Circuit Court for Baltimore City
Case No. 620240003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1867

September Term, 2021

IN RE: P.S.

Reed,
Albright,
Getty, Joseph M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 3, 2024

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

This appeal stems from an adjudication hearing in the Circuit Court for Baltimore City, sitting as a juvenile court. The State charged the appellant, P.S., with robbery, conspiracy to commit robbery, second-degree assault, and theft of property valued less than $100. After a two-day adjudication hearing, the court found facts sustained as to all counts. P.S. timely appeals and presents two questions for our review:

1. Did the juvenile court err in concluding that the officers' failure to preserve potentially exculpatory surveillance footage did not constitute bad faith, thereby erroneously denying the defense motion to dismiss for a violation of P.S.'s constitutional due process rights pursuant to *Arizona v. Youngblood*?

2. Did the juvenile court err in (a) changing its ruling on a motion in limine based on an unreported opinion, thereby admitting a surveillance video and BOLO flyer, and (b) admitting hearsay?

For the reasons to follow, we shall affirm the judgments of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

On August 17, 2020,[1] Lutzelar Lopez[2] went to a store in Baltimore City on the corner of Clinton Street and Baltimore Street to buy a soda. As he exited the store, Lopez was assaulted and robbed of $80 by two individuals. Lopez testified about that event as follows:

> After work, I always used to go to the store because it's close to buy a Monster. That day, I went to buy the Monster and I was carrying $82.00. So I was left with $80.00. When I left the store and I went to turn to go to my house, I saw the young man direct coming like toward me. Then I was

[1] P.S. was 14 years old when the charged conduct occurred.

[2] Lopez's last name is sometimes referred to in the record as Lopez-Perdomo and Lopez-Ferdoma. For consistency, we refer to him as Lopez, which is the last name that he stated when he testified at the adjudication hearing.

> walking and I got really close walking to the wall because then I noticed that someone was coming behind me.
>
> * * *
>
> And then I felt like someone grabbed me by my neck. It wasn't the one that was behind me, coming behind me. It was the one that was on the wall on the alley. Then when I fell to the floor and I started like wrestling with them, that is when I hurt my feet because I wrestle in the floor. And I didn't let them to get to my face. But they took the $80.00 and the phone that I was carrying. And they gone toward the opposite side of the street and I told them about my phone and they threw it against the wall and it broke.

During the adjudication hearing, Lopez made an in-court identification of P.S. as one of the individuals who robbed him. Although the robbery was not captured on video, surveillance video that was admitted into evidence at the adjudicatory hearing showed two individuals following Lopez after he exited the store.

Detective Miguel Rodriguez testified at the adjudication hearing. Detective Rodriguez authenticated another surveillance video[3] that showed two individuals walking past the store on the corner of Clinton Street and Baltimore Street. The State also introduced a BOLO (be on the lookout) flyer with a still shot from that surveillance video. Detective Rodriguez testified as follows: "The result of sending out that flyer gave that information identifying one of the suspects as [P.S.]"

[3] This Court has reviewed the surveillance video that was entered into evidence at the adjudication hearing.

P.S. offered and the court admitted into evidence police body-worn camera footage[4] that depicted Lopez reviewing a neighbor's personal surveillance footage. Lopez told police that the assailants were Black. While reviewing the neighbor's surveillance footage, however, Lopez identified someone who appeared to be white. Lopez believed that individual depicted on the neighbor's surveillance footage was an assailant. Police did not obtain the neighbor's surveillance footage.

At the conclusion of the adjudication hearing, the court ruled in relevant part as follows:

> Although there is no video of the Respondent actually robbing Mr. Lopez . . ., the Court cannot ignore the totality of the circumstances in this case. The victim testified that when he left the store, he noticed someone coming from behind him. Once he got close to the alley, he felt someone grab him by his neck. He fell to the ground and he and his attackers began wrestling. His attackers took his phone and $80.00. They threw his phone back at him, but did not return his $80.00. Then they ran west.
>
> After the incident, he told officers that two people assaulted him and that these individuals had followed him once he exited the store. The video clearly depicts the Respondent and another individual following the victim once he exited the store. The Respondent and other individual were in close proximity to each other, an indication that each of them was aware of the events that were about to transpire.
>
> The victim testified that two people attacked him and the individual who was closest to him wore pants, a white shirt, and tennis shoes. One of the individuals wore a mask and the other had on shorts. Incidentally, the video depicts two individuals following the victim one wearing shorts and the other wearing a mask. The BOLO flyer also depicts these individuals. Detective Rodriguez conducted an investigation, obtained video footage, produced a BOLO flyer, and learned the next day that the individual on the flyer was the Respondent.

