Circuit Court for Prince George's County
Case No. CT160374X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1116

September Term, 2018

DARON BOSWELL-JOHNSON

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: November 7, 2019

* 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.

After a seven-day jury trial, the Circuit Court for Prince George's County found Daron Boswell-Johnson guilty of two counts of first-degree murder and two counts of use of a handgun during the commission of a crime of violence. The court sentenced Mr. Boswell-Johnson to life imprisonment without the possibility of parole for each murder count, and twenty years' imprisonment for each use of a handgun count, all to run consecutively.

On appeal, Mr. Boswell-Johnson asserts that his confession to the police, after a twenty-six-hour interrogation, was involuntary, and he alleges several errors during trial. We affirm his convictions.

I. BACKGROUND

In the early morning of February 2, 2016, Neshante Davis and her young daughter, Chloe Davis-Green, were shot fatally outside of their home in Fort Washington. Later that day, officers picked up Mr. Boswell-Johnson at his place of employment and took him to the Criminal Investigations Division ("CID") and placed him in an interview room at approximately 2:00 p.m. At around 5:56 p.m., the officers advised Mr. Boswell-Johnson of his *Miranda* rights. Questioning continued into the next day, and at some point the detectives took Mr. Boswell-Johnson on a ride-along to try and locate the gun used to kill Neshante and Chloe. Mr. Boswell-Johnson ultimately confessed to the murder, and was taken to the Department of Corrections at around 4:00 p.m. on February 3, 2016. Neither the record nor the briefs indicate when Mr. Boswell-Johnson was presented to a Commissioner, but the parties don't dispute that it was within 24 hours of being advised of

his *Miranda* rights. Although the parties developed a full factual record during a suppression hearing and at trial, we recount those facts necessary to resolve the issues before us.

A. The Suppression Hearing

As noted above, and as we will describe in greater detail below, Mr. Boswell-Johnson went with police to the station house and was interrogated over the course of approximately 26 hours. In the later stages of his interrogation, he confessed to the murder, and before trial he moved to suppress the confession on two grounds: *first*, the statement was obtained based upon an illegal arrest, and *second*, the statement was not voluntary. The parties appeared before the circuit court on January 3, 2018 for a suppression hearing.

Both parties presented witnesses and evidence during the hearing. After considering the testimony, evidence, and relevant law, the court made several findings and conclusions. The court began with the shooting itself, then described how police came to Mr. Boswell-Johnson's workplace and took him for questioning:

> Almost two years ago to the day, on February 2nd, 2016, in the early morning hours in Fort Washington, Maryland, Prince George's County Police responded to a call for a shooting. Upon arrival they discovered NeShante Davis, age 26, and Chloe Davis-Green, aged 3 years old, both suffering from multiple gunshot wounds. Those wounds proved to be fatal for both victims.
>
> The Prince George's County Police immediately began an investigation, including speaking with family, friends, and associates of the victims.
>
> Detective Delaney and . . . S[ergeant] Hamm were charged with locating three individuals, including [Mr. Boswell-Johnson], who was at work in Rockville, Maryland. Delaney, Hamm, and Roger St. Louis testified to the facts and

> circumstances that indicated that [Mr. Boswell-Johnson] quickly and voluntarily left his job and willingly went with the Prince George's County Police to be interviewed on the afternoon of February 2nd, 2016.
>
> This testimony is contradicted by the testimony of [Mr. Boswell-Johnson] and Mr. Greathouse,[1] who indicated that [Mr. Boswell-Johnson] was forcibly taken from his job by the police that day.

The court also articulated some undisputed background facts:

> First and foremost, and probably most importantly, [Mr. Boswell-Johnson] was the next of kin of one of the individuals[2] that was shot and killed and was, obviously, very close to the mother of the child that was shot and killed. Obviously, he would be the first individual that the police would have to notify about the incident.
>
> Secondly, upon review of State's [Exhibit] No. 1, that being the recorded interview of [Mr. Boswell-Johnson], the level of cooperation displayed throughout the entire interrogation is unique, to say the least. . . .
>
> Thirdly, [Mr. Boswell-Johnson], as it was fleshed out later on, already knew at the time that he was approached by the Prince George's County Police, he already knew about the incident and knew about the deaths and was eager to talk to the police about the incident.

The court found the testimony of the detectives about Mr. Boswell-Johnson's willingness to leave with them more credible than Mr. Greathouse's and concluded that Mr. Boswell-Johnson had presented himself voluntarily to the Prince George's CID:

> Therefore, under the totality of the circumstances, including [Mr. Boswell-Johnson's] handling of his own personal effects, including his cell phone, and the amount of cooperation, the testimony by the State's witnesses, coupled with the

[1] Mr. Greathouse, Mr. Boswell-Johnson's co-worker at Safelite Autoglass, witnessed his interactions with the police.

