Circuit Court for Baltimore City
Case No. 124003014

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1027

September Term, 2024

TYREE KING

v.

STATE OF MARYLAND

Graeff,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 9, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of wearing, carrying, and transporting a handgun on his person and a related offense, Tyree King,[1] appellant, presents for our review a single issue: whether the court erred "in allowing evidence that was not disclosed to [the] defense until the day before trial." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Lieutenant Herbert DuBose of "the Home Detention Enforcement staff for [the] Department of Public Safety and Correctional Service[s]." Lt. DuBose testified that on December 2, 2023, he was at his office at 428 East Preston Street, waiting for Mr. King to be transported to the office in a "transport van." When the van arrived, Mr. King "grabbed all [of] his belongings . . . and carried them into the building." When Mr. King "stopped and started putting his stuff down on [a] table," he was "placed in handcuffs," and Lt. DuBose began to "search those . . . bags." Starting with a black "crossbody . . . saddle bag," the lieutenant asked Mr. King: "Is there anything on you that I need to know about that's going to poke me? Or if I'm going to find anything?" Mr. King replied: "It's not mine." Lt. Dubose asked: "What's not yours?" The lieutenant "unzip[ped] the black bag" and saw "the handle of a firearm." After officers took Mr. King to another area and "secured him," Lt. DuBose "cleared the weapon" and "took the rounds out." The court admitted into evidence the firearm, which the lieutenant identified as "the black Smith and Wesson weapon that [he] recovered out of [Mr. King's] bag."

[1]Mr. King is alternatively identified in the record as "Kyree King" and "Kyree Malik King." For consistency, we shall identify him as "Mr. King."

Mr. King contends that the court erred "in allowing evidence that was not disclosed to [the] defense until the day before trial." On January 4, 2024, Mr. King was charged by indictment. On January 23, 2024, Mr. King filed a request for discovery and motion to produce documents. On March 25, 2024, the State forwarded to defense counsel its initial disclosures. On April 3, 2024, the court scheduled trial to commence on July 1, 2024. On that date, the court rescheduled trial to commence on July 16, 2024.

On July 15, 2024, defense counsel filed "Supplemental Motions in Limine," in which she contended that on that date,

> the State provided Defense with a report written by [Lt. DuBose] that had never previously been disclosed. This report included new information pertaining to the role and presence of other previously undisclosed officers, previously undisclosed photos of Mr. King's property, previously undisclosed photos of the firearm in question, previously undisclosed statements by Mr. King, and new information pertaining to the possession of ammunition.
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> * * *
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> In the report, [Lt. DuBose also] recounts that he questioned Mr. King prior to searching his property, that Mr. King "seemed resistant to answer the question," and that Mr. King ultimately answered, "that bag isn't mine; it is my aunt's."
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> [T]he State [also] provided to defense eight photographs pertaining to the search of a black bag and the recovery of a firearm.
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> * * *
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> [Also, Lt. DuBose] wrote that he[] "searched the remaining property of [Mr.] King and found nine random calipers [sic] of bullets in his property in a white sock. The ammo was place [sic] in an envelope and placed in the contraband closet." The report also included a photo of the white sock and bullets. No

> information pertaining to [the] search of the rest of Mr. King's belongings or the recovery of ammunition was disclosed prior to July 15, 2024.

Mr. King moved "pursuant to Maryland Rule 4-263" to suppress the aforementioned evidence and statements, and to preclude related testimony.

On July 16, 2024, the parties appeared for trial. Following the selection of the jury, the court heard argument on the motions in limine. Defense counsel argued, in pertinent part, that "the information [in the report] is significantly more detailed in ways that [she] could have investigated further," and "change[d] the nature of the [d]efense," which had been that Lt. DuBose "was a neglectful officer." The prosecutor "accept[ed] that the State made a late disclosure," but countered that defense counsel "was on notice that there must be additional information," because the report "is mentioned in" a video recording made by a "body-worn" camera. The prosecutor further contended that until she spoke with Lt. DuBose on July 1 or 2, 2024, she did not learn "that there were these pictures," or that her "subpoena that went to Parole and Probation never got to the right people." The prosecutor stated that Lt. DuBose sent the report to her "on the 11th," and she "was out on the 12th." Defense counsel rebutted that "all of those things are due to the [d]efense without the necessity of request," and that she had "no additional obligations." Defense counsel further contended that the body-worn camera footage did not reveal that Lt. DuBose intended "to write a report or that he took photos."

Following argument, the court stated that it would "exclude the nine bullets." The court further stated, in pertinent part:

> [W]hat's particularly troubling for me is the timeline when a conversation happens between the State and [Lt. DuBose] on July 1st or 2nd, and then [the

lieutenant] sends it on the 11th and then it's not disclosed to the other side until the 15th.