[4] This Court has reviewed the police body-worn camera footage that was entered into evidence at the adjudication hearing.

> The Court is not convinced that the individuals who robbed and assaulted Mr. Lopez . . . were captured on some video that the police intentionally destroyed. And the victim may well have been confused when he spoke to the police. He testified that he feared for his life. That the incident happened quickly. That he was on the ground and in pain. Victims are often confused and disoriented after suffering a traumatic incident. In this case, however, the Court is not convinced that the victim was so confused so as not to be able to adequately recall the events of August 17, 2020. His testimony, Detective Rodriguez's testimony, the evidence including the tell tale video and BOLO flyer and the totality of the circumstances all indicate beyond a reasonable doubt that the Respondent and his cohort were the individuals who robbed and assaulted Mr. Lopez[.] Accordingly, Respondent is found facts sustained as to all counts.

We shall supply additional facts, as may be relevant, in our analysis.

DISCUSSION

I. *The Court Did Not Err in Denying P.S.'s Motion to Dismiss.*

A. Parties' Contentions

On appeal, P.S.'s counsel argues that the police acted in bad faith in failing to preserve a neighbor's surveillance footage, which did not depict the robbery, but instead depicted events "within 30 minutes of the time of the alleged robbery[,]" when "[i]t would be reasonable that a person who had just committed a robbery on foot could still be walking around the area[.]" P.S. contends that the juvenile court thus erred in denying P.S.'s motion to dismiss: "P.S.'s case is the rare case that demonstrates bad faith by the officers in failing to preserve security footage which they reviewed with [Lopez], from which [Lopez] identified a person who 'looks white' despite his previous description of the suspect as 'Black,' and where P.S. is obviously Black."

The State responds that P.S. has not established clear error in the court's decision to deny the motion to dismiss, as the juvenile court found as follows: "it's speculative to find that the police didn't preserve [the neighbor's surveillance video] because they knew that it would be difficult for them without the video to prove their case." As a result, the State contends that the juvenile court properly denied the motion to dismiss, and reversal under *Arizona v. Youngblood*, 488 U.S. 51 (1988), is unwarranted.

B. Analysis

When a defendant alleges a due process violation stemming from the State's failure to preserve "potentially useful evidence[,]" the defendant must demonstrate that the State acted in bad faith. *Youngblood*, 488 U.S. at 58. *See also Steck v. State*, 239 Md. App. 440, 466 (2018) (a showing of "bad faith" is "a high standard for an individual to satisfy, typically found only in the most egregious of cases."). P.S. concedes that we review a court's finding as to bad faith for clear error. *See Elliott v. State*, 185 Md. App. 692, 737 (2009).

Here, before the adjudication hearing, defense counsel moved to dismiss the petition based on *Youngblood*, arguing that the "police in this case intentionally failed to preserve what would have been exculpatory evidence, and that their intent behind doing so is made clear through body worn camera." That body-worn camera footage, which was later admitted into evidence, shows officers canvassing the area around the location of the robbery with Lopez. During that canvas, the officers observed a camera outside a rowhouse near where Lopez said the robbery occurred. The officers knocked on the door

and asked the resident if they could review the surveillance footage, and the resident agreed.

The officers reviewed the footage with Lopez, and Lopez appeared to identify someone who he believed was an assailant:[5]

> [LOPEZ]: Uh, this one right here… in a blue t-shirt, he's one of them?
>
> [FEMALE OFFICER]: What?
>
> [MALE OFFICER #1]: There is a…could you replay that video again? [Unintelligible] Which one sir?
>
> [LOPEZ]: That one here[.]
>
> [MALE OFFICER #1]: That's not blue, this is not blue, is green…
>
> [LOPEZ]: Blue, blue, yes blue.
>
> [MALE OFFICER #1]: It's green.
>
> [LOPEZ]: The other one was in like a white t-shirt, but I don't know where he came from.
>
> [MALE OFFICER #1]: That's green.
>
> [NEIGHBOR]: [Unintelligible.]
>
> [FEMALE OFFICER]: That's it? That's him?
>
> [LOPEZ]: Yes. Yes.
>
> [MALE OFFICER #1]: No, because you said he was black sir.
>
> [LOPEZ]: A black…
>
> [MALE OFFICER #1]: Yes you said they were two black males.