[2] Mr. Boswell-Johnson was the biological father of Chloe Davis-Green.

> contradictions and lack of veracity of [Mr. Boswell-Johnson's] witnesses–specifically Mr. Greathouse, who first said he thought [Mr. Boswell-Johnson] was in cuffs, but then backed off of that during cross examination–the Court finds the testimony of Delaney, Hamm and St. Louis to be credible, logical and supported by the totality of the circumstances. And, thus, [Mr. Boswell-Johnson] voluntarily went to CID that day to be interviewed.
>
> Now, once he was at CID–and the recording of his interview began at 2:29 in the afternoon and the actual interview of [Mr. Boswell-Johnson] begins at 2:57, while at CID [Mr. Boswell-Johnson], along with several other individuals, were simultaneously being interviewed. While obtaining background information from [Mr. Boswell-Johnson], [he] was informed by the Prince George's County Police that he was not under arrest and [he] verbalized more than once his desire to cooperate with the authorities.
>
> As the afternoon progressed and the statements and the information provided by [Mr. Boswell-Johnson] were compared to the information gathered from other interviewees and other aspects of the investigation, it became apparent that there were some significant contradictions in the information provided by [Mr. Boswell-Johnson].
>
> Accordingly, at approximately 5:54 in the afternoon, [Mr. Boswell-Johnson] was then advised of his Miranda rights and he subsequently waived those rights.
>
> Prior to the advice of rights, the Court finds that there was not a custodial interrogation, because the situation did not rise to the level of [Mr. Boswell-Johnson] actually being in custody. It was not until those contradictions were identified by the Prince George's County Police that a reasonable person could interpret at that point that [Mr. Boswell-Johnson] was not free to leave.

The circuit court then found that despite the length of the interrogation, Mr. Boswell-Johnson's confession was voluntary:

> Turning our attention to the voluntariness issue. Without a doubt, I agree with the Defense that a 26 hour detention/interrogation is alarming, to say the least.

> But if we look at the totality of the circumstances here, specifically the education level of [Mr. Boswell-Johnson]. [He] testified–well, not testified, but during the course of the actual interview he indicated to the authorities that he was studying at the University of Phoenix to obtain his business degree, that at the time of this incident [he] was a manager and supervisor of a handful of individuals at the Safelite AutoGlass Repair in Rockville, Maryland. That [he] had prior dealings with the criminal justice system, coupled with the fact that throughout the 26 hour period that [he] was given access to nourishment, hydration, and the use of the restroom, and he was even able to catch catnaps.
>
> And, again, what carried a significant amount of weight with the Court on this particular issue is the level of cooperation displayed by [Mr. Boswell-Johnson] throughout the entire interview process. By [his] own admission and by the Court's observation of the entire interrogation there's a complete absence of any undue promise, inducement and/or threat throughout the interview.
>
> Moreover, the Court finds that [Mr. Boswell-Johnson's] claim during the hearing that he was intimidated by the police, the Court finds that claim lacks credibility and is in direct contradiction to everything that I observed during the 13 hours of conversation that [Mr. Boswell-Johnson] had with the Prince George's County Police.
>
> Thus, the Court finds that [Mr. Boswell-Johnson's] statement given to the Prince George's County Police was, in fact, voluntary.
>
> [As to] the presentment issue. Again, when you're talking about a 26 hour detention, that gives serious rise to concern. However, one thing that is in the State's favor in this circumstance is there was serious exigent circumstances. We had a gun that had been used in a homicide, that had been secreted at a location and that weapon needed to be located so that another child couldn't be hurt or some other citizen couldn't come across it.
>
> So the police efforts to locate that weapon and to do so in a timely fashion went directly to a public safety issue and warranted the extended detention and interview of [Mr. Boswell-Johnson].

The court then denied Mr. Boswell-Johnson's motion to suppress his statement.

B. The Trial

At trial, the State called Detective James Boulden, one of two interviewing officers, to testify about the recorded interview of Mr. Boswell-Johnson's interrogation. On direct examination, the State introduced several short excerpts of Mr. Boswell-Johnson's interview. Defense counsel objected, and moved during Detective Boulden's cross-examination to have the entire recorded interview (State's Exhibit No. 127) admitted into evidence under the doctrine of completeness. Defense counsel argued that the entire recording was necessary for counsel to cross-examine, and thereby confront, the witness adequately.

