Circuit Court for Montgomery County
Case No. C-15-CR-23-000306

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 413

September Term, 2024

CRAIG DONNELL JOHNSON

v.

STATE OF MARYLAND

Berger,
Nazarian,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 6, 2025

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

After a one-day trial in the Circuit Court for Montgomery County, a jury found Craig Donnell Johnson guilty of robbery. Before trial, Mr. Johnson had filed a motion to dismiss the case, arguing that the State had withheld the fact that it had used facial recognition technology ("FRT") to identify him as the alleged perpetrator and had failed to disclose details about the technology and its outputs. The State admitted that it had violated its discovery obligations but opposed dismissal and offered a postponement. Mr. Johnson declined a postponement and the court denied his motion to dismiss. On appeal, Mr. Johnson challenges the court's denial of his motion to dismiss, as well as two other rulings, and we reverse.

I. BACKGROUND

On February 18, 2023, a man entered a Cricket Wireless store in Rockville and spoke with the sales representative, Jennifer Benitez, about purchasing a phone. He left about fifteen minutes later to confer with his wife, then returned a few hours later to buy the phone. Ms. Benitez went to the back of the store to retrieve the phone. As she returned to the front, the man "popped up behind" the sales counter and put Ms. Benitez in a headlock. He directed Ms. Benitez to tell her six-year-old daughter, who was at the store with her that day, to go into the bathroom. The assailant took Ms. Benitez's phone from her, threw it against a wall, and punched Ms. Benitez in the face. Ms. Benitez then went into the bathroom with her daughter.

The assailant entered the bathroom with the cash register and directed Ms. Benitez, who had the keys, to open it. She opened the register, and the assailant took the money, about $200. Ms. Benitez asked the assailant to let her and her daughter go, and he

responded by punching her in the face and pushing her into the bathroom. To escape the situation, Ms. Benitez lied and told the assailant that the police were coming. The assailant went to the back of the store and Ms. Benitez ran out of the store with her daughter. The assailant then ran out of the store and past Ms. Benitez and her daughter.

Ms. Benitez's manager called the police and Ms. Benitez provided a written statement to the police about an hour later. Detective Brian Dyer from the robbery section of the Montgomery County Police Department retrieved footage from the Cricket store's surveillance cameras, which had captured the assailant's interactions with Ms. Benitez. Detective Dyer said he was able to make out the assailant's face from the footage. He said that he submitted a still photo from the footage to a department-wide informational board and later developed Mr. Johnson as a suspect. Detective Dyer then directed Officer Jacob Zaika to conduct surveillance at the address that he found in Mr. Johnson's MVA records, which was a little over a mile away from the Cricket store.

Officer Zaika surveilled Mr. Johnson's home on February 21, 2023. He saw a man who resembled the assailant in the still photo entering and exiting the house. Officer Zaika relayed that information to Detective Dyer, who then applied for and executed a search warrant at Mr. Johnson's home that day. Detective Dyer seized a pair of sneakers that he believed matched the shoes the assailant was wearing, but he didn't find the assailant's distinctive jacket or his jeans, which Detective Dyer had noticed in the surveillance footage. He also didn't seize a cell phone because Mr. Johnson claimed he didn't own one. Detective Dyer arrested Mr. Johnson that same day.

Mr. Johnson remained in pre-trial detention leading up to his robbery trial, which took place on February 20, 2024. The day before trial, Mr. Johnson filed a motion to dismiss the case in which he claimed that the State committed a *Brady*[1] violation by failing to disclose until February 12, 2024—nearly a year after defense counsel submitted his discovery demands—the fact that the police used FRT to develop Mr. Johnson as a suspect. On the morning of trial, Mr. Johnson argued to the court that the police had never explained how they developed him as a suspect. Not until about a week before trial did the State disclose to defense counsel that the police had entered the still surveillance photo into an FRT, which, the State claimed, generated only one result: Mr. Johnson.

