

Circuit Court for Baltimore City
Case No. 118176011

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 440

September Term, 2019

TROIE ANDERSON

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 14, 2020

*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.

A Baltimore City jury convicted appellant Troie Anderson of carjacking, robbery, second-degree assault, theft of a motor vehicle, and theft of property with a value of at least \$1500 (a motor vehicle), but acquitted her of theft of property with a value of at least \$100 (a cellphone).

The court sentenced Anderson to 13 years of incarceration for carjacking, but suspended all but six and one-half years. On the theft charges, the court sentenced her to a concurrent term of five years, with all but two years suspended. The other convictions merged for purposes of sentencing

In Anderson’s timely appeal, she poses one question: “Did the Circuit Court err in allowing the State to publish and enter into evidence a video of the incident in question when the State failed to provide a copy of the video to Appellant until the day of trial?”

Because we see no error or abuse of discretion, we shall affirm.

FACTUAL BACKGROUND

Anderson, her daughter, and others were involved in a violent affray on a West Baltimore street. During the affray, Anderson and her daughter attacked one victim, forced her out of her car, and attempted to escape in the victim’s car.

In discovery, the State produced three, short video clips that showed portions of the affray. It appears that the clips had initially been recorded on one cellphone and copied onto a second by the rudimentary method of using the second phone to record the clips as they were played back on the first. Unsurprisingly, the three clips were of poor quality.

Anderson, too, had produced a cellphone video in discovery. Her video was of a higher quality than the State's, because it apparently came directly from the phone itself. Anderson's video showed some of the events that had occurred just before the events depicted in the State's video clips.

In the course of trial preparation on the day before the trial began, the victim showed the prosecutor yet another video-recording of the affray. Although the new video is apparently still a recording of a recording, it was of better quality than the three clips that the State had previously produced. The new video depicted the events in the three other clips, but also included about 63 seconds of footage of events that occurred before the other videos began. The State emailed the new video to defense counsel at 1:00 p.m.

At a motions hearing the next day, defense counsel argued that the State had violated its discovery obligations because it had failed to produce the new video until the eve of trial. As a remedy, counsel asked the court to dismiss the charges against Anderson or to preclude the State from using the new video at trial. Defense counsel did not ask for a postponement.

After reviewing the three clips that the State had produced in a timely fashion as well as the new video that the State had belatedly produced, the court agreed that the State had committed a discovery violation and that sanctions were appropriate. The court, however, declined to dismiss the charges or to exclude the new video altogether. Instead, the court prohibited the State from playing the 63-second segment of the new video that is not depicted in the other videos.

At trial, the State introduced the video that the defense had produced, as well as the new video, minus the 63-second segment. The victim narrated both videos as they were played for the jury.

ANALYSIS

Maryland Rule 4-263 governs discovery in criminal cases in the circuit courts. Rule 4-263(c)(1) requires the State to “exercise due diligence to identify all of the material and information that must be disclosed under this Rule.” There is no question that the State was required to disclose the new video if it intended to use the video at trial. *See* Md. Rule 4-263(d)(9).

Rule 4-263(n) addresses the sanctions that a circuit court may impose when, as in this case, it finds that a discovery violation has occurred:

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party 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 party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

On its face, Rule 4-263(n) does not require a court impose any particular sanction in case of a discovery violation. Instead, the rule leaves the choice of a sanction, if any, to the sound discretion of the circuit court. *See, e.g., Thomas v. State*, 397 Md. 557, 570 (2007).

“In exercising its discretion regarding sanctions for discovery violations, a trial 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 [sic] of curing any prejudice with a continuance; and (4) any other relevant circumstances.” *Id.* at 570-71 (footnote omitted) (citing *Taliaferro v. State*, 295 Md. 376, 390 (1983)); *see generally Muffoletto v. Towers*, ___ Md. ___, 2020 WL 503140 (Jan. 31, 2020).

“[T]he court should impose the least severe sanction that is consistent with the purpose of the discovery rules.” *Thomas v. State*, 397 Md. at 571. “[B]ecause the exclusion of prosecution evidence as a discovery sanction may result in a windfall to the defense, exclusion of evidence should be ordered only in extreme cases.” *Id.* at 573.

This Court may reverse a circuit court’s decision on discovery sanctions only if we find an abuse of discretion. In this context, as in others, an abuse of discretion does not occur simply because the appellate court would not have made the same ruling as the circuit court. *See, e.g., McLennan v. State*, 418 Md. 335, 353 (2011). Instead, the circuit court’s decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. *Id.* at 353-54.

In this case, we see nothing that remotely approaches an abuse of discretion. The court found that a discovery violation had occurred and agreed that sanctions were appropriate. After viewing the videos, however, the court saw that, except for the first 63 seconds, the new video did not depict anything that the defense had not previously seen. Furthermore, to the extent that the new video only contained a clearer version of what the

defense had previously seen, the court found little or no prejudice. Accordingly, the court excluded the first 63 seconds, but permitted the State to introduce the rest. In so doing, the court devised a sanction that was narrowly tailored to limit, if not to eliminate entirely, the prejudice, if any, that was attributable to the discovery violation. That the sanction disappointed both parties is perhaps the best evidence of its soundness.

In her opening brief, Anderson relied prominently on *Williams v. State*, 364 Md. 160 (2001). In that case, the Court held that the State had committed a discovery violation, but the circuit court had made no specific findings about whether a violation had occurred and had exercised no discretion in fashioning any remedy. *Id.* at 178. In those circumstances, the Court reversed the conviction because it concluded that the court's error was not harmless. *Id.* at 179. *Williams* differs markedly from this case, because here the circuit court found that a violation had occurred and exercised its discretion to formulate a remedy. When the court finds a violation and formulates a remedy, we ask only whether the court abused its discretion. In this case, the court did not.

On appeal, Anderson now argues that the court should have granted a postponement to allow her counsel to prepare to counter the newly-disclosed video. At trial, however, defense counsel did not request a postponement. Instead, counsel took the maximalist position that the court should either dismiss all charges against her or exclude the new video in its entirety. The court did not abuse its discretion by declining to impose a sanction that the defense did not request.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
APPELLANT TO PAY COSTS.**