Although the court struggled with whether to admit the entire twenty-six-hour recording at that stage, it ultimately declined to admit it in its entirety during cross-examination, but reassured defense counsel that the jury would have it for their consideration:

> THE COURT [TO DEFENSE COUNSEL]: Okay. Well, I agree with you, if your intent is to actually before the State's case closes to admit the entire statement–my only concern . . . is that the jury have the entire statement for their consideration.
>
> Now we are not in your case-in-chief, I did pull the trigger a little quick. Certainly, if the State does not admit the full statement in your case-in-chief, if you want to admit it, I will allow you to do so. But if the State is proffering at some point in their case they are going to admit it, that's my only concern, I'm not going to compel them to admit it at this juncture.
>
> If you want to confront, you are going to have to do it through the awkward process that we did before.

> [DEFENSE COUNSEL]: Or I can call him as a witness in my case.
>
> THE COURT: You can do that also.
>
> [DEFENSE COUNSEL]: We will be here forever but if that's what the State wants to do. I just want a fair case, Your Honor.
>
> THE COURT: I'm trying to give you that.
>
> [DEFENSE COUNSEL]: I believe the Court is. But I don't believe limiting my client's statement to just the clips that the State admitted thereby frustrating our ability to effectively cross-examine the witness is fair.
>
> THE COURT: I disagree with you. I think the fairness of the statement issue goes to the jury's consideration of voluntariness. Because he is not making it easy to cross-examine this particular witness, that's not his obligation. And I don't think that goes to the issue of whether or not you are receiving a fair trial. He is being tactical. You have been tactical throughout this case.

The court also advised defense counsel that he could impeach the detectives who conducted the interview either by reading portions of the interview or asking about clips played to them through headphones:

> [DEFENSE COUNSEL]: I can piecemeal it.
>
> THE COURT: Now, you can piecemeal it by showing it on the laptop.
>
> [DEFENSE COUNSEL]: Now, what happens–because I know I'm going to confront him with words that were being said, what do you do then?
>
> THE COURT: You got headphones over there.
>
> [DEFENSE COUNSEL]: How can I properly impeach him for the jury to understand if I ask him questions and he is just listening to headphones?
>
> THE COURT: After he listens, sir, you told him the car was brown, right? You were wrong, right? Say it in front of the jury, that's how they find out. Okay. It's easy.

> [DEFENSE COUNSEL]: Not in this case, Your Honor. But we'll see. The Court listened to the tape or saw the tape.
>
> THE COURT: Like six months ago. Well, not six months ago.
>
> [DEFENSE COUNSEL]: The Court is aware my client, over 200 times, denied being involved in this incident.
>
> THE COURT: I didn't count the times, no. But repeatedly, yes. I'm aware of that.
>
> [DEFENSE COUNSEL]: I'm going to ask all of them.
>
> THE COURT: You are going to ask each 200?
>
> [DEFENSE COUNSEL]: Yes. If I have to do it this way I will.
>
> THE COURT: I guess we'll finish on Tuesday and go from there.

Defense counsel never renewed his objection, but instead moved for a mistrial during Detective Boulden's cross-examination. Counsel asserted that Detective Boulden had testified about statements made by Mr. Boswell-Johnson during a ride-along, when in fact Mr. Boswell-Johnson had made them at CID during the interrogation, and "that's not justice." The court concluded, however, that everything could be clarified on cross-examination, and never ruled on the request for a mistrial.

After a seven-day trial, the jury found Mr. Boswell-Johnson guilty of first-degree murder and use of a handgun during the commission of a crime of violence. The court sentenced Mr. Boswell-Johnson to life imprisonment without the possibility of parole for each of the first-degree murder counts, and twenty years in prison for each of the use of a handgun counts, all to run consecutively. Mr. Boswell-Johnson noted a timely appeal. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Boswell-Johnson raises four issues on appeal.[3] He argues *first* that the circuit court should have suppressed his entire 26-hour interrogation. He argues *second* that under the doctrine of completeness, he should have been allowed to play the entire recorded interview to the jury during cross-examination of Detective Boulden in response to the excerpts the State played during direct examination. He argues *third* that his cross-examination of Detective Boulden was restricted improperly when the circuit court allowed only portions of his statement, rather than the full 26-hour recording, to be published to the jury. And he argues *fourth* that the circuit court should have granted a mistrial based on a discovery violation the State allegedly committed. We disagree with all four arguments and affirm.

[3] Mr. Boswell-Johnson phrases his questions presented as follows:

> 1. Whether the Trial Court erred by not granting the Appellant's motion to suppress his Statement?
> 2. Whether the Trial Court erred by allowing the State to admit incriminating excerpts of the Appellant's statement during the Detective's direct examination, by not allowing the Appellant to enter his complete recorded statement into evidence contemporaneously with the Detective's cross examination?
> 3. Whether the Trial Court erred by restricting the Appellant's cross examination by only allowing portions of the Appellant's recorded statement to be published to the jury during cross examination?
> 4. Whether the Trial Court erred by not granting the Appellant's Motion for mistrial?