Mr. Johnson requested information on the FRT search on February 16, 2024, and the State provided a three-page email that was sent to Detective Dyer on February 21, 2023 that contained the surveillance photo, Mr. Johnson's MVA photo and mugshot, and some information about him. Mr. Johnson argued that FRT searches are designed to produce more than one result, but this email contained no information on any other suspects generated (if any), nor did it identify the software used to conduct the search. He contended that this last-minute, bare bones disclosure left him with inadequate time and information to prepare to attack the reliability of the FRT search at trial and that the court should dismiss the case without prejudice.

The State argued in response that this was not a *Brady* issue. The court agreed but made clear that it did present a discovery issue. On that point, the State admitted that it had

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

learned of the police department's use of FRT in this case back in February 2023 but said that it didn't know about the email until it conferred with Detective Dyer a week before trial. The State claimed that the email was the only document associated with the FRT search and that it had no other information. The State argued as well that Mr. Johnson wasn't prejudiced by the police department's use of FRT because the State didn't intend to offer the email as evidence or to elicit testimony on how the police developed Mr. Johnson as a suspect. The State seemed to indicate that it hadn't disclosed any information on the FRT search sooner because it didn't intend to use it at trial and so didn't believe it was necessary to disclose it. The State then suggested that a continuance was a more appropriate remedy than dismissal.

The court reviewed the *Taliaferro*[2] factors to determine the appropriate sanction for the State's discovery violation and ruled that a postponement was appropriate, but a dismissal wasn't. Mr. Johnson opted to continue with trial rather than postpone it indefinitely because he had been incarcerated for a year already and anticipated that he would remain incarcerated until the new trial date.

The court proceeded with the parties' other motions and then with trial. Officer Zaika testified briefly about his involvement in the case. Then Ms. Benitez testified about the robbery and identified Mr. Johnson as the assailant with what she said was 100% certainty. Lastly, Detective Dyer testified about his investigation into the robbery. The State asked him if he developed Mr. Johnson as a suspect, and Detective Dyer said yes.

[2] *Taliaferro v. State*, 295 Md. 376 (1983).

But the State did not ask, and Detective Dyer did not testify, about the police department's use of FRT in their investigation. Mr. Johnson waived his right to testify and had no witnesses to call. He asked the court for permission, however, to either admit a photo of his teeth into evidence or to show his teeth to the jury because Mr. Johnson was missing several teeth, but Ms. Benitez couldn't remember if the assailant had any distinguishing characteristics. The court denied both requests.

The jury convicted Mr. Johnson of one count of robbery and the court sentenced Mr. Johnson to fifteen years' incarceration with all but five years suspended and credit for time served, followed by five years of supervised probation. Mr. Johnson filed a timely appeal on April 26, 2024.

We include additional facts in the Discussion as necessary.

II. DISCUSSION

Mr. Johnson presents three issues on appeal that we recast. *First*, he argues that the court abused its discretion when it denied his motion to dismiss the case without prejudice. *Second*, he contends that the court abused its discretion when it refused to allow him to display his mouth to the jury to attack Ms. Benitez's in-court identification. And *third*, Mr. Johnson claims the evidence was insufficient to support his robbery conviction.[3] We hold

[3] Mr. Johnson phrased his Questions Presented as follows:

> 1. Did the trial court err when it refused to dismiss the indictment against Appellant with prejudice due to the State's Brady and discovery violations arising from the State's failure to disclose its use of a facial recognition

Continued . . .

that the circuit court abused its discretion when it denied Mr. Johnson's motion to dismiss the case and we reverse that ruling. We do not reach his other questions.

We review a trial court's ruling on discovery sanctions for abuse of discretion. *See Williams v. State*, 416 Md. 670, 698–99 (2010) (citation omitted). An abuse of discretion occurs when the court's decision is "'well-removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Mason v. State*, 487 Md. 216, 239 (2024) (*quoting Devincentz v. State*, 460 Md. 518, 550 (2018)).

Mr. Johnson claims the court abused its discretion when it denied his request for a dismissal and instead offered a postponement as a remedy for the State's discovery

---

program?

2. Did the trial court err when it refused to allow Appellant to present himself to the jury for inspection and later denied Appellant's motion for a new trial?
3. Was the evidence insufficient to convince any rational trier of fact of Appellant's guilt beyond a reasonable doubt?

