Circuit Court for Prince George's County
Case No. CT181211X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1920

September Term, 2019

ROBERTO ANDRE TURCIOS

v.

STATE OF MARYLAND

Nazarian,
Ripken,
Harrell, Glenn, T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: December 21, 2021

Roberto Turcios was convicted in the Circuit Court for Prince George's County of theft of property valued between $1,500 and $25,000, unauthorized removal of property, unlawful taking of a motor vehicle, and rogue and vagabond. On appeal, he argues the circuit court erred in striking a juror for cause, finding the State did not violate the discovery rules, and allowing the complaining witness to testify about the value of the property. He also contends the evidence was insufficient to support his conviction for theft of property valued between $1,500 and $25,000. We affirm.

I. BACKGROUND

A. The Incident.

On June 5, 2018, Alejandro Cardenas reported his red 2000 Honda Civic missing. The next night, Corporal Ian Webster of the Prince George's County Police Department was on patrol in Hyattsville when he saw a red Honda Civic at the intersection of 68th Avenue and Trenton Street. Corporal Webster was "alerted by [his] tag-reader system" that the vehicle had been reported stolen, and he verified that the vehicle was not occupied. He then radioed for Corporal Brian Spencer "to come over and watch [the vehicle] and give it some time to see if anybody comes and gets in it" while Corporal Webster assisted with a traffic stop across the street.

Corporal Spencer proceeded to the intersection of 68th Avenue and Trenton Street and passed the vehicle twice to verify the license plate number. He confirmed that the vehicle was the same red Honda Civic reported missing by Mr. Cardenas. Corporal Spencer testified that as he passed the vehicle each time, he saw an individual in the driver's seat but no one in the passenger's seat. He identified the individual in the driver's seat as

Mr. Turcios, recognizing him from "various prior contacts."

Corporal Spencer then parked his unmarked police vehicle to "maintain visual observation of the suspected stolen vehicle" while he waited for other officers to arrive. Corporal Webster returned and the officers attempted to block the Civic in to prevent it from leaving the scene. Corporal Webster approached the Civic from the rear while Corporal Spencer approached from the driver's side. At this point, Corporal Webster activated his emergency lights, which triggered the cruiser cam in his police vehicle.[1]

Before a third police vehicle arrived to block the front of the Civic, though, Corporal Spencer's unmarked vehicle hit the Civic and the Civic fled the scene. As Corporal Webster began chasing the Civic, he noticed "what I believed to be a second person in the vehicle sitting—leaned back in the [front passenger] seat." Corporal Webster continued to pursue the vehicle for several miles. When the Civic approached the intersection of Riggs Road and Merrimac Drive, it struck a police vehicle operated by Detective Stephen Johnson. As Corporal Spencer had identified Mr. Turcios from "numerous encounters," Detective Johnson also identified the person in the driver's seat as Mr. Turcios.

The Civic then turned into a condominium complex and drove into a dead end, hitting a tree. Corporal Webster turned off his cruiser cam because he "knew the pursuit was over" because "[t]he car couldn't go anywhere else." Corporal Webster saw the driver's side door of the Civic open, and "the operator jump[ed] out and start[ed] running."

[1] Corporal Webster describes a cruiser cam as "a video camera in the front windshield of the vehicle."

He did not see anyone jump out of the passenger side of the vehicle.

Corporal Webster exited his vehicle to "g[i]ve chase on foot towards the woodline," and testified he never lost sight of the individual who jumped out of the driver's side of the Civic. After running for "20 yards or so," the individual fell. As Corporal Webster tried to grab the person's hands to place them under arrest, he recognized the individual as Mr. Turcios. Once Corporal Webster placed Mr. Turcios under arrest, he noticed Mr. Turcios's brother, Jose Turcios.[2] Corporal Webster watched officers arrest Jose, and he recognized Jose the same way he recognized Mr. Turcios, from "[p]revious encounters."

B. Pretrial Proceedings.

On May 14, 2019, defense counsel emailed the State, asking them to "please clarify how the officers were able to ID my client as the driver, and let me know who will be ID'ing him at trial?" The following day, the State responded that officers "identified him by him jumping out of the driver's seat and running away." Further, the State wrote that "[officers] know Roberto Turcios. Saw him get out of the driver side and apprehended him." Defense counsel requested additional information:

> Which officer witnessed him jump out of the driver's seat? Can you give me more specifics? According to Records the officer with cruiser cam turned hi[s] camera off just for those few moments, so I'm trying to get as much information as possible.
>
> * * *
>
> Can you please tell me which officer(s) will be making the ID? Thanks!

[2] Because the brothers share the same last name, we will refer to Mr. Turcios's brother as Jose.

The State responded that all officers would be making an identification of Mr. Turcios as the driver of the Civic. Defense counsel, noting that all officers were not present for the bailout, asked the State to provide information about "(1) who witnessed Turcios and his brother crash and bail from the vehicle; (2) who specifically is planning to ID Turcios at trial; and (3) how, specifically, that person is able to ID Turcios." The State wrote "any one of my officers can identify the defendant."

On July 3, 2019, defense counsel filed a Motion to Compel Police Officer Identification Information. The defense alleged that "none of the State's discovery materials make clear how, specifically, officers were able to discern that Roberto Turcios—and not his brother, Jose Turcios—was the driver:"

> For example, did one of the officers witness Mr. Turcios bail out of the driver's seat once the car had crashed? Did that officer apprehend him immediately, or was there a foot chase? Did the same officer who witnessed the crash ultimately apprehend Mr. Turcios, or was it another officer?[3]

The defense asserted that to "mount a meaningful defense" to the charges, "it is critical that Mr. Turcios know not only who, specifically, will identify him as the driver at trial, but more importantly, how that identification was made." Defense counsel asked the court to "[c]ompel the State to furnish Mr. Turcios with the names of each officer who will identify Mr. Turcios as the driver of the car in trial;" "[c]ompel the State to furnish Mr. Turcios with the names of each officer who witnessed the bail-out from the vehicle;"

[3] At this point, defense counsel did not know that Corporal Webster saw Mr. Turcios bail out of the driver's seat of the Civic or about the specific events leading up to his arrest. This information, detailed in Section I.A., above, was not elicited until trial.

and "[c]ompel the State to furnish Mr. Turcios with the substance of those identifications." Defense counsel also asked the court to "[c]ompel the State to furnish Mr. Turcios with the names of each officer who is familiar with Mr. Turcios from previous encounters," and "[c]ompel the State to furnish Mr. Turcios with the substance of those prior encounters."