[5] On June 9, 2022, this Court granted P.S.'s Unopposed Motion to Supplement the Record with transcripts and a translation of the body-worn camera video recording that were admitted into evidence at the adjudicatory hearing.

[FEMALE OFFICER]: Black.

[MALE OFFICER #1]: He's not black.

[LOPEZ]: He's not black? Well, I saw [unintelligible].

[MALE OFFICER #1]: No. So, so that's the wrong one. Were they black? Or white?

[LOPEZ]: Yes, black, black.

[MALE OFFICER #1]: Yeah, so…

[FEMALE OFFICER]: So, okay…I don't see them hiding before so, so [Unintelligible] looking for…

[MALE OFFICER #1]: Uh hum.

[FEMALE OFFICER]: So, that's a five thirty one…. Is anything after that?

[NEIGHBOR]: Yes, ma'am. There is… at 5:44…

[FEMALE OFFICER]: [Unintelligible] be able to pick up on it, no doubt…

[MALE PARAMEDIC]: Uh?

[FEMALE OFFICER]: That's [Unintelligible] first

[MALE OFFICER #1]: More or less sir.

[NEIGHBOR]: Right here?

[FEMALE OFFICER]: Yeah, right here.

[MALE OFFICER #1]: What time did it happen?

[NEIGHBOR]: [Unintelligible]

[LOPEZ]: I don't remember. When it arrived, when I called the woman… she does not stay, even her what time it is, because…

[MALE OFFICER #2]: [Unintelligible]

[FEMALE OFFICER]: No. So, apparently they went into Noble and ran.

[MALE OFFICER #2]: Oh, okay.

[FEMALE OFFICER]: Westbound on Noble.

After the officers did not see anyone on the footage that they believed fit the Lopez's original description of the suspects, the following occurred:

[FEMALE OFFICER]: That's the only one that that one picked up?

[NEIGHBOR]: Yeah, uh, five thirty one right? And then there's five forty four…

[FEMALE OFFICER]: It isn't probably that late [Unintelligible]… Yeah...

[NEIGHBOR]: So, hum…

[MALE OFFICER #1]: And I didn't see no, no more males, at all…

[FEMALE OFFICER]: No…

[MALE OFFICER #1]: Unless, with the one with the green…

[FEMALE OFFICER]: But, it didn't occur here…

[MALE OFFICER #1]: Correct

[NEIGHBOR]: Five twenty five, twenty seven…

[FEMALE OFFICER]: But he… I don't think that was a… [Unintelligible] I don't think that was a number one male or not…

[MALE OFFICER #1]: Uhm no.

[FEMALE OFFICER]: I don't think so.

[MALE OFFICER #1]: The one he identify It's looks like a like a… number two male.

> [FEMALE OFFICER]: Yes, that's what I'm saying. It looks like a number 2 male, yes.
>
> [MALE OFFICER #1]: [Unintelligible] the who… the whole…
>
> [FEMALE OFFICER]: He didn't identify him… Well, thank you so much sir. I really appreciate it.
>
> [NEIGHBOR]: You're welcome. Sorry [Unintelligible]
>
> [MALE OFFICER #1]: Thank you. No, it's all right.

The officers left the scene without preserving a copy of the neighbor's surveillance footage.

Defense counsel argued that the officers acted in bad faith when they failed to preserve the neighbor's security footage. The State responded by making the following observation about the body-worn camera footage that depicts the officers and Lopez reviewing the neighbor's surveillance footage: "the time frame for which they're looking through the videos is not the time frame in which the alleged incident occurred. . . the time frames are completely off based on the other materials[.]"[6] The prosecutor also stated as follows: "And the evidence to which counsel is referring to is not in the State's possession. We don't have it. And since it's been brought to the State's attention, I even went around there. I sent detectives around there to see if we could get the evidence[.]"

