Circuit Court for Prince George's County
Case No. CT190808X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 130

September Term, 2020

GERVAIS BENAMNA

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 4, 2021

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

Following a jury trial in the Circuit Court for Prince George's County, Gervais Benamna, appellant, was convicted of theft of property valued at more than $100 and less than $1,500.[1] On appeal, he contends that the court erred in admitting testimony from an officer investigating the case because it constituted inadmissible hearsay evidence. For the reasons that follow, we shall affirm.

BACKGROUND

At trial, the victim testified that he was smoking a cigarette outside of his apartment when he was approached by two men. One of the men put a knife to his neck and took his cell phone and wallet. The men then got into a car and drove away. Three days after the robbery, the victim purchased a new cell phone. When the victim accessed his iCloud account, he saw several photographs and videos that he had not taken. He recognized the person in these photographs and videos as the person who had robbed him. At trial, he identified that person as Mr. Benamna.

The victim gave the photographs to Detective Jermaine Woodward who had them sent out in a "mass email to [ ] local police agencies" to see if anyone recognized the person in the photographs. Detective Charles Horowitz of the Montgomery County Police Department testified that he received the email and recognized Mr. Benamna as the person in the photographs, having had several encounters with Mr. Benamna during the "course of his duties" as an officer. He then provided that information to Detective Woodward.

[1] The jury acquitted him of robbery with a dangerous weapon, robbery, second-degree assault, and reckless endangerment.

Mr. Benamna testified that he had bought the cellphone for $200 from someone on the street near the victim's apartment. He admitted that he had taken the pictures and videos that were found on the cell phone. He also acknowledged that cell phones generally cost more than $200 and that there was information on the phone indicating that it had belonged to someone else.

DISCUSSION

At trial, Detective Woodward testified that he had received the photographs from the victim's cell phone, emailed the photos to other police agencies to see if anyone recognized the person in the photos, and based on the responses he received, learned the identity of the individual in the photos. The following exchange then occurred:

> [PROSECUTOR]: Did there come a time that you filed charges for a particular individual in reference to the robbery on June 2nd?
>
> DETECTIVE WOODWARD: Yes.
>
> [PROSECUTOR]: And after you did that, what, if any, further investigative efforts did you take in this case?
>
> DETECTIVE WOODWARD: Once we got the information, before I applied for the charges, I had to go through several different local databases to verify the information that I got from the victim and what I got from the other local police agencies just to make sure everything matched up correctly. Once I know those things were matched up correctly and that was the person who was the suspect, then that's when I applied for the warrant.

At this point defense counsel objected and asked to approach the bench. When asked to articulate his objection, defense counsel asserted that the "testimony regarding information received from other agencies and verified calls for a conclusion, one, a conclusion based on hearsay and is taking the leap to what I presume he was about to testify to would be a

warrant for [appellant]." The court overruled the objection, finding that it was "not hearsay to testify what he did" and that he "didn't say what he [was] told, he said what he did in response to what he was told."[2]

On appeal, Mr. Benamna contends that Detective Woodward's testimony was inadmissible for a number of reasons including that it was inadmissible hearsay, was unduly prejudicial, constituted inadmissible "other crimes" evidence, and improperly bolstered the victim's testimony. However, because defense counsel specifically stated that the only ground for his objection was that it "called for a conclusion based on hearsay," he has "forfeited all other grounds for objection on appeal." *Perry v. State*, 229 Md. App. 687, 709 (2016). Therefore, we shall only consider whether Detective Woodward's testimony constituted inadmissible hearsay.

"'Hearsay' is 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." Md. Rule 5-801. "Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. "Because a circuit court has no discretion to admit hearsay in the absence of an exception to Rule 5-802, appellate review of whether evidence is hearsay and, if so, whether it falls within an exception and is therefore admissible," is performed without deference to the circuit court's ruling. *Hallowell v. State*, 235 Md. App. 484, 522 (2018) (citation omitted).

[2] We note that although defense counsel was concerned Detective Woodard was about to testify that the warrant he obtained was for appellant, the prosecutor did not elicit such testimony from Detective Woodward following the bench conference.

As an initial matter, it is not entirely clear what the hearsay statement even was, or who the hearsay declarant was. Detective Woodward testified that before obtaining an arrest warrant, he "went through several different local databases" to make sure the information he obtained from the victim and the local police agencies "matched up correctly." He did not testify about what information he had obtained from either source or from the databases. And unless the result of the search is supposed to be the hearsay statement and the inanimate database is supposed to be the hearsay declarant, it is difficult to know how to begin the hearsay analysis.

But even if Detective Woodward's testimony contained a "statement," to be considered hearsay that statement must have been offered for the truth of the matter asserted. This is because "'a statement that is offered for a purpose other than to prove its truth is not hearsay at all.'" *Ashford v. State*, 147 Md. App. 1, 76 (2002) (internal quotation marks and citation omitted). For example, an out-of-court statement is not hearsay when "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). Here, the State only used the results of the database search to show that Detective Woodward had relied upon them to obtain an arrest warrant for the suspect. Consequently, the State used the results for a recognized and legitimate non-hearsay purpose.

In arguing for a contrary conclusion, Mr. Benamna relies on a number of cases in which Maryland courts have held that statements by an informant or an accomplice were inadmissible for the non-hearsay purpose of explaining why the law enforcement officers

did what they did when the statement contained prejudicial detail about the defendant's involvement in a crime. *See Parker v. State*, 408 Md. 428 (2009); *Graves v. State*, 334 Md. 30 (1994); *Zemo v. State*, 101 Md. App. 303 (1994); *Purvis v. State*, 27 Md. App. 713 (1975). However, unlike those cases, Detective Woodward's testimony did not contain any specific information about Mr. Benamna or imply that he had engaged in any particular criminal activity. Moreover, it was not intended to put before the jury the testimony of someone who was not testifying in the case.

Finally, even if the circuit court erred in admitting the challenged testimony it was harmless beyond a reasonable doubt. Both the victim and Detective Horowitz testified, without objection, that they had identified Mr. Benamna as the person in the photographs and relayed that information to Detective Woodward. Moreover, Mr. Benamna acknowledged that he had taken the photographs. Detective Woodward's testimony simply established that he had checked local police databases to make sure that the person who had been identified in the photographs was in fact the person that he was going to arrest. Accordingly, we conclude that any error "in no way influenced the verdict[.]" *Dorsey v. State*, 276 Md. 638, 659 (1976).

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