On July 18, 2019, the circuit court held a hearing on Mr. Turcios's Motion to Compel. Defense counsel asked for information about how police officers identified Mr. Turcios as the driver of the Civic "[b]ecause obviously who was the driver of the car is a determinative issue as to many of the counts." The State argued it had complied with the discovery rules because it provided the names of all "the officer witnesses that [the State] may call:"

> [I]t's the State's position that the State should not be hamstrung into saying which officer they're intending to use to identify the defendant as the driver, because there are multiple . . . officers that can do that.
>
> * * *
>
> What has been provided to defense counsel is sufficient for her to be put on notice as to who was there and who could have seen [Mr. Turcios] driving. And as a result of that, the State has fulfilled its obligation under Discovery Rule 4-263, which would have only required that I provide what is compelled. What is compellable is what has been reduced to a writing or is in some sort of recording or of, like, a photo identification that was done.
>
> * * *
>
> [T]he State has provided that . . . these officers are more likely than not to be able to provide an identification.

The court disagreed with the State, noting under the rules of discovery, the State has "to say, 'This officer and that officer and the other one can identify him as the driver.'"

The court did not require the State to "say who you will call," but instructed the State to "give [defense counsel] a list of everyone who can identify him as the driver." The State informed the court it could provide defense counsel with those names immediately, stating on the record "[i]t's either Corporal Webster, Detective Johnson, and possibly Corporal Spencer." Defense counsel argued this information was not sufficient because "we believe we're entitled to specifics as to how they're actually able to identify Mr. Turcios as the driver . . . as opposed to the passenger:"

> I would note that there are credibility issues that have already emerged in this case through discovery.
>
> * * *
>
> One of my biggest concerns with this case is that everything is caught on cruiser cam with the exception of the critical moment where the identification could have been made. . . . the reason that the video cuts out is because the officer manually turned [off] the camera, and then he turned it back on again.
>
> Now, right when their car starts to smoke and sort of spin out, the video cuts out. A few seconds later, it cuts back in to show the moment of the crash where presumably the individuals in the car had bailed out of the car.
>
> * * *
>
> [P]retrial identification information disclosure must be . . . [s]ubstantially complete and accurate. And given the credibility issues emerging in this case, we don't believe that just having the names of the officers would provide us with complete and accurate information.
>
> * * *
>
> I have no meaningful way to challenge an identification if the officers are simply saying, We saw him go out of the driver's seat. We know him from previous encounters.
>
> I believe we're entitled to more specifics about what -- what exactly happened. Perhaps all three officers have a completely different story about what happened during the bailout.

> I would also note that it's critical for us to know how they are familiar with Mr. Turcios to mount . . . a meaningful suppression motion as to the identification, Your Honor. We could perhaps cross-examine the officers as to those previous encounters. We could attack the identification in that way.

The court disagreed, finding that the State "complied with the discovery obligations" by providing Mr. Turcios with a list of the names of the three officers who could identify him as the driver of the Civic. The court stated defense counsel's argument "may very well be fodder for attacking their identification before the jury, but I don't think that it imposes any additional obligation on the State." Thus, the court found, the State had complied with its obligations under Rule 4-263.

C. The Trial.

Trial began on August 6, 2019, with jury selection. During *voir dire*, the court asked prospective jurors whether they had ever been "charged with a crime, witnessed a crime, arrested for a crime?" Juror 11 informed the court that in 2009, "I had to spank my son's butt, and I got locked up for that." Juror 11 indicated they served "like a month in jail," but did not know the exact charge they were convicted of, noting that they "guess[ed]" it was a second-degree assault charge. They indicated they would be "able to put that aside . . . listen to the evidence in this case and . . . render a fair and impartial verdict." The State and defense counsel argued about striking Juror 11 for cause:

> [THE STATE]: I think he should be struck for cause.
>
> [COUNSEL FOR MR. TURCIOS]: I would disagree. He said he could be fair and impartial. He said he --
>
> [THE STATE]: He has a conviction that's probably an assault, second degree. That makes him --

> [COUNSEL FOR MR. TURCIOS]: No. He has to have served over six months. I believe that's the requirement to be ineligible.
>
> [THE STATE]: I think a period of incarceration that's more than a year possible.
>
> [THE COURT]: That's my understanding. And the fact that he served a month. I don't know why he served a month, but I'm going to strike him for cause, 11.

Counsel for Mr. Turcios did not object at that point and did not object when the court later went through the list of struck jurors. After questioning all potential jurors and striking some for cause, the court asked the parties whether they were satisfied with *voir dire*. Defense counsel responded "I am, Your Honor." The jury was seated, and trial began.

Mr. Cardenas testified first, stating he paid $4,500 for the Civic when he purchased it in "2011 or about. Something like that." The State asked Mr. Cardenas if he knew the value of the vehicle when it was stolen in 2018. Defense counsel objected, the court overruled the objection, and Mr. Cardenas responded that he had been offered $3,500 for the car:

> [THE STATE]: When this car came up missing, would you know what would be the value? How much would you have been able to sell it for on the market?
>
> [COUNSEL FOR MR. TURCIOS]: Objection.
>
> [THE COURT]: Overruled. He can answer if he can.
>
> * * *
>
> [THE STATE]: So let me ask the question again. [] If you had tried to sell that car in 2018, in June 2018, about how much money do you think you would have gotten for it?
>
> [COUNSEL FOR MR. TURCIOS]: Objection.
>
> [THE COURT]: Overruled.
>
> [MR. CARDENAS]: Well, I have been offered thirty-five

hundred.

The defense did not ask Mr. Cardenas any questions about the value of the Civic or the timing of the offer during cross-examination.

