UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0423

September Term, 2015

IN RE: DION L.

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: April 8, 2016

In late 2014, appellant Dion L. was alleged delinquent in connection with several automobile thefts and associated events that occurred on November 28 and 29, 2014. Following a two-day hearing, the Circuit Court for Prince George's County, sitting as a juvenile court, found Dion to be involved in armed carjacking, armed robbery, and first degree assault, among other related offenses. The court committed Dion to a level B placement on April 10, 2015. Dion appealed on April 17, 2015, and presents one question for our review:

> Did the trial judge err in permitting the State to introduce identification evidence that had not been disclosed in discovery?

For the following reasons, we affirm the judgment of the juvenile court.

BACKGROUND

Dion does not contest the sufficiency of the evidence. Accordingly, we need only summarize the facts that gave rise to this prosecution, or that may be necessary to the resolution of issues raised in this appeal. *See Martin v. State*, 165 Md. App. 189, 193 (2005) (citing *Whitney v. State*, 158 Md. App. 519, 524 (2004)). The following was described by the witnesses at hearings on March 20 and 24, 2015.

Shamika Hill testified that in the early morning on November 28, 2014, two masked gunmen approached her while she was at a gas station in Washington D.C. They, along with a third male, took her 2003 Dodge Durango and fled the scene. Philip Enyinnaya testified that, later that day, two masked men pulled up in a Dodge Durango outside his residence in Hyattsville. They exited the car and approached him with guns drawn. After asking for his money, they took Mr. Enyinnaya's keys to his BMW X5 and

to his brother's Chevy Impala and drove off in the two cars, trailing the Durango. Mr. Enyinnaya's mother, who observed the incident from a window, called the police. Mr. Enyinnaya identified Dion L. in a photographic array and in court as being one of the carjackers.

The next day, on November 29, 2014, Officer Richard Willis, a member of the District of Columbia Metropolitan Police Department ("MPDC"), was on patrol with his partner when he spotted a Dodge Durango matching the description of a vehicle sought in connection with a carjacking. Willis attempted to conduct a traffic stop of the Durango, but was unsuccessful, and a chase ensued. Willis stated in trial that, as the Durango passed the police cruiser, he could see several individuals in the vehicle including the driver. Willis then broadcast the Durango's license plate number and subsequently learned that the vehicle had been found in an alley and was unoccupied. When he arrived at the Durango's location, he saw the driver, whom he identified in court as Dion, sitting outside a library, about 40 to 50 yards away from the abandoned Durango. Willis arrested Dion and took him into custody.

During Willis's testimony, defense counsel objected to Willis's identification of Dion as the driver of the Durango, arguing that it was a pre-trial identification that was not disclosed in discovery. The prosecutor argued that the State had disclosed the pre-trial identification in the factual narrative that was provided with the juvenile petition.[1]

[1] The prosecutor referred to this document as an arrest report. However, the record reflects that the State had provided the writ of juvenile petition and complaint for (Continued . . .)

The juvenile petition recounted the events described above, and stated the following with respect to Dion's arrest:

> On November 29, 2014 at approximately 1930 hours, Officer Willis #4881 with MPDC was on routine patrol in the area of Lincoln Heights neighborhood located in the 5th District Durango in the area and attempted to conduct a traffic stop. The carjacked Dodge Durango failed to stop for Officer Willis and a chase ensued. The subjects in the Dodge Durango crashed and bailed out of the vehicle in the 5000 Block of Central Avenue SE Washington, DC. The subjects were ultimately apprehended by the MPDC in the area. The driver of the carjacked Durango was identified by MPDC as the Respondent Dion L.

The remainder of the juvenile petition described the course of the Prince George's County investigation and the officers involved in it.

After hearing argument from defense counsel and the prosecutor on the issue, the court ruled that Willis would be allowed to testify to the identification. The court stated that Willis's identification of Dion was not "within the identification type of evidence required to be disclosed by the State." Alternatively, the court observed that "any failure of the State to specifically say that the witness is going to say that this was the person that was in that vehicle is not something that would cause the Court to bar the witness from testifying to that effect."

At the conclusion of the hearings, the juvenile court found Dion to have been involved in the offenses of armed carjacking, armed robbery, robbery, carjacking, first

(. . . continued)
restitution to the respondent. The prosecutor also mentioned that she had "provided a video with Officer Willis in the video with the [Dion]." The record does not reflect any other mention of the video or its significance.

degree assault, second degree assault, wearing a handgun, transporting a handgun, motor vehicle theft, two counts of theft of property having a value less than $1000, one count of theft of property valued between $100-$10,000, and unauthorized use of a motor vehicle. After a hearing held on April 10, 2015, the juvenile court committed Dion to level B placement. He filed an appeal to this Court on April 17, 2015.

DISCUSSION

Dion first argues that the court erred in its determination that the prehearing identification by Willis was not the type of identification required to be disclosed by the prosecution in discovery. Second, he argues that the court erred in ruling that the State was not required to "specifically" advise the defense that Willis, as opposed to another officer, identified Dion as the driver of the Durango. The State contends that the circuit court properly concluded that the prosecutor complied with its discovery obligations, and that, alternatively, if the failure to specifically identify Willis as an identification witness was a discovery violation, the trial court properly exercised its discretion in concluding that the violation did not warrant exclusion of Willis's testimony.

We review the issue of whether a discovery violation occurred *de novo*. *Cole v. State*, 378 Md. 42, 56 (2003) ("The application of the Maryland Rules . . . to a particular situation is a question of law, and 'we exercise independent *de novo* review to determine whether a discovery violation occurred'"). "[A]n appellate court will ordinarily affirm a trial court's judgment on any ground adequately shown by the record, even though the ground was not relied on by the trial court." *Temoney v. State*, 290 Md. 251, 261 (1981)

(Citations omitted). "In other words, a trial court's decision may be correct although for a different reason than relied on by that court." *Robeson v. State*, 285 Md. 498, 502 (1979) (Citations omitted).

