leitze determined that the DVR system had two cameras, camera 5 on the inside of the Residence and camera 8 on the outside of the Residence. The camera 8 videos recovered from the system depicted the exterior of the Residence, including a view of a black male and a white male walking into and out of the alley where Swann was shot as well as a view of the suspects leaving in a black

Pontiac G6. The camera 5 videos depicted Dalton inside the Residence holding three firearms and carrying a backpack.

[6] The State charged Dalton with murder, felony murder, level 2 felony robbery, and class A misdemeanor carrying a handgun without a license. The State subsequently dismissed the felony murder and robbery counts. A jury trial began in February 2023. In addition to presenting ample circumstantial evidence that pointed to Dalton as the shooter, the State moved to publish eight video clips from camera 8 and five video clips from camera 5. Dalton objected based upon lack of foundation. The trial court held a hearing outside the presence of the jury, during which the State presented foundational evidence, including the testimony of Detectives Leitze and Condon. The trial court overruled Dalton's objection and permitted the State to publish the video clips to the jury. The jury found Dalton guilty of murder and the handgun offense. The trial court sentenced Dalton to sixty years in the Department of Correction. This appeal ensued.

Discussion and Decision

[7] Dalton asserts that the trial court abused its discretion in admitting the surveillance videos extracted from J.S.'s DVR system at trial. In general, a trial court has broad discretion in ruling on the admissibility of evidence, and we will disturb a trial court's evidentiary rulings only upon an abuse of discretion. *Speers v. State*, 999 N.E.2d 850, 852 (Ind. 2013), *cert. denied* (2014). An abuse of discretion occurs only where the court's decision is clearly against the logic and effect of the facts and circumstances, or when the court misinterprets the law.

Williams v. State, 43 N.E.3d 578, 581 (Ind. 2015). We may affirm a trial court’s evidentiary decision if it is sustainable on any basis in the record. *Barker v. State*, 695 N.E.2d 925, 930 (Ind. 1998).

- [8] Dalton asserts that the “video evidence was critical evidence as to the issue of [his] identity and role in the murder” because there was no witness to the actual murder. Appellant’s Br. at 14. Dalton claims that the State failed to present sufficient evidence to authenticate the video evidence pursuant to the silent-witness theory, and therefore admission of the recordings constituted an abuse of discretion. We disagree.
- [9] Indiana Evidence Rule 901(a) provides that “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” “Photographs and videos can be authenticated through either a witness’s testimony or, in instances in which no witness observed what a photograph or video portrays, the silent-witness theory.” *McFall v. State*, 71 N.E.3d 383, 388 (Ind. Ct. App. 2017) (citing 13 Robert L. Miller, Jr., *Indiana Practice Series: Evidence* § 901.209 (4th ed. 2016)). The silent-witness theory permits the admission of surveillance footage as substantive rather than merely demonstrative evidence. *Flowers v. State*, 154 N.E.3d 854, 868-69 (Ind. Ct. App. 2020) (citing *McCallister v. State*, 91 N.E.3d 554, 561 (Ind. 2018)).
- [10] For evidence to be admitted pursuant to the silent-witness theory, there must be a strong showing of authenticity and competency. *Id.* Authenticating witnesses,

however, are not required to testify that video footage is a true and accurate representation of a scene. *Id.* Rather, for a video or image to be admissible under the silent-witness theory, “there must be adequate proof of the reliability of the process that produced what the [video or image] intend[s] to depict, including proof that the evidence was not altered.” *Stott v. State*, 174 N.E.3d 236, 246 (Ind. Ct. App. 2021). Our case law establishes that the evidence is generally admissible “when there is testimony from someone with knowledge on the security system that produced the video or image, on the integrity of the system’s process, and on whether [the] video or image was altered.” *Id.* (providing survey of Indiana caselaw applying silent-witness theory).

[11] Here, among other foundational evidence, the State presented testimony from Detectives Leitze and Condon. Detective Leitze testified regarding the DVR system’s process and his familiarity with the system that produced the videos. He stated that he was specifically trained in forensics and specialized in the extraction of data from DVR devices. He further stated that extraction from J.S.’s specific DVR device was “very simple” and that the videos produced at trial were the true and accurate videos that he extracted in the crime lab and provided to Detective Condon. Tr. Vol. 3 at 64.

[12] Although Detective Leitze admitted that he had “no personal knowledge of what was done to that or with that DVR system in the minutes, hours, days, before it came to [his] desk[,]” *id.* at 61, this is not dispositive to our review in light of the additional foundational evidence presented. While authenticating witnesses are not required to testify that video footage is a true and accurate

representation of a scene under the circumstances presented, Detective Condon was able to testify regarding his personal observations of the crime scene, which corroborated many aspects of the videos, which in turn supports their authenticity and serves as some proof that the evidence was not altered.

Moreover, as noted by the State, Dalton gave a police interview wherein he also provided details of his actions on the night in question, which are supported by parts of the video depicting the same. In addition, the record indicates that nobody had access to the DVR system between the time J.S. showed Detective Condon footage on his cell phone and when officers seized the DVR system, which is substantial proof that the evidence was not altered. The totality of the foundational evidence was sufficient to establish the authenticity and competency of the videos to support their admission pursuant to the silent-witness theory. The trial court did not abuse its discretion.²

[13] In any event, even when a trial court abuses its discretion in admitting evidence, reversal is required only if the error prejudices the defendant's substantial rights. Ind. Appellate Rule 66(A). In making this determination, we

² Dalton's comparison of this case to *Stott* is unpersuasive. In *Stott*, we found that the trial court abused its discretion in admitting cell-phone photographs of surveillance footage because the State "did not produce any evidence" about the security system or how it operated and further presented no witness that could "attest to the accuracy of the footage." *Stott*, 174 N.E.3d at 246-47. That is a far cry from what happened here. As noted above, based upon the totality of the foundational evidence presented here, we find no abuse of discretion.

assess the probable impact the erroneously admitted evidence had upon the jury in reaching its verdict. *Stott*, 174 N.E.3d at 241. “If there is independent, overwhelming evidence of guilt, we may conclude that the jury did not rely on the improper evidence and any error was therefore harmless.” *Id.*

[14] Here, Dalton was interviewed by police and admitted that he drove the black Pontiac G6 that officers personally observed at the scene and believed to be driven by the murder suspects. Dalton also admitted that he was on the victim’s porch just before the murder and that he shot his gun as the victim ran past him but claimed that he shot into the ground to get the victim to stop running. Forensic scientist and firearms examiner Michael Cooper testified that he matched fired cartridges recovered from the scene, from inside the victim’s house, and from inside the victim’s body to two of the firearms found in Dalton’s backpack. Accordingly, the videos placing Dalton at the scene and depicting him in possession of the firearms used in the murder were merely cumulative of other evidence already before the jury. We find no reversible error. *See Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017) (improper admission of evidence is harmless when erroneously admitted evidence is merely cumulative of other evidence before trier of fact), *trans. denied*.

[15] Affirmed.

Bailey, J., and Pyle, J., concur.

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