Corporal Spencer testified next. He identified Mr. Turcios as the person sitting in the driver's seat of the stolen vehicle on the night of June 6, 2018:

> [THE STATE]: When you were able to pass by this vehicle though, do you recall how many seconds went by as you were passing the vehicle?
>
> [CORPORAL SPENCER]: I would say three to five seconds. I was traveling the speed limit. The speed limit on 68th Avenue, I believe, is 25 miles an hour.
>
> [THE STATE]: Okay. And when you were passing this vehicle, were you able to observe anyone inside of the vehicle, the 2000 red Honda Civic?
>
> [CORPORAL SPENCER]: Yes, ma'am.
>
> [THE STATE]: And who were you able to observe inside of the vehicle?
>
> [CORPORAL SPENCER]: It was the defendant.

The defense objected to this identification, arguing this testimony violated the discovery rules because the State had failed to inform the defense that Corporal Spencer identified Mr. Turcios before the car chase, not after the bailout:

> [COUNSEL FOR MR. TURCIOS]: Objection. Your Honor, if we can approach?
>
> [THE COURT]: Sure.
>
> * * *
>
> [COUNSEL FOR MR. TURCIOS]: So none of this was turned over in discovery. This is why I filed a motion to compel police officer identification pursuant to State v. Williams.
>
> We didn't really have a full hearing. The judge found that she complied because she . . . identified three officers who could

> identify [Mr. Turcios] as the one who fled out of the driver's side of the car after the vehicle crashed. That was the only information that was given. We've had countless emails about the identification. I've constantly been requesting this information, which I'm entitled to pursuant to Williams. And it's . . . required . . . by the discovery rules.
>
> They're required to give all information pertaining to identification. This is obviously critical. The only thing I was on notice of is that three officers could identify him as having fled from the vehicle upon the crash.
>
> [THE STATE]: No, no, no. I said clearly that he -- there are three officers who can identify him as the driver. That's all I said. And it was found sufficient in terms of identification.
>
> [THE COURT]: Was this brought up at motions?
>
> [COUNSEL FOR MR. TURCIOS]: Your Honor, I filed a motion, and I would like to pull it out, and I also have the case Williams as well. Williams requires that the State provide not just the names of who can identify them, but the substance of those identifications. I requested all of that.
>
> And my understanding, based on the hearing that we had, was that the only three officers who could make the identification -- and this information was very difficult to get. I had to file a motion to compel -- was three officers who witnessed the crash and then the bailout.
>
> [THE STATE]: That was not what was said. I said there were three officers who could identify him as the driver. There was also discovery where -- and there's video. There's video of the cruiser camera showing his car hitting the defendant's car. So she -- she knows he was right there, and it was in the discovery that he was surveilling the vehicle. This is not new.

The court overruled the objection and allowed Corporal Spencer to identify Mr. Turcios in the courtroom as the same person he had seen in the driver's seat of the Civic. Defense counsel also objected to Corporal Spencer's testimony about his second pass by the vehicle, when he again saw Mr. Turcios seated in the driver's seat. This objection likewise was overruled. Corporal Spencer testified he did not see the bailout from the scene.

On cross-examination, Corporal Spencer testified that his "key observation" of Mr. Turcios occurred when his unmarked vehicle hit the Civic:

> [COUNSEL FOR MR. TURCIOS]: Now, you said you made two passes past the car holding who you believed to be Mr. Turcios, and in both of those passes, you were able to identify the sole occupant of the car, the driver, as Mr. Turcios?
>
> [CORPORAL SPENCER]: Ma'am, I want to clear up. I was able to identify on those two passes, but I had a third observation that was -- the key observation was the third time.
>
> [COUNSEL FOR MR. TURCIOS]: Okay. And that was when you hit the back of his car. Correct?
>
> [CORPORAL SPENCER]: That's when I attempted -- that's when I tried to block the car from departing the scene. That was the third observation. That was the key observation point.

Detective Johnson testified that on the night of June 6, 2018, he "responded out to assist in a pursuit of a vehicle." His surveillance vehicle was struck by the Civic, and after that Detective Johnson was able to get a look at the driver:

> [THE STATE]: When he passed you on your left, were you able [to] see into the vehicle?
>
> [DETECTIVE JOHNSON]: I looked over inside the vehicle. I saw the driver, yes.
>
> [THE STATE]: And who did you see -- how many people did you see? Did you observe -- how many people did you observe in the vehicle?
>
> [DETECTIVE JOHNSON]: I just saw one.
>
> [THE STATE]: Okay. And where did you see that one person?
>
> [DETECTIVE JOHNSON]: In the driver's seat.
>
> [THE STATE]: Okay. And were you able to see who it was in the driver's seat?
>
> [DETECTIVE JOHNSON]: Yes, I saw a face.
>
> [THE STATE]: And what face did you see?
>
> [DETECTIVE JOHNSON]: The Defendant's, Roberto

Turcios.

Defense counsel made a standing objection that was overruled and Detective Johnson identified Mr. Turcios in the courtroom. When the State questioned Detective Johnson about how he was able to see clearly into the Civic during a high-speed chase, he said that he had "probably close to a dozen" interactions with Mr. Turcios in the past. He did not, however, see anyone else in the Civic, and did not observe the bailout.

Corporal Webster testified that he followed the Civic for the entire pursuit until the Civic hit a tree and could go no further. He then saw the driver of the Civic "jump[] out and start running:"

> [THE STATE]: Okay. And at that point – and are you still right behind the vehicle?
>
> [CORPORAL WEBSTER]: Yes.
>
> [THE STATE]: Okay. And were you able to observe all of this?
>
> [CORPORAL WEBSTER]: Yes.
>
> [THE STATE]: Okay. Then what happened?
>
> [CORPORAL WEBSTER]: Driver door -- the driver door opens and the operator jumps out and starts running.
>
> * * *
>
> [THE STATE]: Okay. So when you see the person that was operating the vehicle jump out, what do you do?
>
> [CORPORAL WEBSTER]: I got out of my car and gave chase on foot towards the woodline. . . . They get tangled up and fall into the brush. At which point, I made contact with them, get on top of them, and start attempting to get their hands.
>
> * * *
>
> [THE STATE]: -- so you were able to see who it was?
>
> [CORPORAL WEBSTER]: They were face down on the ground to where I couldn't see them, and I had a flashlight as well, so I was able to see their face clearly.