Maryland Rule 11-109 gives the respondent in a juvenile case broad discovery rights to information held by the State. Rule 11-109 requires the State, without the necessity of a request by the juvenile, to provide "any relevant material or information regarding . . . prehearing identification of the respondent by a witness for the State[.]" Rule 11-109(a)(3)(B). Although Rule 11-109 governs discovery in juvenile proceedings, the Court of Appeals's interpretation of the criminal counterpart to this rule, Rule 4-263, provides us with guidance.[2] *In re Caitlin N.*, 192 Md. App. 251, 271 (2010).

The definition of a pre-trial identification encompasses more than just "state-orchestrated identification procedures, such as a photographic array, a show-up, or a line-up"—instead, the rules require mandatory disclosure of all pre-trial identifications of the defendant. *Williams v. State*, 364 Md. 160, 172-74 (2001). The Court of Appeals, in *Williams v. State*, described the polices underlying the disclosure requirements found in Rule 4-263:

> Inherent benefits of discovery include providing adequate information to both parties to facilitate informed pleas, ensuring thorough and effective

[2] Maryland Rule 4-263 requires the State to provide "[a]ll relevant material or information regarding . . . pretrial identification of the defendant by a State's witness" in criminal cases. Rule 4-263(d)(7)(B). In juvenile cases, the trial is referred to as a hearing. We use the terms, "pre-trial identification" and "pre-hearing identification" interchangeably.

> cross-examination, and expediting the trial process by diminishing the need for continuances to deal with unfamiliar information presented at trial. Specific to the mandatory disclosure provisions of Rule 4-263(a), the major objectives are to assist defendants in preparing their defense and to protect them from unfair surprise. *See Patrick v. State,* 329 Md. 24, 30, 617 A.2d 215, 218 (1992).

364 Md. 160, 172 (2001). Thus, the goal of the rules is to assist defendants in preparing their defense *generally*—the rules are not aimed exclusively at furthering the defense's ability to prepare pre-trial motions. *Id.*

Dion argues that the juvenile court was incorrect in determining that Willis's identification of Dion was not the type of identification that the rules required to be disclosed. We agree, however, we shall affirm the court on a different ground.

In this case, Willis's identification of Dion as the driver of the vehicle that fled the attempted traffic stop was a pre-trial identification of the type contemplated by Rules 11-109 and 4-263. Therefore, the prosecutor was required to disclose the identification to Dion. However, as further discussed below, we hold that the prosecutor disclosed the identification by providing the juvenile petition to the defense, which specifically stated that "[t]he driver of the carjacked Durango was identified by MPDC as the Respondent Dion L." We note that the only police officer mentioned in the petition that worked with MPDC was Officer Willis.

Dion argues that the decisions by the Court of Appeals in *Williams v. State* and by this Court in *Simons v. State*, 159 Md. App. 562 (2004) compel reversal in this case. In *Williams*, the prosecutor, in response to repeated requests for clarification by the defense, stated several times that its witness could not identify Williams. 364 Md. at 172.

Williams was rightfully surprised at trial when the witness recounted that he had identified the Williams on the night of the crime. *Id.* at 165-66. The Court reversed Williams's conviction due to a violation of Rule 4-263. *Id.* at 181. In *Simons*, the witness had informed the police, prior to trial, that she had seen Simons near the scene of the crime around the time that the crime was committed. 159 Md. App. 562, 574 (2004). However, the prosecutor failed to convey that information to the defense, and, when interviewed by the defense counsel's investigator prior to trial, the witness stated that she had not seen the defendant the night of the crime. *Id.* We reversed Simons's conviction because the State violated Rule 4-263 when it failed to inform him of the pre-trial identification by a witness. *Id.*

Dion claims that, similar to circumstances of *Williams* and *Simons*, he was subjected to unfair surprise by Willis's testimony that he saw Dion driving the stolen Durango, and that this prejudiced his ability to present an adequate defense. Dion maintains that, had he known of Willis's identification, it would have "afforded the defense the opportunity to investigate the scene of the purported identification with an eye to locate anything which could have impeached the officer's testimony and his ability to make the identification he claimed to have made."

In contrast with *Williams* and *Simons*, here, the juvenile petition specifically states that Dion "was identified by" the DC Metropolitan Police. This is not a case where the prosecutor repeatedly denied that there was a pre-trial identification. Nor is this a case where the State failed to inform Dion of a pre-trial identification. Instead, the prosecutor

provided information to the defense that Dion had been identified by the MPDC. The record does not indicate what steps defense counsel took to learn more about the pre-trial identification of Dion, but there is no doubt that the phrase, "was identified" put defense counsel on notice that an identification had occurred. Dion should not have been surprised when Willis, as the only officer scheduled to testify from MPDC, stated that he had identified him the day of his arrest.

Finally, Dion contends that the disclosure in the juvenile petition was not substantially complete because it did not specifically state that Willis was the MPDC officer who made the identification. We disagree. The narrative relayed by the juvenile petition provided sufficient information from which defense counsel could have concluded that Willis was the officer who identified Dion. In this case, it would have been preferable for the prosecutor to use the active voice to articulate that Willis identified Dion as the driver of the Durango. Nevertheless, based on the availability of the juvenile petition, which specifically expressed that "[t]he driver of the carjacked Durango was identified by MPDC as the Respondent[,]" we hold that the disclosures made by the State in this case served the purpose of discovery and Rule 11-109. We affirm the judgment of the juvenile court.

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