The State phrased its Questions Presented as follows:

1. Did the trial judge act within her discretion when she denied Johnson's Brady and discovery motion seeking, as a remedy for a discovery violation, the dismissal of the State's case?
2. Did the trial judge act within her discretion in refusing to admit evidence without authentication or during closing argument?
3. If considered, was the evidence sufficient to convict Johnson of robbery?

violation.[4] He argues that the State's violation was severe, given the timing of the disclosure eight days before trial, and that the court's suggested remedy was inadequate, given how long Mr. Johnson had been detained awaiting trial. He asserts that the court's ruling forced him to choose between proceeding with trial without sufficient information to challenge the police department's investigation or postponing the trial and likely remaining detained for an uncertain (but probably lengthy) additional amount of time.

The State doesn't dispute that its late disclosure of the fact that it used FRT and the limited information about the FRT search violated its discovery obligations. Instead, the State argues that the court ruled correctly that the prejudicial effect of the discovery violation was limited and that the late disclosure wasn't the result of misconduct by the State. The State also points out that Mr. Johnson could have, but chose not to, accept the court's postponement offer. To dismiss the case at this point, the State contends, would result in a "windfall" to Mr. Johnson. We conclude that a postponement was inadequate to remedy the discovery violation in this case and that the court abused its discretion when it denied Mr. Johnson's motion to dismiss.

Maryland Rule 4-263(d)(7)(B) requires the State to disclose "[a]ll relevant material or information regarding . . . pretrial identification of the defendant by a State's

[4] Mr. Johnson also argues that the court erred when it ruled that the State didn't commit a *Brady* violation by failing to disclose information on the FRT search until a week before trial. A *Brady* violation occurs when the State suppresses evidence that is favorable to the defendant and is "material either to guilt or to punishment" in the defendant's case. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Here, the State provided so little evidence on the FRT search that we are unable to determine whether that information is exculpatory. We focus instead on his discovery claim.

witness . . . .” This requirement is not limited to “State-orchestrated identification procedures, such as showups, lineups, and photographic arrays.” *Green v. State*, 456 Md. 97, 149 (2017). For example, the Rule may require the State to disclose the pre-trial identification of a co-defendant, *see id.* at 156, a non-arresting officer’s pre-trial surveillance of the defendant, *see Williams v. State*, 364 Md. 160, 178 (2001), *abrogated on other grounds by State v. Jones*, 466 Md. 142 (2019), or a witness’s prior inconsistent statement about their ability to identify the defendant as the assailant. *See Collins v. State*, 373 Md. 130, 133–34, 146 (2003). At its core, the purpose of this and other discovery rules is to “‘prevent a defendant from being surprised’” and to “‘give a defendant the necessary time to prepare a full and adequate defense.’” *Thomas v. State*, 397 Md. 557, 574–75 (2007) (*quoting Jones v. State*, 132 Md. App. 657, 678 (2000)).

When the State violates its discovery obligations, the trial court has the discretion to impose sanctions, including postponement, exclusion of evidence, mistrial, or “any other order appropriate under the circumstances.” Md. Rule 4-263(n). In determining whether and what sanction(s) to impose for a discovery violation, trial courts consider the factors outlined in *Taliaferro v. State*, 295 Md. 376 (1983): (1) whether the violation was “technical or substantial”; (2) “the timing of the ultimate disclosure”; (3) “the reason, if any, for the violation”; (4) “the degree of prejudice to the parties”; and (5) whether a postponement would cure the prejudice. *Id.* at 390–91. In fashioning sanctions for a discovery violation, “‘the court should impose the least severe sanction that is consistent with the purpose of the discovery rules.’” *State v. Graham*, 233 Md. App. 439, 459 (2017) (*quoting Raynor v. State*, 201 Md. App. 209, 228 (2011), *aff’d*, 440 Md. 71 (2014)). And

although "'the sanction of dismissal should be used sparingly, if at all,'" *Steck v. State*, 239 Md. App. 440, 466 (2018) (*quoting Graham*, 233 Md. App. at 439), a trial court is not precluded from dismissing when appropriate. *See id.* (commenting that "dismissal could be envisioned for discovery violations under Rule 4-236(d)").

