

Circuit Court for Baltimore City  
Case No. 120301003

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 180

September Term, 2023

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BERNARD STANFORD

v.

STATE OF MARYLAND

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Wells, C.J.,  
Beachley,  
Woodward, Patrick L.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: May 24, 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 Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted Bernard Stanford, appellant, of first-degree murder, use of a firearm in the commission of a crime of violence, and related weapons charges. Stanford received a life sentence for the crimes. In this appeal, Stanford presents two questions for our review. For clarity, we have rephrased those questions as:

1. Did the trial court abuse its discretion in its handling of an alleged discovery violation by the State, where the prosecutor had purportedly failed to timely disclose evidence that the State intended to use at trial?
2. Did the trial court abuse its discretion in failing to grant a new trial after the prosecutor asked a defense witness about “what [he] had growing in [his] basement?”

For reasons to follow, we affirm.

### **BACKGROUND**

On September 24, 2020, Michael Johnson was shot and killed outside of a Crown gas station in Baltimore. Stanford was subsequently arrested and charged with first-degree murder and related charges.

At trial, the State introduced into evidence surveillance footage of the exterior of the Crown gas station and surrounding area around the time of the shooting. That footage was played for the jury during the testimony of Baltimore City Police Detective Erick Ohmstede, who investigated the shooting. According to Detective Ohmstede, the video showed Stanford and the victim standing near one another outside of the Crown gas station. Shortly thereafter, Stanford can be seen firing a gun, and the victim can be seen running away.

In his defense, Stanford alleged that he shot the victim in self-defense. In support of that defense, Stanford’s father, Gary Stanford (“Gary”), testified that, at the time of the shooting, he and Stanford lived together at a home that was located near the Crown gas station where the shooting occurred. On the day of the shooting, Gary and Stanford went to the gas station, where they encountered the victim. According to Gary, the victim accosted him as he went up to the store window to buy cigarettes. During the ensuing confrontation, Gary observed the victim reach for what he believed to be a gun. Scared that he would be shot, Gary jumped on the victim “to try to stop him from grabbing his gun.” Gary eventually fell to the ground, and the victim ran away. Gary stated that he was unsure whether he heard any gunshots.

Ultimately, the jury convicted Stanford of first-degree murder, use of a firearm in the commission of a crime of violence, and related weapons charges. This timely appeal followed. Additional facts will be supplied as needed below.

## **DISCUSSION**

### **I.**

Stanford’s first claim of error concerns an alleged discovery violation by the State. At the beginning of the second day of trial, defense counsel informed the trial court that the prosecutor had just notified the defense that the State intended to call Amarjeet Sandhu, the owner of the Crown gas station, as a witness in the State’s case-in-chief. Defense counsel asked the court to preclude Sandhu from testifying in light of the State’s late disclosure.

In response, the prosecutor proffered that Sandhu was named in the supplemental discovery documents, which had been disclosed several weeks before the start of trial, but candidly acknowledged that the State had not indicated its intention to call Sandhu as a witness at that time. The prosecutor added that Sandhu’s testimony would be limited to confirming that the surveillance equipment at the Crown gas station, which provided the bulk of the footage depicting the shooting, had been properly maintained. The prosecutor explained that the actual video would be authenticated by Detective Ohmstede.

In response to the prosecutor’s proffer, defense counsel clarified that the State had produced a set of documents in discovery in 2020, shortly after Stanford was arrested and charged, and that Sandhu’s name was not included in those set of documents, despite the fact that Sandhu’s name had been a part of the investigating detective’s notes. Defense counsel alleged that the State, upon realizing the omission, disclosed additional documentation in October 2022 that included Sandhu’s name. The following colloquy ensued:

THE COURT: Okay. I understand the argument. Is the State arguing that the only reason that the State is calling this witness is to authenticate – well, to identify the existence of a video surveillance systems at his franchise gas station on the date of the alleged crime, right? And to authenticate it.

[STATE]: Testify as to that it was working properly and that –

THE COURT: And to authenticate it, correct, as accurately depicting what he would typically in any business day see when using that?

[STATE]: That’s correct.

THE COURT: And on that business day?

[STATE]: But I won't actually authenticate it fully until I put Detective Ohmstede on.

THE COURT: Okay. This witness is certainly capable of being cross-examined with regard to concerns that the Defense has as to the limited – and I mean really the limited testimony and the purpose for which this witness is being called in to testify.