> [THE STATE]: Okay. So you were using your flashlight at this point?
>
> [CORPORAL WEBSTER]: Yes.
>
> [THE STATE]: All right. How are you using this flashlight when you are trying to struggle to get this person in handcuffs?
>
> [CORPORAL WEBSTER]: Until I could see their hands, I had my weapon out, which has a flashlight on it. And I couldn't see their hands immediately to determine if they were armed or not, so I was using my flashlight with my weapon to make sure they were unarmed.
>
> [THE STATE]: Okay. So when you were able to finally see who the driver of the vehicle was, who was it?
>
> [CORPORAL WEBSTER]: It was Roberto Turcios.

Corporal Webster then identified Mr. Turcios in the courtroom.

After the State rested, the defense moved for a judgment of acquittal on the theft count, arguing that the State had adduced "insufficient proof of valuation." The State and defense counsel disagreed over the State's direct examination of Mr. Cardenas. Defense counsel argued that no testimony had been elicited about the market value of the Civic at the time of the theft. When the court reminded defense counsel that Mr. Cardenas had testified that he was offered $3,500 for the Civic, counsel responded that Mr. Cardenas had not provided a time frame of when that offer was made:

> I don't believe he gave a time frame as to when that was made, and what matters is the fair market value at the time of the offense. I don't believe there was any testimony that at or around the time of the offense there was any way to ascertain what the fair market value would have been.

The State argued that Mr. Cardenas provided he was offered $3,500 for the Civic in response to the State's question of how much he would have received for the Civic if it were sold in 2018, at the time of the crime:

> [THE STATE]: Your Honor, the question I asked him related to a specific time. And he answered as – in relation to that time. It wasn't just a generic: Someone offered me $3,500. It was as it relates to that time period, which was specifically asked in my questions. . . .
>
> [COUNSEL FOR MR. TURCIOS]: And, Your Honor, I don't doubt that Madam State asked that, but whether she got a receptive response is a whole other issue. Obviously, her questions are not evidence. The witness's testimony is evidence, and that evidence did not come out.
>
> [THE STATE]: It came out because he answered, yes, around $3,500; that's what I would have gotten. That was in direct response to my question.

The court denied Mr. Turcios's motion for judgment of acquittal.

Before the case went to the jury, the defense filed a Motion for a Mistrial or to Strike the Identification Testimony of Officers Spencer and Johnson Due to Discovery Violations. The motion focused on the email exchange between the State and defense counsel, and specifically what the State had and hadn't disclosed about the identifications:

> On August 6, 2019, over defense objection, two witnesses in the above case took the stand and identified Mr. Turcios as the driver—and thus the likely perpetrator of the charged offenses. Specifically, Officers Spencer and Johnson testified that they saw Mr. Turcios in the driver's seat of the car when they drove by him.
>
> The State elicited this testimony despite withholding it from defense. Worse, the State *affirmatively misrepresented* to defense counsel what the officers could and would testify to. Despite defense counsel's repeated efforts to force the State to comply with the discovery rule, undersigned counsel was not aware of this identification testimony until it came out at trial.
>
> In the months leading up to trial, in response to a plethora of emails by defense counsel asking *who* would be identifying Mr. Turcios as the driver at trial, and *how*, as well as a motion to compel police officer identification information, the State

> informed undersigned counsel only that **"[the officers] identified [Roberto Turcios] by jumping out of the driver's seat and running away"** and that **"[a]lso—they know Roberto Turcios. Saw him get out of the drive's side and apprehended him."** And yet, at trial, it quickly became abundantly clear that the identifying officers were not even present for the bail-out.

(Emphases in original.)

As a remedy for this asserted affirmative misrepresentation, the defense asked the court to grant a mistrial or, in the alternative, to strike Officers Spencer's and Johnson's testimony from the record. Defense counsel argued that even if the State had acted in good faith or unintentionally, the State's failure to comply with the discovery rules should result in a mistrial because the error "irreparably prejudiced" Mr. Turcios from having a fair trial. They asserted this information was "essential in determining . . . whether to take a plea" and "essential for the defense to provide Mr. Turcios with competent counsel."

The State responded that defense counsel failed to ask follow-up questions about pretrial identifications at the hearing on Mr. Turcios's Motion to Compel:

> [W]hen we were in court arguing this motion, I was specifically asked who could identify the defendant as the driver, and then I provided the three names. And they did identify him as the driver.
>
> There was no follow-up -- it was a motion to compel. Like, that would be the perfect opportunity to do a follow-up and ask in what way that -- none of that ever happened.
>
> * * *
>
> [Defense counsel] asked for three things. Who can identify him? How can they identify him? Who was present for the bailout?
>
> Judge Wallace asked me who can identify him, and I said these

> three officers.
>
> How can they identify him?
>
> Because they saw him driving and they know him from numerous cases.
>
> No one asked the third question. Who witnessed the bailout? [Defense counsel] didn't even ask the third question. And Judge Wallace thought it was sufficient, what I provided as information as to what she was requesting.

The court denied the motion. The court found that Mr. Turcios was not prejudiced irreparably because although the discovery did not specifically address the substance of the identifications, the State had provided Mr. Turcios with the names of the identifying officers. Providing the names, the circuit court found, was sufficient for the State to comply with the discovery rules.

The jury found Mr. Turcios guilty of theft of property valued between $1,500 and $25,000, unauthorized removal of property, unlawful taking of a motor vehicle, and rogue and vagabond. The court sentenced Mr. Turcios to four years incarceration followed by five years of supervised probation. Mr. Turcios filed a timely notice of appeal. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Turcios presents four questions on appeal that we rephrase.[4] *First*, did

[4] Mr. Turcios phrased the Questions Presented in his brief as follows:

> 1. Did the circuit court err in striking a juror for cause where the juror was not in fact disqualified from serving?
> 2. Did the circuit court err in finding that the State did not violate the discovery rules, in allowing police witnesses to testify as to information not disclosed in discovery, and in

Continued…

Mr. Turcios affirmatively waive his objection of the trial court's decision to strike Juror 11 for cause? *Second,* did the circuit court err in finding the State complied with its mandatory discovery obligations? *Third,* did the circuit court err in allowing Mr. Cardenas to testify about the market value of the Civic? *Fourth,* was the evidence sufficient to support Mr. Turcios's conviction for theft of property between $1,500 and $25,000?