The State doesn't dispute that it committed a discovery violation in this case, so we concentrate our review on whether the circuit court abused its discretion in deciding how to address that violation. The court reviewed the *Taliaferro* factors and found that (1) the violation fell somewhere between technical and substantial; (2) the ultimate disclosure was "very, very late"; (3) the reason for the violation, which the court believed was not willful or intentional, was the State's belief that the FRT information was not important; (4) because the State didn't intend to reference the FRT search in front of the jury, the court was unable to determine the degree of prejudice; and (5) a postponement would cure any prejudice. The court determined that a dismissal was inappropriate because there was no willful misconduct by the State, and the court concluded that a postponement was the appropriate remedy. We hold that the court abused its discretion in ruling that a dismissal was inappropriate and that a postponement would be an adequate remedy. In reaching this conclusion, we focus on the prejudicial impact of the violation and the (in)ability in this case to cure that prejudice with a postponement because the State can't, or won't, identify the FRT program it used or other information about how that technology generated Mr. Johnson's identity. *See Williams*, 416 Md. at 699 (focusing on "the existence of prejudice and the feasibility of curing the prejudice," and holding that the court's discovery sanction was inadequate).

First, contrary to the court's finding, the prejudicial impact of the violation here was not indeterminable—it was significant. The victim in this case didn't identify Mr. Johnson before trial and there was no physical evidence connecting him to the robbery directly. Although Detective Dyer said he could make out a face from the video, the FRT was the only way that police connected Mr. Johnson to the case. Everything else, the court noted correctly, "stemmed from . . . the officer utilizing this extra software" (*i.e.*, the FRT). The FRT search prompted Detective Dyer to look at Mr. Johnson as a suspect, which prompted the surveillance at Mr. Johnson's house, the search of his house, and ultimately, his arrest. And yet there was no way for the defense to investigate or challenge the identification. The State insisted that it didn't (and still doesn't) know what FRT program the police used and that it didn't have any additional information to produce. And it doesn't matter that the State never intended to introduce evidence of the FRT search at trial. The FRT generated Mr. Johnson's identity from the primary source store video and became the source—the fruit-bearing tree, as it were—of everything that flowed from it.

The late disclosure of the use of the FRT put Mr. Johnson at a significant disadvantage in preparing his defense. And having no access, even to this day, to information regarding the software used, the suspects generated by the search, or any other information on the FRT search and procedure (besides the one email) left Mr. Johnson unable to attack the reliability of the FRT search and, in turn, the credibility of the investigation that identified him. The FRT search came as a surprise to Mr. Johnson just a week before trial and left him with no meaningful opportunity to prepare a defense to it, so Mr. Johnson was prejudiced by the State's discovery violation. *Thomas*, 397 Md. at 574

(explaining that, in discovery context, defendant is prejudiced when "he is unduly surprised and lacks adequate opportunity to prepare a defense"). A postponement likely would have been a viable sanction and remedy if, at the time of the motions hearing, the State were ready to produce the missing information as well. But it wasn't, and that leads to the problem we address next.

Second, on this record, a postponement could not have allowed Mr. Johnson any meaningful opportunity to address the prejudice because, as the State maintained at trial, and conceded at argument in this Court, that it had no other information on the FRT search aside from the three-page email indicating that Mr. Johnson was the only suspect the program generated. The State argued in the circuit court, and argues here, that a continuance was a more appropriate sanction, but it has no answer to the question of what the defense could or would have been able to do with the additional time without the information. And a postponement would have been pointless without the identity of the FRT program, the results, and whatever else the police used or generated in identifying Mr. Johnson—it would have delayed the trial and prolonged Mr. Johnson's pre-trial detention without affording him any opportunity to respond to the information the State hadn't produced. Put another way, a postponed trial of this case would have been the same trial as the one Mr. Johnson had, just later. What's the remedy there?

