

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1766

September Term, 2015

DAVID C. COLEY

v.

STATE OF MARYLAND

Krauser, C. J.,
Graeff,
Leahy,

JJ.

PER CURIAM

Filed: September 6, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Accused of firing shots at police officers using a gun that he kept in his home, and then setting fire to his residence, after the officers requested that he exit his house so that they could serve him with a writ of eviction, appellant, David C. Coley, was convicted, by a jury, of first-degree arson, two counts of first-degree assault, and two counts of use of a firearm in the commission of a crime of violence, in the Circuit Court for Prince George’s County. On appeal, Coley contends that the trial court erred in permitting two expert witnesses, Corporal Edward Gesser and Lieutenant Aaron Tyler, to testify because the subject matter of their expert testimony was not accurately disclosed to him in the State’s “Notice[s] of Expert Witness,” though the reports of both officers were provided to him and their testimony was consistent with their opinions contained in those reports. *See* Maryland Rule 4-263(d)(8)(A) (stating that as to any expert witness consulted, the State must provide the defendant with “the expert’s name and address, *the subject matter of the consultation*, the substance of the expert’s findings and opinions, and a summary for the grounds for each opinion” (emphasis added)).

As an initial matter, the parties disagree as to the appropriate standard of appellate review for this issue. The State contends that the trial court found a discovery violation as to each witness, that the trial court then exercised its discretion in allowing the witnesses to testify, and that Coley’s claims should be reviewed under the abuse of discretion standard. *See Breakfield v. State*, 195 Md. App. 377, 391 (2010) (noting that the choice of sanction, if any, to address a discovery violation is committed to the sound discretion of the trial court). Coley, on the other hand, contends that the trial court found no discovery violations, and, therefore, did not exercise its discretion in allowing the witnesses to testify;

that the failure to find a discovery violation in each instance was error; and that this court should review his claims under the harmless error standard. *See Williams v. State*, 364 Md. 160, 178-79 (2001) (holding that where the trial court does not make a specific finding, as a matter of law, that the State violated the discovery rule, it does not exercise its discretion in fashioning a remedy and therefore the harmless error standard of review applies). We need not resolve this issue, however, because even if the trial court did not find a discovery violation and erred in not doing so, the error is harmless beyond a reasonable doubt.

“To conclude that a trial court's error does not require reversal we must be able to declare, upon an independent review of the record, our belief, beyond a reasonable doubt, that the error did not influence the verdict.” *Muhammad v. State*, 223, Md. App. 255, 272 (2015). Here, the State’s “Notice[s] of Expert Witness” did not clearly indicate that Lieutenant Tyler would be called as an expert in K-9 handling in the specific field of accelerant detection, or that Corporal Gesser would be called as an expert in firearms identification. Coley, however, was not prejudiced by these omissions. As Coley conceded at trial, the State had also provided him with a copy of both experts’ reports which clearly indicated their areas of expertise and the substance of their opinions and conclusions. Moreover, when the State sought to admit both experts, Coley did not request a continuance to give him additional time to prepare, but simply sought the windfall of exclusion. Therefore, even if the trial court erred by not finding a discovery violation, there is no reasonable possibility that, having found such a violation, it would have excluded the testimony of either witness. Consequently, there is no reasonable possibility that the alleged error could have affected the verdict. *See Thomas v. State*, 397 Md. 557, 572-74

(2007) (finding that even though the trial court did not make a specific finding of error, the appellant was not prejudiced from the State's untimely discovery disclosure as he received the information prior to trial, he did not request a continuance, and it was not an extreme case where the trial court would have likely excluded the evidence if it had found a discovery violation).

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**