A. Mr. Turcios Affirmatively Waived His Objection To The Trial Court's Decision To Strike Juror 11 For Cause.

First, Mr. Turcios argues the trial court erred in striking Juror 11 for cause because,

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denying defense counsel's related motion for mistrial and motion to strike?

3. Did the circuit court err by allowing the complaining witness to testify that the amount someone previously offered him for his vehicle was indicative of the vehicle's worth at the time it was taken?
4. Was the evidence insufficient to sustain Appellant's conviction for theft of property valued between $1,500 and $25,000?

The State phrased its Questions Presented as follows:

1. Should the Court decline to consider Turcios's challenge to the trial court's decision to disqualify a juror because he affirmatively waived the objection at trial?
2. Did the trial court correctly conclude that the State complied with its obligation to disclose police-officer identifications?
3. To establish the value of a stolen car, did the trial court soundly exercise its discretion in allowing the owner to testify about an offer he had received for the car?
4. To the limited extent reviewable, for Turcios's conviction for theft of property valued between $1,500 and $25,000, was the evidence legally sufficient to establish the value of the stolen car?

contrary to the trial court's apparent view, the juror was not disqualified from serving under Courts and Judicial Proceedings ("CJ") Article § 8-103(b)(4). At the time of Mr. Turcios's trial, § 8-103(b)(4) provided "an individual is not qualified for jury service if the individual . . . [h]as been convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding 6 months and received a sentence of imprisonment for more than 6 months."[5] Because Juror 11 did not receive a sentence of imprisonment for more than six months, Mr. Turcios argues, they were "erroneously disqualified from service," and the circuit court erred as a matter of law in striking them for cause.

The State does not dispute that the trial court applied CJ § 8-103(b)(4) incorrectly. Rather, the State asserts Mr. Turcios did not preserve this argument for appeal because he "affirmatively waived the objection at trial," and thus "acquiesced in the trial court's ruling" to strike Juror 11. The State points to three separate instances during jury selection where the defense had the opportunity to object and didn't: (1) when the court actually struck Juror 11 for cause; (2) when the court reviewed the list of stricken jurors with counsel; and (3) when the court asked defense counsel whether they were satisfied with *voir dire* and defense counsel responded affirmatively.

In the context of jury selection, a "claim of error in the inclusion or exclusion of a prospective juror or jurors 'is ordinarily abandoned when the defendant or his counsel indicates satisfaction with the jury at the conclusion of the jury selection process.'"

[5] Since Mr. Turcios's trial, this statute has been amended to bar people from jury service only if they have served one year of incarceration. Md. Code (1973, 2020 Repl. Vol.), § 8-103(b)(4) of CJ.

Gilchrist v. State, 340 Md. 606, 617 (1995) (*quoting Mills v. State*, 310 Md. 33, 40 (1987)). Mr. Turcios posits that his argument is preserved on appeal because "[a]lthough the defense indicated at the conclusion of the strike-for-cause phase that it was 'satisfied' with *voir dire*, the defense *did not* indicate whether or not it was satisfied with the empaneled jury." (Emphasis in original.) In other words, Mr. Turcios urges us to hold that defense counsel did not waive or abandon their earlier disagreement of striking Juror 11 for cause when defense counsel later responded they were satisfied with *voir dire*.

But his argument doesn't account for the distinction between expressing disagreement with the court about striking a potential juror for cause and making an explicit objection, on the record, if that juror is struck. During the conversation about Juror 11's response to the conviction question, counsel for Mr. Turcios did express disagreement that Juror 11 was disqualified by statute from serving on the jury because of their prior conviction. Once the court made its final decision, however, and struck Juror 11 for cause, defense counsel made no objections. And later on, defense counsel informed the court that they were satisfied with *voir dire*. Because defense counsel's response was "more here than the simple lack of an objection," they "affirmatively advised the court that there was no objection." *Booth v. State*, 327 Md. 142, 180 (1992). We hold that Mr. Turcios affirmatively waived his objection of the trial court's decision to strike Juror 11 for cause.[6]

[6] In the alternative, Mr. Turcios asks us to exercise plain error review. To the extent we have that authority under the circumstances, we decline to do so. *See* Md. Rule 8-131(a).

B. The Circuit Court Erred In Finding That The State Complied With Its Discovery Obligations, But The Error Was Harmless.

Next, Mr. Turcios alleges three interrelated ways in which the trial court erred with regard to the scope of discovery. Mr. Turcios argues the court erred when it found that the State didn't violate Rule 4-263(d)(7) by failing to provide defense counsel with information about *how* officers identified Mr. Turcios as the person sitting in the driver's seat of the Civic; in allowing the officers to testify about this information in front of a jury; and in denying Mr. Turcios's Motion for a Mistrial or to Strike the Identification Testimony of Officers Spencer and Johnson Due to Discovery Violations. The resolution of all three alleged errors hinges on whether a discovery violation occurred.

We follow two steps in assessing whether the circuit court erred in finding the State didn't violate Rule 4-263(d)(7). *First*, we determine whether a discovery violation occurred. "[A]pplication 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.'" *Cole v. State*, 378 Md. 42, 56 (2003) (*quoting Williams v. State*, 364 Md. 160, 169 (2001) (abrogated on other grounds by *State v. Jones*, 466 Md. 142 (2019)); *see also Kazadi v. State*, 467 Md. 1, 49 (2020) ("An appellate court reviews without deference a trial court's conclusion as to whether a discovery violation occurred."). *Second*, if we find that "the trial judge erred because the State did in fact violate the discovery rule, we consider the prejudice to the defendant in evaluating whether such error was harmless." *Williams*, 364 Md. at 169. An error is harmless "if, upon an independent review of the record, we can conclude 'beyond a reasonable doubt, that the error in no way influenced

the verdict; otherwise, reversal is required.'" *Simons v. State*, 159 Md. App. 562, 576 (2004) (*quoting Williams*, 364 Md. at 178–79).