The State argues that dismissal would result in a "windfall" for Mr. Johnson. To the contrary, for us to affirm an ineffectual non-sanction would risk rewarding the State not only for violating its discovery obligations, but also for failing to maintain and account for the information itself. We recognize that the circuit court found that the discovery violation

here did not represent misconduct on the part of the State. That finding is difficult to square, however, with the State's insistence, both in the circuit court and in this Court, that it doesn't know what FRT program the police used or whether any additional information exists. Even if we were to take that representation at face value—and that is a struggle—affirming this discovery ruling would allow the State to lose or fail to keep information it indisputably is required to produce. If the State had acknowledged that the FRT information and analysis had been destroyed, the circuit court could have decided whether to preclude the State from using the fruits of the FRT search at trial. But it would set a terrible precedent if we allowed the State to use FRT to identify Mr. Johnson, disappear all the discoverable bases for that identification, and introduce the identification and its fruits all the same:

> If a prosecutor's lack of knowledge could excuse, or even mitigate, the prejudicial effect of the undisclosed information, prosecutors would most effectively operate in a vacuum because by removing themselves from the privity of law enforcement officers' testimony and evidence, prosecutors could slip beyond the grasp of discovery rules by claiming ignorance, and thereby force the defendant to enter trial unaware of the evidence to be offered against him or her. This is intolerable and totally adverse to one of the avowed purposes for discovery rules: *to assist the defendant in preparing his or her defense and prevent unfair surprise at trial.*

Green, 456 Md. at 153 (cleaned up).

At oral argument in this Court, the State suggested that there "is a person out there who surely knows what the State used" to conduct the FRT search at issue and that a postponement would have enabled the State to obtain and disclose that information. This argument contradicts the State's position at trial and introduces facts not in the record (*i.e.*,

the existence of additional information on the FRT search). The State insisted at trial, and did not correct or refute in its brief to this Court, that the email was "the only document that was generated from [the FRT] search." We decline to speculate about what might or might not exist, especially after asking the State and getting no answer.

The State's discovery violation carries greater significance, and inflicted greater prejudice on Mr. Johnson, in the context of the FRT technology that the State admits to using here. There is ample reason to question the reliability of evidence generated by FRT and artificial intelligence ("AI") more broadly, and we would send exactly the wrong message if we allowed the State to rely on an FRT-generated identification without accountability. FRT has produced unreliable results in multiple instances across the country, including here in Maryland. In 2022, Alonzo Sawyer was arrested after a facial recognition program identified him as the perpetrator of an assault. Khari Johnson, *Face Recognition Software Led to His Arrest. It Was Dead Wrong*, WIRED, (Feb. 28, 2023, 7:00 AM), https://www.wired.com/story/face-recognition-software-led-to-his-arrest-it-was-dead-wrong/, *archived at* https://perma.cc/Q7QW-RPX5. The true perpetrator was seven inches shorter and twenty years younger than Mr. Sawyer, and Mr. Sawyer spent nine days in jail before the error was fixed. *Id.* According to the Innocence Project, at least six others (as of February 2024) had been accused of crimes wrongfully due to misidentification through FRT. Alyxaundria Sanford, *Artificial Intelligence Is Putting Innocent People at Risk of Being Incarcerated*, Innocence Project, (Feb. 14, 2024), https://innocenceproject.org/news/artificial-intelligence-is-putting-innocent-people-at-risk-of-being-incarcerated/, *archived at* https://perma.cc/3WUB-HN8A. Our courts must, and will, recognize the power and opportunity AI tools can offer.

But the very real prospect that AI could hallucinate evidence, as it does text and citations when it can't find an answer, *see* Joe Patrice, *Trial Court Decides Case Based On AI-Hallucinated Caselaw*, Above the Law (July 1, 2025, 12:48 PM), https://abovethelaw.com/2025/07/trial-court-decides-case-based-on-ai-hallucinated-caselaw/, *archived at* https://perma.cc/PC6C-WX5Y, places all the greater imperative on allowing FRT- and AI-generated evidence to be tested appropriately, and we cannot give the State a pass here where it failed even to identify the technology it used to identify the suspect it pursued and prosecuted.

A postponement in this case couldn't mitigate the prejudice Mr. Johnson suffered because of the State's discovery violation, and the circuit court abused its discretion when it denied Mr. Johnson's motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. MONTGOMERY COUNTY TO PAY COSTS.