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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1399**

State of Minnesota,
Respondent,

vs.

Charles Edward Love,
Appellant.

**Filed June 4, 2018
Affirmed
Bjorkman, Judge**

Dakota County District Court
File No. 19HA-CR-17-1023

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Mary Russell, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this appeal from two convictions of third-degree burglary, appellant argues that the district court abused its discretion by admitting surveillance video and still photos without adequate authentication. We affirm.

FACTS

This case arises from unauthorized entries into two Farmington businesses that occurred during the mornings of March 11 and 12, 2017. At approximately 9:40 a.m. the first morning, an employee of Gossips Bar and Grill called owner L.Z. to alert her to a possible problem. L.Z. immediately went to the bar, noticed the outside door handle in an open trash can by the back entrance, and heard the security alarm ringing. She called the Farmington police.

Gossips has an interior alarm system and 12 security cameras covering both the interior and exterior of the building. The responding detective and L.Z. reviewed the security-camera footage together.¹ The video shows a man, later identified as appellant Charles Edward Love, approaching the back door of Gossips, entering the building and moving around inside, and removing money from a cashbox. Footage from an exterior camera shows Love driving away in an older silver or gray minivan with rust around the back tires. L.Z. discovered \$27 was missing from the cash box. Date- and time-stamping indicated the video was recorded that morning between 9:02 and 9:25 a.m. At trial, L.Z.

¹ Because L.Z. was unable to obtain a hard copy of the video on the morning of the incident, the detective used his body camera to record the video as he watched it with L.Z.

testified about the locations of the cameras, identified the areas depicted in the footage, and verified the accuracy of both the video and the copy of it made by the detective.

L.Z. and co-owner R.B. worked at Gossips that evening. At one point, R.B. thought he saw the man from the video walk past the bar. After closing up before 4:00 a.m. on March 12, L.Z. and R.B. decided to look for the silver minivan shown in the video. They left in their own cars to search the area. A few minutes later, R.B. called L.Z. to say he had seen the minivan parked by Celts Pub. The two met at Celts Pub, where they saw a minivan that appeared to match the one in the video. As L.Z. called 911, Love came out the back door; R.B. intercepted and held him at gunpoint until police arrived.

C.C., a cook at Celts Pub, encountered Love in an area limited to employees at about 6:00 a.m., an hour before the restaurant was scheduled to open. When C.C. confronted him, Love explained that he had used the bathroom and quickly left through the back door.

Like Gossips, Celts Pub has a security camera. The detective who had previously responded to the Gossips' burglary arrived on the scene and reviewed the video footage. He testified that the video accurately depicts the interior of Celts Pub, and the video's time-stamp shows Love entered the building at 5:37 a.m. and left at 5:52 a.m.

The state charged Love with two counts of third-degree burglary in violation of Minn. Stat. § 609.582, subd. 3 (2016). At trial, Love objected to admission of the videos and the still photos the detective made from the Gossips footage. The district court

overruled the objection, concluding that the videos and still photos were sufficiently authenticated. The jury found Love guilty as charged.² Love appeals.

DECISION

To be admissible, tangible evidence must be authenticated or identified. Minn. R. Evid. 901(a). Video recordings may be authenticated in two ways, using the “pictorial witness theory” or the “silent witness theory.” *In re Welfare of S.A.M.*, 570 N.W.2d 162, 164-65 (Minn. App. 1997). Under the first authentication method, a witness describes what she saw; the video is a pictorial representation of the witness’s personal observations. *Id.* at 164. Under the second method, the video depicts events that no person directly observed, but witness testimony describes the process or system of recording and verifies that this process produces an accurate video. *Id.* at 165. While the authenticating elements vary with the circumstances of each case, the fundamental admissibility concern is satisfied when there is sufficient evidence to show that “the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). As this court stated in *S.A.M.*:

A videotape may be authenticated by testimony describing the reliability of the process or system that created the tape, as well as by testimony from an observer that the videotape is an accurate portrayal of the event, if the evidence sufficiently demonstrates that the videotape is what its proponent claims.

570 N.W.2d at 166. We review a district court’s evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

² The jury also found Love guilty of the lesser-included offense of misdemeanor trespass. Love does not appeal that aspect of the verdict.

Love argues that the district court abused its discretion by admitting the video recordings and still photos from the two bars.³ We consider admission of the evidence from Gossips and Celts Pub in turn.

L.Z. testified that Gossips has 12 high-definition security cameras in the interior and exterior of the building and that the video recordings contain accurate time- and date-stamps. L.Z. responded to the call about a possible break-in at about 9:40 a.m. The detective arrived 20 minutes later. After making an initial survey of the scene, the detective reviewed and recorded the surveillance video with L.Z. The short time period between when the recording was made (between 9:02 a.m. and 9:25 a.m.) and when it was viewed (10:00 a.m.) provided minimal opportunity for the video to be tampered with or altered. *See State v. Hollins*, 789 N.W.2d 244, 251-52 (Minn. App. 2010) (stating that Minn. R. Evid. 901(a) requirement of authentication is to show absence of tampering or substitution), *review denied* (Minn. Dec. 12, 2010). Indeed, Love does not assert that the subject recordings were altered in any way.

Before testifying, L.Z. watched the video made by the detective and testified that it matched the footage she watched with him shortly after the March 11 incident. L.Z. explained to the jury what was depicted in the video and identified the locations shown. L.Z. also testified that the time-stamp indicated the video was made between 9:02 and 9:25. This is consistent with the timing of the phone call from the employee. On this record, we

³ Love does not challenge the accuracy of the recordings the detective made while viewing the two videos.

discern no abuse of discretion by the district court in admitting the surveillance video and still photos from Gossips.

The state made an even stronger showing as to the authenticity of Celts Pub's surveillance video. The detective testified that he personally reviewed the footage with the manager and recorded it on his phone. During his testimony, the detective identified the areas of Celts Pub shown on the video and pointed out the date- and time-stamps as they appeared on the footage. And the detective testified that the video had not been edited. More importantly, these "silent witness" elements were confirmed by employee C.C.'s testimony that he saw Love leaving an employee-only area of the building at the time indicated in the video, just before R.B. confronted and detained Love.

In sum, we are persuaded that the state established that the videos and still photos are what they purport to be—accurate evidence that Love was in the buildings on the dates and times at issue. Accordingly, the district court did not abuse its discretion by admitting this evidence.

Affirmed.