On the circumstances just described by the State and the Defense, the Court does not find the existence of any unfair surprise or ambush with regard to this anticipated limited testimony. And certainly if you want a little break to investigate him, to examine him, meaning outside of the courtroom, you know, to in any way interview him to prepare for the cross-examination, the Court would be happy to give you time to do that in an abundance of caution.

Would you like that?

[DEFENSE]: That's not necessary. Thank you, Your Honor.

Sandhu thereafter testified as to the history and operability of the surveillance system at the Crown gas station. Later, during the testimony of Detective Ohmstede, the State moved to introduce the video footage depicting the exterior of the Crown gas station and the surrounding area around the time of the shooting. Stanford did not object; to the contrary, Stanford conceded that the footage could be properly authenticated through Detective Ohmstede and that the footage was "admissible evidence." When the trial court proposed that the footage be admitted "by stipulation," Stanford agreed. The court then informed the jury that the footage would be admitted based on the parties' stipulation.

Following trial, Stanford filed a motion for a new trial, arguing, in part, that the trial court erred in allowing Sandhu to testify. In that motion, Stanford noted that the parties' initial trial proffer, in which the parties had claimed that Sandhu's name was disclosed

several weeks before trial, was incorrect and that Sandhu had not been identified, either by name or as a potential witness, until the day before trial. Stanford argued that, given the State’s late disclosure, he was entitled to a new trial. The State, in its response, agreed that the parties’ initial trial proffer was incorrect but argued that a new trial was unwarranted. The court denied Stanford’s motion for a new trial.

*Parties’ Contentions*

Stanford argues that the trial court erred in “failing to discern a discovery violation” and in “failing to impose an appropriate sanction” upon learning that the State had not named Sandhu as a witness until immediately before trial. Stanford contends that the court should have precluded Sandhu’s testimony. Stanford avers that the court’s error in allowing Sandhu to testify could not be considered harmless because Sandhu was the only person who could provide a foundation for the admissibility of the surveillance video, which was vital to the State’s case. Stanford contends that the court separately erred in denying his motion for a new trial “in light of the additional factual proffers made in the post-trial motion and response, which rendered the discovery violation even more egregious[.]”

The State argues that Stanford waived this claim when he stipulated to the admission of the surveillance video during Detective Ohmstede’s testimony. On the merits, the State asserts it did not violate its discovery obligation because, according to the trial proffers, Sandhu’s name had been provided to the defense several weeks before trial. The State contends that the trial court nevertheless did find a discovery violation and fashioned an

appropriate remedy, offering the defense an opportunity to interview Sandhu before he took the stand. The State argues that the court did not abuse its discretion in choosing that remedy over the more drastic remedy of witness exclusion.

### *Analysis*

We agree with the State that Stanford waived his claim against Sandhu’s testimony when he stipulated to the admission of the video. We begin with the proposition that when the “same or similar evidence is admitted without objection at another point in the trial, the objection is waived.” *Francois v. State*, 259 Md. App. 513, 523 (2023) (citing *DeLeon v. State*, 407 Md. 16, 32-33 (2008)). This principle is particularly applicable where a party stipulates to the same or similar evidence, because that stipulation “constitutes an express waiver . . . conceding for the purposes of trial the truth of some alleged fact.” *Smith v. State*, 225 Md. App. 516, 526 (2015) (quoting *United States v. Harrison*, 204 F.3d 236, 240 (D.C. Cir. 2000)). “By stipulating,” a party “waive[s] any right to contest the . . . stipulated elements.” *Id.* (quoting *Harrison*, 204 F.3d at 240).

Here, Stanford stipulated to the video’s admissibility during Detective Ohmstede’s testimony. He therefore waived any claim of prejudice related to Sandhu’s testimony because it was solely limited to authenticating the video to establish its admissibility. Stanford’s stipulation “constitutes an express waiver,” which prevents him from now claiming prejudice from testimony regarding the video’s “stipulated elements[,]” *i.e.*, that there is a proper foundation to admit the video. *Id.* (quoting *Harrison*, 204 F.3d at 240)).

Although we hold that the issue is waived, we also reject Stanford’s claim on its

merits. Maryland Rule 4-263 states, in pertinent part, that the State must disclose to the defense the name and telephone number of each witness the State intends to call at trial. Md. Rule 4-263(d)(3). Ordinarily, that information must be provided “within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c)[.]” Md. Rule 4-263(h)(1). In addition, the State has a continuing obligation to produce discoverable information to the defense. Md. Rule 4-263(j). The primary purpose of the discovery rule is to protect the defendant from surprise and to permit the defendant to mount an adequate defense. *Alarcon-Ozoria v. State*, 477 Md. 75, 101 (2021).