* * *

. . . I think it's a litigator's job to be checking their email at night, and on the weekends.

So, the fact that, you know, the State was off on the 12th and then the next workday is the 15th, I don't really care. I mean, if [Lt. DuBose] sent it on the 11th, to me, it's quite simple to just attach that to an email and flip it to the other side. . . . . I know you're working nights. I know you're working weekends.

And one of the most important things that should be happening during that time, if anything, is the exchange of discovery. So, I take [defense counsel's] point that it's frustrating when you have to prepare, thinking your case looks one way, and then you find out literally the day before trial that maybe some cross-examination that you prepared you won't need. Some other cross-examination that you didn't have prepare you need prepared.

* * *

But you know, whether there is prejudice to a [d]efendant shouldn't turn on how good of a defense attorney we've got here. Because you know, she can pivot, and she has, and I think she's going to do a great job. But it's not fair that she gets stuff, that she gets discovery the day before, particularly, you know, the mandatory type of stuff that needs to be sent over.

That being said, I sort of – where I land on this is through no fault of her own, or in her credit, [defense counsel] is an excellent attorney. She is able to pivot. She is ready to go. I have every confidence that she's going to do a fabulous job for Mr. King. I didn't hear much in the way of actual prejudice to Mr. King or [defense counsel] saying that she wasn't ready to prepare. There hasn't been a [d]efense postponement request made to me.

So, because of that, I'm going to deny the Motion. [T]he Supplemental Motion relating to paragraphs one, two, and three . . . .

Following the commencement of trial, defense counsel stated in opening statement, in pertinent part: "It was not his gun. Plain and simple." During Lt. DuBose's testimony,

the court admitted, over defense counsel's objection, a photograph of "all of Mr. King's property [including] the firearm and the magazine," and a photograph of "the black bag" in which the lieutenant "found the weapon."

Mr. King contends that the court erred in denying the motions, "because (1) the court failed to expressly determine that a discovery violation occurred, (2) the record shows that a discovery violation occurred, and (3) the error cannot be deemed harmless beyond a reasonable doubt." The State counters that the court "did indeed find a discovery violation," and "because the defense failed to articulate any concrete prejudice," the court "properly exercised its discretion in declining to impose [the] sanction" of "exclusion of the late-breaking evidence."

We agree with the State that the court found a discovery violation, and with Mr. King that a discovery violation occurred. Rule 4-263(d) states, in pertinent part, that "[w]ithout the necessity of a request, the State's Attorney shall provide to the defense . . . [a]s to each State's witness the State's Attorney intends to call to prove the State's case in chief . . . all written statements of the witness that relate to the offense charged." Also, Rule 4-263(h) states, in pertinent part, that "[u]nless the court orders otherwise[,] the State's Attorney shall make disclosure pursuant to section (d) of [the] Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court." Here, the State conceded, and the court recognized, that the State "made a late disclosure." Also, the court explicitly stated that it found the delay in disclosure "particularly troubling," that the prosecutor could have easily forwarded the report to defense counsel, that the prosecutor had been "working nights" and "weekends" prior to

disclosure, that "one of the most important things that should be happening during that time . . . is the exchange of discovery," that it was "not fair" that defense counsel received the discovery "the day before" trial, and that disclosure of the report was "mandatory." From these statements, we conclude that the court effectively, and correctly, concluded that the State failed to comply with Rule 4-263.

Nevertheless, we agree with the State that the court properly exercised its discretion in declining to exclude the challenged evidence. Rule 4-263(n) states that when "the court finds that a party has failed to comply with [the] Rule," the court may "enter any . . . order appropriate under the circumstances." The Supreme Court of Maryland has stated that "even if the State violates Rule 4-263," a court does "not abuse [its] discretion in admitting . . . challenged evidence at trial" where the defendant "was not prejudiced in any way and there was no bad faith on the part of the State." *Thomas v. State*, 397 Md. 557, 572 (2007). Here, defense counsel did not ask the court for a postponement, and indicated in opening statement that Mr. King's defense was not that Lt. DuBose did not find a gun, but that the gun found by the lieutenant did not belong to Mr. King. Also, the State did not offer Lt. DuBose's report into evidence, and the exclusion of the evidence cited in the motions in limine would not have precluded the lieutenant from testifying that he discovered a gun while searching Mr. King's property, or from identifying that gun. From these circumstances, we conclude that Mr. King was not prejudiced by the State's violation of Rule 4-263, and hence, the court did not err in denying the motions in limine.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.