The court denied the motion to dismiss under *Youngblood*, finding that there was no bad faith:

> As counsel has articulated, there has to be a showing of bad faith in order for a case to be dismissed. . . . By going back to the scene, the State

[6] Detective Rodriguez obtained surveillance footage from the store on the corner of Clinton Street and Baltimore Street and testified as follows: "I proceeded to search for playback for the date of the incident and the time that was given, a round about time that was given through the victim and 9-1-1- calls. Approximately like around 4:50 hours."

> spoke to the officers, spoke to the lead detective, all in an effort to retrieve this video, which unfortunately expired after a certain time frame.
>
> Now, the Court finds that the failure, that it should have been preserved if in fact it was exculpatory. And the failure to preserve was at best negligent. And it's speculative to find that the police didn't preserve it because they knew that it would be difficult for them without the video to prove their case.
>
> The issue involving the time frame, the Court will have to certainly make a judgment on that. But looking at all the factors and totality of it, this Court does not find that the proper remedy in this case is dismissal. So the motion to dismiss based on bad faith is denied.

On appeal, P.S. attempts to analogize the instant case to *People v. Alvarez*, 229 Cal. App. 4th 761 (Cal. App. 2014). In *Alvarez*, the victim was robbed by approximately five men. *Id*. at 766. Shortly thereafter, three defendants were apprehended. *Id*. There were "two police controlled cameras in the vicinity of the robbery" and "[o]fficers were typically aware that footage was only available for a fairly short amount of time." *Id*. at 764, 767-78. One of the defendants "specifically asked the senior officer on the scene, [Detective Wren], to check any relevant video." *Id*. at 764, 770. Detective Wren replied: "'If I had video cameras of what took place, that's part of my job. My job is not to arrest people that aren't guilty of something.'" *Id*. However, Wren later admitted that he did not review any of the footage. *Id*. Nor did Wren ask anyone else to do so, and "[h]e asserted it was not his responsibility." *Id*. at 764. Detective Sirin — who maintained and controlled the cameras — "did not receive a request from any of the officers involved to view footage related to" the case. *Id*. at 767-68. By the time Detective Sirin received a request from the defendant's attorney, the footage had been deleted. *Id*. at 768. The trial court granted the defendants' motion to dismiss, finding that the police acted in bad faith. *See id*. at 769-70.

The California intermediate appellate court affirmed that ruling with respect to two of the three defendants. *Id*. at 776-78, 788.

Alvarez is distinguishable for at least two key reasons. First, as to the substance and origin of the video evidence, the videos at issue in *Alvarez* were captured by police-controlled cameras, and "it was a reasonable inference from the testimony that at least one of the cameras would have captured the" scene of the crime at the time of the offense. *Id*. at 775. In contrast, the video at issue here was captured by a private party's home surveillance camera, and P.S. does not claim that video would have captured the robbery. Instead, P.S.'s counsel argued as follows before the juvenile court: "it's a 30 minute window in which it's alleged that this crime may have occurred and what time they reviewed the video. And the person who committed the crime could very well still been walking around the area." The State is correct that P.S.'s claim "relies on the assumption that the robber, after committing the crime, would have remained in the area for an extended period of time."

Second, *Alvarez* was a State appeal from the trial court's grant of a motion to dismiss. Thus, the defendants in *Alvarez* received the benefit of a deferential standard of review on appeal. *See id*. at 774 (quoting *People v. Rodriguez*, 20 Cal. 4th 1, 11 (1999)) (noting that "'the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence--that is, evidence that is reasonable, credible, and of solid value' in support of the court's decision."). Here, the State prevailed below, and thus P.S. acknowledges that he has the

burden to establish "clear error" in the court's finding as to a lack of bad faith. *See Elliott*, 185 Md. App. at 737.

The court here properly found that the police did not act in bad faith when they failed to preserve the video evidence. Moreover, we agree with the court's determination that the failure to preserve the video was "at best negligent."[7] *See Gimble v. State*, 198 Md. App. 610, 628 (2011) (examining *Patterson v. State*, 356 Md. 677 (1999) and noting that negligence "does not amount to bad faith under *Youngblood*."). Although it would have been preferable for the police to obtain and preserve the surveillance footage from the private party's residence, the failure to do so does not amount to bad faith under these circumstances.[8]

II. *Any Error in the Court's Consideration of an Unreported Opinion Was Harmless. And the Court Did Not Err in Admitting a Detective's Testimony About the Investigation.*

A. Parties' Contentions

P.S.'s second question presented encompasses two distinct arguments. First, P.S. argues that the juvenile court erred in reconsidering its ruling on the admission of a

[7] Based on the context of this statement, it is clear to us that the court meant the following: P.S.'s argument established "at best" that the police were negligent in failing to preserve the video.