On appeal, Mr. Turcios does not dispute Corporal Webster's identification of Mr. Turcios as the individual who jumped out of the driver's side of the Civic when it crashed into the tree. Rather, Mr. Turcios asserts that the list of names provided by the State at the Motion to Compel hearing was not sufficient because "the State did not disclose that Corporal Spencer and Detective Johnson allegedly identified Mr. Turcios *before or during the car chase* . . . information that came to light for the first time during the trial." (Emphasis in original.) The State's failure to disclose this information, argues Mr. Turcios, prejudiced him irreparably because "the State had falsely represented that all identifications occurred following the bailout" portion of the incident. Therefore, he says, the court erred in deciding "the State did not need to provide defense counsel with the substance of the pretrial identifications" and also "by subsequently allowing Corporal Spencer and Detective Johnson to testify they saw Mr. Turcios sitting in the driver's seat of the Honda."

Maryland Rule 4-263 governs discovery in criminal cases. It provides, in pertinent part, that "[w]ithout the necessity of a request, the State's Attorney shall provide to the defense . . . [a]ll relevant material or information regarding . . . pretrial identification of the defendant by a State's witness." Md. Rule 4-263(d)(7). Mr. Turcios argues that the State violated the discovery rule when it failed to provide the defense with "all relevant material or information" pertaining to the circumstances under which the officers made their identifications:

> With the plain language of the rule in mind, commonsense dictates that the phrase "all relevant material or information" includes the circumstances under which the identifications were made. [Here], the State only informed the defense that three officers could identify Mr. Turcios and led the defense to believe that the officers could identify him because they saw him exit the Honda after it crashed. The State acknowledged it did not inform defense counsel that Corporal Spencer and Detective Johnson identified Mr. Turcios *before* and *during* the car chase. The nature of the identifications by Corporal Spencer and Detective Johnson was categorically different from the one made by Corporal Webster, who recognized Mr. Turcios when he detained him in the woods. Because it did not provide the substance of Spencer's and Johnson's identifications, the State violated Md. Rule 4-263(d)(7).

(Emphasis in original.) In other words, Mr. Turcios contends that the trial court erred when it didn't require "the State to disclose that Spencer and Johnson identified Mr. Turcios before the bailout," as opposed to after the bailout.

In *Williams v. State*, the Court of Appeals decided "whether the State violated Maryland Rule 4-263(a)(2)(C)[7] by inaccurately representing in discovery that a police officer witness, who was the non-arresting surveilling officer, could not specifically identify the defendant, when at trial the officer positively identified the defendant." 364 Md. at 164. Mr. Williams was convicted of distribution of cocaine stemming from the execution of a search warrant at an apartment. *Id.* at 165. Two of the State's witnesses placed Mr. Williams at that apartment on the night of the search. *Id.* at 165–66. One witness was Trooper Wilson.

Defense counsel in that case requested information about pretrial identifications of

[7] This rule is now Maryland Rule 4-263(d)(7).

Mr. Williams made by Trooper Wilson. *Id.* at 166. At a suppression hearing, the State argued that Trooper Wilson's observation of Mr. Williams at the apartment did not amount to an identification under Rule 4-263 because he "was only testifying to the general description of a man who entered the surveilled premises." *Id.* The State informed the court, on numerous occasions, that "it wasn't even a situation where the officer can say that he saw the face of the person who went in there," but could testify only about the person's "size, height, stature." *Id.* at 167 (cleaned up).

When Trooper Wilson took the stand at trial, however, "he distinctly stated" that the person he saw entering the apartment was "Mr. Williams who is seated at the defense table." *Id.* at 168 (cleaned up). The trial court found this testimony did not violate Rule 4-263. *Id.* The Court of Appeals disagreed, holding that a "police officer's surveillance observation, if used by the State for purposes of identification, is a pre-trial identification requiring disclosure" under Rule 4-263. *Id.* at 164. The Court reasoned that the purpose of mandatory discovery disclosures is "to assist defendants in preparing their defense and to protect them from unfair surprise." *Id.* at 172. Therefore, information disclosed in discovery "must be substantially complete and accurate." *Id.* at 175. And by providing Mr. Williams with only partially correct information about Trooper Wilson's identification of Mr. Williams, the State violated the mandatory discovery rule:

> It is clear that the discovery process in this case not only failed to assist Williams with his defense, but it failed to protect Williams from unfair surprise. Thus, the objectives of discovery were not realized. We conclude that Trooper Wilson's surveillance observation, if used by the State for purposes of identification, is "relevant material regarding a

> pretrial identification," . . . and disclosure is required.

Id. at 178.

Mr. Turcios argues that the State's disclosure about the pretrial identifications by Corporal Spencer and Detective Johnson were similarly incomplete and inaccurate:

> [T]he State provided the defense with only "partially correct"—and, therefore, inaccurate—information about Corporal Spencer's and Detective Johnson's identifications. If anything, moreover, the prosecutor in *Williams* could at least claim to be completely surprised. Here, by contrast, the State readily acknowledged that it knew all along that Spencer and Johnson identified Mr. Turcios prior to the bailout, but simply deemed disclosure unnecessary. Finally, especially where all identifications were made at night and the dash cam did not capture the bailout, the State's reliance on Corporal Spencer's and Detective Johnson's identifications was not harmless.

The State disagrees. It responds that "[i]t should . . . have come as no surprise to the defense that the pursuing officers could identify [Mr. Turcios] based on the chase (as opposed to events coming only after the bailout) and to prepare a defense accordingly." The State notes that Mr. Turcios, before trial, received notice of which officers did and did not engage in the vehicle chase, the names of all three officers who would identify Mr. Turcios at trial, and disclosed that all three officers would identify Mr. Turcios as the driver of the Civic. Mr. Turcios disputes the State's assertion that he should not have been surprised about the substance of the officers' testimony at trial:

> [T]he State ignores that the prosecutor (a) knew the undisclosed information all along and (b) made statements that misled defense counsel's understanding of when the officers allegedly made the identifications. . . . Under these circumstances, the State cannot seriously contend that defense counsel had no reason to be surprised when Corporal Spencer and Detective Johnson testified that they identified Mr. Turcios

before or during the dispute.