If the State fails to meet its discovery obligations, the court may order the State “to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the [State] from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances.” Md. Rule 4-263(n). “The decision as to which remedy or sanction to impose generally rests within the broad discretion of the trial court.” *Williams v. State*, 416 Md. 670, 698 (2010). “This discretion extends to deciding whether to grant or deny a motion to disqualify a witness from testifying based upon a party’s failure to comply with discovery obligations.” *Correll v. State*, 215 Md. App. 483, 512 (2013).

When exercising that discretion, a court should consider “(1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other



relevant circumstances.” *State v. Graham*, 233 Md. App. 439, 457 (2017) (quoting *Raynor v. State*, 201 Md. App. 209, 228 (2011)). Generally, “‘the most accepted view of discovery sanctions is that in fashioning a sanction, the court should impose the least severe sanction that is consistent with the purpose of the discovery rules,’ . . . which ‘is to give a defendant the necessary time to prepare a full and adequate defense.’” *Id.* at 459 (quoting *Raynor*, 201 Md. App. at 228). In fact, “[t]he rule ‘does not require the court to take any particular action or any action at all.’” *Alarcon-Ozoria*, 477 Md. at 108 (quoting *Bellard v. State*, 229 Md. App. 312, 340 (2016)).

Against that backdrop, we hold that the trial court did not abuse its discretion in its handling of the State’s alleged discovery violation. First, we do not agree with Stanford’s claim that the court failed to discern a discovery violation. Although the court did not expressly find that the State had committed a discovery violation, it is clear from the trial record that the court accepted the parties’ proffer that, while Sandhu’s name was disclosed several weeks before trial, he was not named as a witness until a day or two before trial. Based on that proffer, the court considered the reasons why the disclosure was not made sooner, the nature of Sandhu’s testimony, the prejudice to Stanford in permitting Sandhu to testify, and the feasibility of ameliorating any prejudice by granting a brief continuance. None of those considerations would have been necessary had the court not found a discovery violation. Moreover, while the court ultimately denied Stanford’s request to disqualify Sandhu as a witness, the court did offer the defense a brief continuance, which Stanford declined. The court’s offer of a continuance was clearly designed as a remedy for

the State’s late disclosure.

As to the adequacy of the court’s remedy, we see no abuse of discretion. In reaching that decision, the court noted that Sandhu’s testimony was limited to establishing the history and operability of the gas station’s surveillance cameras. The court found that the timing of the State’s disclosure did not amount to “unfair surprise or ambush.” The court ruled, therefore, that excluding Sandhu as a witness was not an appropriate remedy. Instead, the court offered to grant a brief pause in the proceedings so that Stanford could more adequately prepare for Sandhu’s testimony. Under the circumstances, the court did not abuse its discretion in choosing that remedy.

Finally, we hold that the court did not abuse its discretion in denying Stanford’s motion for new trial. *See generally Johnson v. State*, 228 Md. App. 391, 433 (2016) (noting that a trial court’s decision whether to grant a new trial is reviewed for abuse of discretion). That the State may have waited until the day before trial to disclose Sandhu’s name was ultimately irrelevant. Again, the sole purpose of Sandhu’s testimony was to lay the foundation for the surveillance video, and Stanford waived any challenge to it when he later stipulated that the surveillance video could be admitted during the testimony of Detective Ohmstede.

## II.

Stanford’s second claim of error concerns an issue that arose during the State’s cross-examination of Stanford’s father, Gary Stanford. As noted, Gary was called as a witness by the defense to support Stanford’s claim that he shot the victim in self-defense.

During his direct testimony, Gary testified that, following the shooting, the police executed a search warrant at the home that he and Stanford shared. Later, during cross-examination, the prosecutor asked Gary about the search:

[STATE]: And at a point in time on October 8th of 2020, you had indicated that detectives executed a search and seizure warrant on your home. Is that correct?

[WITNESS]: Yes.

[STATE]: And you had started to discuss what – that they had recovered a shotgun in your house. Is that correct?

[WITNESS]: Yes. Yes.

[STATE]: And you also talked to them about what you had growing in your basement. Is that correct?