[8] In a footnote in his opening brief, P.S. argues that the court committed plain error "by failing to draw a missing evidence inference regarding the surveillance video, and inferring that its contents would have contradicted the State." As the State notes, however, P.S. cites no authority for the proposition that the court was required to draw a missing evidence inference. *Cf. State v. Rich*, 415 Md. 567, 578 (2010) (to exercise plain error review, the claimant must establish, among other things, that the "the legal error must be clear or obvious, rather than subject to reasonable dispute."). We decline P.S.'s invitation to exercise plain error review.

surveillance video and the BOLO flyer. More specifically, P.S. contends that the court erred in relying on one of this Court's unreported opinions when the court reconsidered its ruling. The State responds by arguing that Md. Rule 1-104 does not prohibit a court from relying on an unreported opinion. The State also claims that any error was harmless beyond a reasonable doubt because P.S. does not challenge the substance of the court's ruling.

Second, P.S. argues that the court erred in admitting Detective Rodriguez's testimony about what happened after police distributed the BOLO flyer. According to P.S., that testimony contained inadmissible hearsay. The State counters by claiming that the challenged testimony was not hearsay, and the circuit court admitted this testimony for a non-hearsay purpose.

B. Analysis

The Juvenile Court's Consideration of an Unreported Opinion

At the beginning of the adjudication hearing in September 2020, defense counsel moved to exclude a witness that the State intended on calling for the limited purpose of authenticating surveillance footage from the store where Lopez left before he was robbed. Defense counsel argued that the State's late disclosure of that witness warranted exclusion of the witness's testimony. The court granted the motion to exclude that witness, ruling as follows:

> I do understand that the State is calling this or would intend to call this witness for a limited scope and I'm not finding that you acted in bad faith, [Madam State]. However, . . . it's almost a blind side to the Respondent to

> just say, oh by the way, I'm going to be calling this witness also because the Respondent has to prepare her case as well. . . .
>
> So the Respondent's motion to exclude, this is a store owner from testifying, . . . the motion is granted.

During the State's case-in-chief, the court admitted State's Exhibit 1A, which is another surveillance video from the same store. Lopez was able to identify himself in that video, and he confirmed that the video fairly and accurately depicted the events of the day.

After Lopez testified, the State indicated that it would call Detective Rodriguez to testify. Defense counsel moved to prohibit Detective Rodriguez from testifying as to the authentication of what would be State's Exhibit 1B: another angle of footage from the store. After examining *Washington v. State*, 406 Md. 642 (2008), the court granted defense counsel's motion. The court reasoned that Detective Rodriguez could not authenticate the video because he was not the custodian of the record and he did not have personal knowledge of the events depicted in the video:

> There must be sufficient evidence that witnesses have first hand knowledge of the facts to which they testify for the fact finder to find that the witness has such knowledge. He does not have that first hand knowledge. Yes, he did retrieve it and look at it. But that's not first hand knowledge. So the motion is granted.

The State then indicated that it would not call Detective Rodriguez to testify and that the State would call another witness. The adjudication was unable to conclude that day because of time constraints.

Because of the court's closure due to the COVID-19 pandemic, the adjudication did not resume until July 2021. At that time, the State called Detective Rodriguez as its only additional witness. The State provided the court and defense counsel with a copy of an

unreported opinion from this Court — *Mills v. State*, No. 1382, Sept. Term 2017, 2018 WL 3660574 (Aug. 1, 2018) — and asked the court to reconsider its ruling in light of that opinion. The court then reviewed *Mills* and reconsidered its prior ruling: "All right. This is still good law. It essentially, it's quite different from the Court's holding in Washington and supports the State's case. The Court will certainly reconsider its decision to not allow the detective to, . . . testify as to the contents of the video."