We agree with Mr. Turcios that the circuit court erred in finding the State complied with its discovery obligations under Rule 4-263(d)(7). The "all relevant material or information" language is broad and, in so many words, required the State to provide the defense with "all relevant material or information" pertaining to the pretrial identification of Mr. Turcios. Md. Rule 4-263(d)(7). Providing Mr. Turcios solely with the names of the three officers who could identify him as the driver of the Civic was not sufficient. "Disclosure, in and of itself, would be immaterial if it is not accompanied by the necessary and intrinsic quality of accuracy." *Williams*, 364 Md. at 175.

Defense counsel left the pretrial hearing on the Motion to Compel believing that Officer Johnson and Corporals Spencer and Webster would be able to identify Mr. Turcios as the driver of the Civic because "they saw him jump out of the car" after the Civic crashed into the tree. But at trial, the testimony revealed that only Corporal Webster saw the bailout—Corporal Spencer identified Mr. Turcios *before* the Civic fled the scene at 68th Avenue and Trenton Street, and Detective Johnson identified Mr. Turcios *during* the vehicle chase.

The objectives of discovery were not fulfilled. The discovery rules are in place "to assist defendants in preparing their defense and to protect them from unfair surprise." *Id.* at 172. If Mr. Turcios had received substantially complete and accurate notice of the identification evidence, *i.e.*, *when* each officer identified Mr. Turcios, defense counsel would have been in a better position to defend Mr. Turcios and any sense of unfair surprise

would have been avoided. For example, knowing the substance of Officer Johnson and Corporal Spencer's identification could have allowed defense counsel the opportunity to "disprove or discredit the officers allegedly involved in those contacts and thus potentially attack the credibility of the testifying officer(s) and the ensuing identification(s)."

But although we agree with Mr. Turcios that the State violated Rule 4-263, we do not see how the violation harmed Mr. Turcios. "Upon an independent review of the record, we must be able to declare, beyond a reasonable doubt, that the error in no way influenced the verdict." *Williams*, 364 Md. at 179. As part of this harmless error analysis, we consider whether the improperly admitted evidence was cumulative, meaning "'there was sufficient evidence, independent of the [evidence] complained of, to support'" a conviction. *Dove v. State*, 415 Md. 727, 743–44 (2010) (*quoting Richardson v. State*, 7 Md. App. 334, 343 (1969)). In other words, cumulative evidence "tends to prove the same point as other evidence presented during the trial." *Id.* at 744.

For all of the contentions about the course of discovery, Mr. Turcios's identity wasn't really in dispute, and Corporal Spencer's and Detective Johnson's identifications were far from the only evidence linking Mr. Turcios to these crimes. Corporal Webster saw Mr. Turcios bail out of the driver's seat of the Civic following the crash. He never lost sight of Mr. Turcios, apprehended him just moments later, and positively identified him. The Civic that crashed was the same Civic that sped away from the officers on 68th Avenue and Trenton Street and engaged Corporal Webster in a high-speed chase. There was ample evidence, in the form of Corporal Webster's identification of Mr. Turcios, to support a

guilty verdict and conviction. And because Corporal Spencer's and Detective Johnson's identifications of Mr. Turcios were cumulative of the other evidence presented at trial, the circuit court's error in finding the State did not violate Rule 4-263 was harmless.

C. The Circuit Court Did Not Err In Allowing Mr. Cardenas To Testify About An Offer He Received For The Civic, And His Testimony Was Sufficient To Support Mr. Turcios's Conviction For Theft Of Property Valued Between $1,500 And $25,000.

Finally, Mr. Turcios contends that the circuit court erred in allowing Mr. Cardenas to testify "that the amount someone previously offered him for his vehicle was indicative of the vehicle's worth at the time" that it was stolen on June 5, 2018. And because Mr. Cardenas's testimony was the only evidence adduced at trial to support the value element of Mr. Turcios's conviction of theft of property valued between $1,500 and $25,000, Mr. Turcios also contends the circuit court erred in denying defense counsel's motion for judgment of acquittal.

At trial, Mr. Cardenas testified he purchased the Civic in "2011 or about" for $4,500. The State then asked Mr. Cardenas, over a defense objection, how much money he thought he could've received for the Civic if he sold it in June 2018. Mr. Cardenas responded he was offered $3,500 for the Civic, but "did not testify as to when the [unknown] person offered him $3,500 or how that person came up with that amount." Mr. Turcios asserts because the State failed to lay a foundation about the offer, the circuit court committed reversible error in allowing Mr. Cardenas to testify. We disagree.

Section 7-104(g)(1)(i) of the Criminal Law Article ("CR") provides "[a] person convicted of theft of property or services with a value of . . . at least $1,500 but less than

$25,000 is guilty of a felony" and faces a five year sentence of imprisonment. Md. Code (2002, 2021 Repl. Vol.). Value is defined as "the market value of the property or service at the time and place of the crime" or "if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property or service within a reasonable time after the crime." CR § 7-103(a)(1)–(2); *see also Wallace v. State*, 63 Md. App. 399, 410 (1985) ("It is, of course, well settled that the test for the value of stolen goods is market value."). Both "direct [and] circumstantial evidence," as well as "any reasonable inferences drawn therefrom," may be used to determine market value of the property. *Champagne v. State*, 199 Md. App. 671, 676 (2011). "An owner of goods is presumptively qualified to provide testimony regarding the value of his goods." *Pitt v. State*, 152 Md. App. 442, 465 (2003).