[DEFENSE]: Objection. Move to strike. May we approach?

THE COURT: Objection sustained. The jury shall disregard whatever may have been growing in or whatever the statement was with [the basement]

.....

After the court sustained defense counsel’s objection and instructed the jury to disregard the prosecutor’s question, Stanford did not ask for any additional relief related to that issue. Later, during its general instructions to the jury, the court instructed the jurors that they were not permitted to consider any questions and answers that the court either struck or told the jurors to disregard. The court also instructed the jurors that, when the court did not permit a witness to answer a question, the jurors were not permitted to speculate as to the possible answer.

Following his conviction, Stanford moved for a new trial, arguing, in part, that the

prosecutor’s question regarding what Gary allegedly had growing in his basement was “egregiously prejudicial” and that the court’s response—a sustained objection—was insufficient to mitigate that prejudice. The trial court ultimately denied Stanford’s motion.

***Parties’ Contentions***

Stanford argues that the trial court erred in failing to grant a new trial based on the State’s cross-examination of Gary Stanford regarding what was allegedly “growing” in his basement. Stanford avers that the question was irrelevant and highly prejudicial.

The State contends that Stanford cannot establish that he was prejudiced by the prosecutor’s cross-examination because he moved to strike the question and the court granted that relief. The State contends further that, because Stanford received the remedy he requested, his appellate claim is unpreserved and he is not entitled to appellate review merely because he later moved for a new trial.

***Analysis***

We are unable to discern from Stanford’s brief whether he is claiming that the trial court erred in not *sua sponte* granting him a new trial contemporaneously with its evidentiary ruling at trial or whether he is claiming that the court erred in denying his motion for a new trial based on the same alleged evidentiary error. Assuming Stanford is raising the former claim, we are unpersuaded. The only relief Stanford requested at trial was for the court to strike the prosecutor’s question, and the court granted that relief. At that point, the court was under no obligation to declare a mistrial *sua sponte*. *Simmons v. State*, 436 Md. 202, 223 (2013).

To the extent that Stanford is claiming that the court erred in denying his motion for a new trial, we are likewise unpersuaded. “On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.” Md. Rule 4-331(a). “Whether to grant a new trial lies within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent an abuse of discretion.” *Brewer v. State*, 220 Md. App. 89, 111 (2014) (citing *Argyrou v. State*, 348 Md. 587, 600 (1998)). “[W]e do not consider that discretion to be abused unless ‘the judge exercises it in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law.’” *Id.* (quoting *Washington v. State*, 424 Md. 632, 667-68 (2012)) (quotations omitted). Moreover, “[i]t is a movant who holds the burden of persuading the court that a new trial should be granted.” *Id.*

Here, after the prosecutor posed the allegedly improper question, and before Gary Stanford could answer, defense counsel objected and moved to strike, and the court immediately sustained the objection, struck the question, and instructed the jurors to disregard “whatever may have been growing in” the basement. Then, during its general instructions to the jury, the court reminded the jurors that they were not permitted to consider any questions and answers that the court either struck or told the jurors to disregard. *See id.* at 112 (“A significant factor in determining whether a defendant was likely to be prejudiced by an improper remark is whether the trial court took appropriate action to overcome the likelihood of prejudice, such as informing the jury that the remark was improper, striking it and admonishing them to disregard it.” (citing *Holbrook v. State*,

6 Md. App. 265, 270 (1969))). It does not appear from the record that the prosecutor made any other comments related to what Gary Stanford may have had “growing” in his basement, and we could find no evidence that the prosecutor’s specific unanswered question had any effect on the jury’s verdict or Stanford’s ability to receive a fair trial. *See Jackson v. State*, 230 Md. App. 450, 467-68 (2016) (holding that trial court did not abuse its discretion in refusing to grant a mistrial after the prosecutor asked an improper question, where the question was isolated and unanswered, the court struck the question, and the defendant was not so clearly prejudiced by the question that he was denied a fair trial).

Finally, as noted, the only relief Stanford requested at trial was for the court to strike the prosecutor’s question, and the court granted that request. *See Isley v. State*, 129 Md. App. 611, 622 (2000) (explaining that the non-preservation of a claim can serve as “an unassailable reason” for a trial court to deny a motion for new trial), *rejected on other grounds by Merritt v. State*, 367 Md. 17 (2001). Given those circumstances, we cannot say that the trial court abused its discretion in denying Stanford’s motion for a new trial.

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