Detective Rodriguez then testified as to his process of downloading copies of the videos to a thumb drive, his experience using similar surveillance systems, and his observations of the store owner's use of the surveillance system. Defense counsel then objected again after realizing that *Mills* is an unreported opinion. The court ultimately ruled as follows:

> The Court reconsidered the motion in limine based on - - well, of course based on Mills. **But even outside of Mills,** after locating the footage, Detective Rodriguez looked at it. He looked at the cameras facing Clinton Street and the cameras facing Baltimore Street. Once he saw everything form [sic] the cameras, he had the evidence he needed and asked the store owner to make a copy of, a copy and store into the DVR. At that point, he downloaded the footage to his thumb drive. He has done this on many occasions. He knew that the system was operable because he, the system contained a live feed with dates and times and he was able to determine the accuracy because of the, the date and times were similar or were the same as what he observed before he came in to the store.
>
> There's no question about authenticity here. Your objection is overruled.

(Emphasis added.)

The court ruled that the video was properly authenticated and admitted State's 1B into evidence. Based on that video, Detective Rodriguez created a BOLO flyer of the

suspects, and that flyer was disseminated within the police department. The State moved to admit the flyer, and defense counsel objected because the flyer was derived from State's Exhibit 1B. The court overruled the objection, and thus the flyer was admitted into evidence as State's Exhibit 2.

On appeal, P.S. concedes in his reply brief: "The trial court's finding of authenticity and decision whether to admit or exclude surveillance video is reviewed for abuse of discretion, and under *Washington* as controlling precedent neither decision would constitute an abuse of discretion." Indeed, P.S. does not challenge the substance of the court's ruling. Instead, P.S. contends that the court erred in relying on an unreported opinion when it reconsidered its ruling.

Md. Rule 1-104(a) states that "[a]n unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority." [9] To be sure, the court here initially relied on the unreported opinion (before defense counsel notified the court that the opinion was unreported). But the court then determined that authentication was proper "even outside of [the unreported opinion.]"

In support of his argument, P.S. cites *Smith v. Warbasse*, 71 Md. App. 625 (1987). *Warbasse* involved a claim of contributory negligence involving a vehicle collision with a pedestrian. *Id*. at 626. The trial court relied on an unreported opinion of this Court when it granted summary judgment "on the grounds that appellant[— the pedestrian —]was

[9] The rule and legend now offered in unreported opinions is: This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104 (a)(2)(B).

contributorily negligent as a matter of law." *Id*. This Court criticized the trial court's citation of an unreported opinion, but nevertheless affirmed the judgment:

> Our review of the record and the authorities convinces us that the trial court's ruling is correct. It would be the height of folly for us to reverse and remand for further consideration, this case, which we know to be correct, solely on the basis of an inappropriate use of an unpublished opinion. Accordingly, we hold that the error, *under the circumstances of this case*, was harmless.

Id. at 634-35.

As the State recognizes, the language of the rule governing the citation of unreported opinions was different at the time of the *Warbasse* opinion. Indeed, the rule in effect then also prohibited the citation of an unreported opinion by "a court[.]" As stated by this Court in *Warbasse*, the rule in effect then stated as follows:

> An unreported opinion of this Court may be cited in this Court or the Court of Appeals for any purpose other than as precedent within the rule of stare decisis. In any other court, an unreported opinion of this Court may be cited **by a court or a party only** (A) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (B) in a criminal action or related proceeding involving the same defendant, or (C) in a disciplinary action involving the same respondent. Whenever a party cites an unreported opinion of this Court, the party shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Id. at 632 (emphasis added). In contrast, the current rule — Md. Rule 1-104(b) — does not expressly address the actions of a "court" in the same way:

> An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

At any rate, the bottom line is that any error stemming from the citation of the unreported opinion was harmless. After defense counsel informed the court that *Mills* was unreported, the court determined that its decision was proper "even outside of Mills[.]" Indeed, P.S. does not challenge the substance of the juvenile court's ruling. As in *Warbasse*, it would be inappropriate for this Court to reverse and remand for the court to reach the same legally proper conclusion, just without referring to the unreported opinion this time. *See id*. at 634-35 ("It would be the height of folly for us to reverse and remand for further consideration, this case, which we know to be correct, solely on the basis of an inappropriate use of an unpublished opinion.").