In urging us to find the circuit court erred in allowing Mr. Cardenas to testify about the value of the Civic at the time it was stolen, Mr. Turcios points to several cases. One holds that "if it is demonstrated that the owner possesses no knowledge whatever of the market price and condition of the article in question, his testimony may be inadmissible." *Cofflin v. State*, 230 Md. 139, 143 (1962). Another provides that even if the testimony is admissible, "when the record shows that [the owner] does not in fact know the market value, his opinion . . . is not alone sufficient to establish value." *Barber v. State*, 23 Md. App. 655, 657 (1974). And of course, the burden is on the State, and not Mr. Turcios, to provide "testimony or other evidence . . . from which the court could find that the value of the automobile at the time of its theft was [$1,500] or upwards." *Mason v. State*, 9 Md.

App. 61, 63–64 (1970).

Ultimately, though, these cases don't help Mr. Turcios here. In *Cofflin*, the Court of Appeals found it insufficient for an appointed guardian of a property owner to testify as to the value of the owner's property when the guardian insisted she could not identify the value of the stolen property and "sought expert advice" about the value. 230 Md. at 144. Nothing in the record there supported a finding that the guardian "possessed any knowledge of the value of that or similar property." *Id.* at 143–44. In contrast, Mr. Cardenas testified (in direct response to the State's question of how much he would receive for the Civic if he were to sell it at the time of the theft) that he was *offered* $3,500 for the vehicle. Mr. Cardenas was qualified to testify about the value of the Civic at the time of the theft in this manner, and the court didn't err in admitting his testimony as evidence of the car's value.

For the same reasons, Mr. Turcios argues the evidence produced at trial was insufficient to support his conviction for theft of property valued between $1,500 and $25,000. "[T]he amount of value of the property . . . stolen is an element of felony theft." *Counts v. State*, 444 Md. 52, 64 (2015). In *Counts*, the Court of Appeals held "if the State seeks to have the defendant convicted of one or another specific grade of felony theft, the State must allege and prove that the value of the property stolen is an amount at or more than the threshold value for that grade of felony charged." *Id.* To convict Mr. Turcios of theft of property valued between $1,500 and $25,000 for stealing the Civic, then, the State had to prove that in June 2018, the Civic had a market value of at least $1,500.

At trial, defense counsel moved for judgment of acquittal on Count 2 of the

indictment, theft of property with a value between $1,500 and $25,000, based on "insufficient proof of valuation." Mr. Turcios acknowledged that the State provided testimony "as to the purchase price" of the Civic, but contended that it "has no bearing on the fair market value at the time of the alleged theft." The State disagreed, noting that Mr. Cardenas "said he could have sold it for $3,500" at the time the Civic was stolen.

"The standard for our review of the sufficiency of the evidence is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Whiting v. State*, 160 Md. App. 285, 305 (2004) (*quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (alteration in original). In so deciding, we "give great deference to the trier of facts' opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence." *Pinkey v. State*, 151 Md. App. 311, 329 (2003). The fact-finder, in this case the jury, "possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation' and this Court must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004) (*quoting State v. Smith*, 374 Md. 527, 534 (2003)). However, "[t]hese principles are simpler in formulation than they are in application. When reviewing findings made by a trier of fact, there is a fine line between the improbable yet permissible inference and the legally unsupportable speculation." *Bible v. State*, 411 Md. 138, 156 (2009).

A property owner's "testimony as to the original purchase price [is] relevant," but

not sufficient, "to the determination of the market value at the time of the theft." *Champagne*, 199 Md. App. at 676. Mr. Champagne was charged with theft of property for stealing a laptop computer with a value of $500 or more. *Id.* at 673. At trial, the only evidence offered by the State pertaining to the laptop's value was the testimony of the owner of the laptop regarding how much he paid for it. We reasoned that while this testimony was "relevant to the determination of the market value at the time of the theft," "[i]t does not follow . . . that [the owner's] testimony, alone, was sufficient to establish that the value of the three-year-old computer was, in fact, over $500 at the time of the theft." *Id.* at 676. We held that the evidence was insufficient to sustain Mr. Champagne's conviction for theft of property with a value over $500, but "acknowledge[d] that there are cases, of course, where the value of a stolen item is so obvious or so clearly within the common knowledge and experience of the jury." *Id.* at 677.

Mr. Cardenas's testimony that he originally paid $4,500 for the Civic in 2011 was relevant to the determination of the market value of the Civic at the time of the theft. Under *Champagne*, this evidence would not, by itself, support Mr. Turcios's theft conviction. *Id.* at 676. But unlike Mr. Champagne, Mr. Cardenas also testified that in June 2018, he was offered the opportunity to sell the Civic for $3,500. That is enough for a reasoning jury to find the value element met.

The circumstantial evidence used to convict Mr. Turcios also exceeded the threshold of evidence we found sufficient in *Angulo-Gil v. State*, 198 Md. App. 124 (2011). Mr. Angulo-Gil was charged with theft of property with a value of more than $500 and

carjacking. *Id.* at 128. At his jury trial, Mr. Angulo-Gil moved for judgment of acquittal on the ground "that, because the owner did not testify, there was no evidence of the vehicle's value." *Id.* at 152. The trial court denied the motion, "ruling that the jury could find from the facts in evidence that, because the car was obviously in good operating condition, it was worth over $500 at the time it was stolen." *Id.* at 130 (cleaned up). We affirmed, holding "a jury reasonably may conclude that, in April 2007, a one year-old operable Ford Focus was worth more than $500." *Id.* at 153.

We agree with Mr. Turcios that some of the facts of his case are distinct from *Angulo-Gil*. The owner of the Ford Focus in that case had only had the vehicle for a year at the time of the theft, while Mr. Cardenas had the Civic for about seven years at the time of this theft. These distinctions, however, also work against Mr. Turcios's argument. In *Angulo-Gil*, there was *no* testimony about the market value of the vehicle at the time of the theft, whereas Mr. Cardenas testified in this case that he was offered $3,500 for the Civic at the time of the theft. Whatever the distinctions, "there was sufficient circumstantial evidence from which the jury could find, beyond a reasonable doubt," that the Civic was worth more than $1,500 in July 2018. *Id.* at 152. Under these circumstances, a rational trier of fact could have inferred the Civic was worth at least $1,500 at the time of the theft, and the circuit court did not err in denying Mr. Turcios's motion for judgment of acquittal.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.