For these reasons, any error in the court's citation of the unreported opinion was harmless beyond a reasonable doubt.

The Juvenile Court Properly Admitted the Challenged Testimony About Detective Rodriguez's Investigation

Last, P.S. contends that the court erred in overruling defense counsel's hearsay objection to Detective Rodriguez's testimony about what happened after police disseminated the BOLO flyer. The State elicited the following testimony at the adjudication hearing:

> [STATE]: What if anything did you do, what if any, what if anything happened once you sent out that flyer?
>
> [DET. RODRIGUEZ]: The result of sending out that flyer gave that information identifying one of the suspects as [P.S.].
>
> [DEFENSE COUNSEL]: Objection, Your Honor. For the record, that is hearsay evidence. That is hearsay testimony. Not phrased such that, he said. But that is hearsay and I am making that objection for the record. . . .

THE COURT: What is, it has to be an actual out of court statement. What is the out of court statement?

[DEFENSE COUNSEL]: Yes, Your Honor. It is an implied out of court statement.

THE COURT: It cannot be implied. It has to be an out of court statement.

[DEFENSE COUNSEL]: So Your Honor, so if information was given - - so you could phrase any out of court statement by phrasing it by information was give to me at blah, blah, blah, blah. And that inherently is a way to just get around the witness says, blah, blah, blah, blah, blah. It is like a way to not explicitly say that I am expressing to you information that is hearsay, right? But it's a way to say, like, for example, I received information that the suspect involved in the domestic dispute was Johnny. Well, someone told him that and he's then reporting it back. And so there's no way to question the proponent of the underlying description because they're not present.

THE COURT: You do realize that there are hearsay exceptions.

[DEFENSE COUNSEL]: Yes.

THE COURT: So if he learned something during his investigation that puts him on notice and that's the [e]ffect on the hearer, that's the first thing, which makes it an exception. What he learned during his investigation, which put him on notice that one of the suspects was the Respondent is a hearsay exception regardless of whether it's a back door as you're asserting. A back door way of getting it in. It is an exception.

[DEFENSE COUNSEL]: Identifications are an exception. You're right, Your Honor. But we don't know - - I mean we're now just being told that some person out there says he looked like [P.S.] I mean, that's not, it doesn't feel like it's an actual conclusion of the hearsay exception.

THE COURT: Okay. Well what it feels like and what it is are two different things. And according to the rules, if he's put on notice that one of the suspects is the Respondent, it is called, the exception is [e]ffect on the hearer and the objection is overruled.

[STATE]: And so Detective Rodriguez, once you learned the suspect's name, what if anything did you do next?

> [DET. RODRIGUEZ]: Well, after learning that uh, that uh [P.S.] was the suspect in this case, at that point I proceeded to write up a statement of charges. Basically, put out a wanted flyer for patrol with his picture. And later on, he was apprehended.

"Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule." *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). "Unlike many rulings on the admissibility of evidence, which are reviewed for abuse of discretion, the issue of '[w]hether evidence is hearsay is an issue of law reviewed *de novo*.'" *Id*. (quoting *Parker v. State*, 408 Md. 428, 436 (2009)).

Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "'The threshold questions when a hearsay objection is raised are (1) whether the declaration at issue is a "statement," and (2) whether it is offered for the truth of the matter asserted.'" *Wallace-Bey*, 234 Md. App. at 536 (quoting *Stoddard v. State*, 389 Md. 681, 688-89 (2005)). "'If the declaration is not a statement, or it is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded under the hearsay rule.'" *Id*. at 536 (quoting *Stoddard v. State*, 389 Md. at 689).

The Supreme Court of Maryland has recognized the general rule that a statement is not hearsay if "it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true." *Graves v. State*, 334 Md. 30, 38 (1994). P.S. challenges the

following testimony from Detective Rodriguez: "The result of sending out that flyer gave that information identifying one of the suspects as [P.S.]."[10]

We find no error in the court's admission of that testimony for two key reasons. First, the court was clear that it was admitting the testimony for a limited purpose: to show the effect on the listener. Thus, that testimony was nonhearsay. Lynn McLain, Maryland

[10] On cross-examination, defense counsel made a tactical decision to ask Detective Rodriguez questions that clarified the extent of Detective Rodriguez's knowledge of the relationship between P.S. and the individual that identified P.S. from the BOLO flyer:

> [DEFENSE COUNSEL]: Do you have any personal knowledge about the basis of the relationship between the person who alleges that that person was [P.S.]?
>
> [DET. RODRIGUEZ]: Yes.
>
> [DEFENSE COUNSEL]: What is the personal - - what's your basis?
>
> [DET. RODRIGUEZ]: Well, the knowledge is that they had investigated directly incidents involving [P.S.]
>
> [DEFENSE COUNSEL]: But you weren't personally involved in those investigations.
>
> [DET. RODRIGUEZ]: Not me, no.

Then, on re-direct examination, defense counsel did not object to the following testimony elicited by the State:

> [STATE]: Detective Rodriguez, what is your relationship with the person who identified, who identified [P.S.] from the be on the lookout flyer? . . .
>
> [DET. RODRIGUEZ]: Okay. That is co-worker at the office.
>
> [STATE]: I mean how close do you work together?
>
> [DET. RODRIGUEZ]: He's in my same squad, detective squad. Yep.

Evidence § 801:10 ("Out-of-court statements that are relevant because a particular person heard or saw them and therefore are offered for the limited purpose of proving their effect on the hearer or reader are nonhearsay. The opposing party's need to cross-examine is met by the opportunity to cross-examine the witness who testifies to the out-of-court statement's having been heard or read by the hearer or reader."). Second, this was a bench trial, and thus there was no danger that the jury would misuse the testimony for an improper purpose. This Court in *In re Matthew S.*, 199 Md. App. 436 (2011), emphasized the distinction between bench and jury trials in this context:

> Moreover, it is important to note that this was a bench trial, and the court stated that it was admitting the testimony because it was being offered to establish "a basis of a probable cause or a reason to take action in the investigation." Thus, the court made clear that it would not consider the evidence for the truth of the matter asserted. The court's statements in this regard are significant.

Id. at 465. *Cf. Parker*, 408 Md. at 443 (expressing the concern that the jury would misuse the challenged testimony as substantive evidence of guilt); *Graves v. State*, 334 Md. 30, 42 (1994) (same); *Zemo v. State*, 101 Md. App. 303, 306 (1994) (noting that there was "a sustained and deliberate line of inquiry that can have had no other purpose than to put before the jury an entire body of information that was none of the jury's business."); Lynn McLain, Maryland Evidence § 801:10 (examining Maryland law governing statements offered to show the effect on the listener within the context of police investigations and noting that "[t] he rules are less restrictive in a bench trial.").

Lastly, we disagree with P.S.'s assertion that the juvenile court used the challenged testimony as substantive evidence of P.S.'s guilt. P.S. points to the court's verdict, when

it examined the totality of the circumstances, which included a brief summary of the procedure that Detective Rodriguez followed during the course of his investigation: "Detective Rodriguez conducted an investigation, obtained video footage, produced a BOLO flyer, and learned the next day that the individual on the flyer was the Respondent." Based on that summary, P.S. argues that "the court relied on Rodriguez's hearsay testimony for its truth[.]" P.S.'s reply brief echoes that interpretation in a more extreme manner: "The court was unequivocal that it was relying on the hearsay testimony that was admitted over defense objection as part of the totality of circumstances that indicated that P.S. was involved in the robbery." In our view, the transcript shows that the court was simply summarizing Detective Rodriguez's testimony about what the detective learned during the course of his investigation. Indeed, the court previously indicated that it admitted the challenged testimony because it was offered to show the effect on the listener, i.e., not for the truth of the matter asserted.[11] The court was not required to repeat that ruling when it rendered its verdict. Unlike the court's brief factual recitation of Detective Rodriguez's procedure, the court indicated that it placed substantive weight on its own examination of the video evidence: "The video clearly depicts [P.S.] and another individual following the victim once he exited the store."

[11] The State argues that "[i]f the lower court erred in relying on this testimony substantively in its verdict, . . . that was separate from the admission of the evidence itself and thus it was incumbent on P.S. to make a contemporaneous objection" under *Rivera v. State*, 248 Md. App. 170, 183 (2020). Because the court did not rely on this testimony as substantive evidence of P.S.'s guilt, we need not decide the State's preservation argument.

For all these reasons, we find no error in the court's admission of the challenged testimony.

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