A. The Circuit Court Did Not Err In Denying The Motion To Suppress Mr. Boswell-Johnson's Statement

Mr. Boswell-Johnson argues *first* that his statement to police should have been suppressed. He contends that officers violated his right to prompt presentment under Maryland Rule 4-212(f) and that his confession was involuntary. A confession is excluded from evidence if it is involuntary, *Smith v. State*, 220 Md. App. 256, 273 (2014), *cert denied*, 442 Md. 196 (2015), and whether the right to prompt presentment was violated is only one factor in the voluntariness analysis. Maryland Code (1975, 2013 Repl. Vol.) § 10-912 of the Courts and Judicial Proceedings Article ("CJ"). The State disputes Mr. Boswell-Johnson's time calculations, but contends in any event that any delay in presenting him to a Commissioner was justified and that, under the totality of the circumstances, his confession was voluntary. We agree with the State.

In reviewing a denial of a motion to suppress, we look solely at the record developed at the suppression hearing and view it in the light most favorable to the prevailing party. *Lee v. State*, 418 Md. 136, 148 (2011). We defer to the trial court's factual findings unless they are clearly erroneous, but undertake "our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Id.* at 148–49. The voluntariness of a confession is a mixed question of law and fact that we review *de novo*. *Ford v. State*, 235 Md. App. 175, 185–86 (2017).

1. *The Police Did Not Violate Mr. Boswell-Johnson's Right To Prompt Presentment.*

Mr. Boswell-Johnson argues that he was arrested, and the presentment clock began

to run, when officers took him from his workplace back to the Prince George's County CID. He contends that he was confronted by eight to ten police officers outside his place of employment, had his automobile impounded, and was taken to a police station and placed in an 8x10 windowless interrogation room—that combination of events, he says, placed him under arrest and required officers to present him to a Commissioner within twenty-four hours of that time. *See* Md. Rule 4-212(f). The State responds that the suppression court found that any delay in presentment was justified by the need to locate the discarded handgun.

Rule 4-212(f) states, in part, that "[w]hen a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest." The purpose of the rule is to reduce "the risk that a confession will be coerced during a custodial interrogation conducted before the accused is advised of his rights by a district court commissioner." *Faulkner v. State*, 156 Md. App. 615, 651 (2004). Any delay for the sole purpose of custodial interrogation violates the rule. *Odum v. State*, 156 Md. App. 184, 203 (2004). But some delays are necessary:

> (1) to carry out reasonable routine administrative procedures such as recording, fingerprinting and photographing; (2) to determine whether a charging document should be issued accusing the arrestee of a crime; (3) to verify the commission of the crimes specified in the charging documents; (4) to obtain information likely to be a significant aid in averting harm to persons or loss to property of substantial value; (5) to obtain relevant nontestimonial information likely to be significant in discovering the identity or location of other persons who

> may be associated with the arrestee in the commission of the offense for which he was apprehended, or in preventing the loss or destruction of evidence relating to such crime.

Williams v. State, 375 Md. 404, 420 (2003).

Everyone agrees that Mr. Boswell-Johnson's interrogation ripened into an arrest at some point, but it is difficult on this record, even after watching the entire twenty-six-hour recorded encounter, to identify the precise moment when that happened.[4] Even so, we agree with the State that the suppression court properly denied Mr. Boswell-Johnson's motion to suppress his confession. The suppression court found that Mr. Boswell-Johnson was officially under arrest at the time he was read his *Miranda* rights, which occurred at approximately 5:54 p.m., about three hours after he was taken to CID, and that finding alone brings his presentment within the twenty-four hour period. But even if we agreed with Mr. Boswell-Johnson that he was under arrest the instant officers picked him up at work, we agree that any delay in presentment was justified, as the suppression court found, by the time spent looking (ultimately unsuccessfully, but with Mr. Boswell-Johnson's in-person help) for the murder weapon. We share the suppression court's concern over the

[4] Mr. Boswell-Johnson alleges that although the suppression court found that he was not arrested when he was picked up by police officers outside of his place of employment, the suppression court later accepted that argument when it denied his Motion to Reconsider the Motion to Suppress because he raised it in the motion and the suppression court denied it without a hearing. He's wrong. Maryland Rule 4-252(h)(2)(C) provides that "[i]f the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise." By the time Mr. Boswell-Johnson made this argument, the motion already had been denied, and the argument doesn't morph into a finding solely by operation of the court's decision to deny a motion to reconsider without a hearing.

length of this interrogation, but see no error in its finding that the police complied with the prompt presentment rule.

2. Mr. Boswell-Johnson's Confession Was Voluntary

Next, Mr. Boswell-Johnson urges us to find that his confession was involuntary because it was "a result of the psychological coercion of being subjected to relentless isolation and interrogation . . . ." The State maintains that the totality of the circumstances, as established in the record before the suppression court and viewed in the light most favorable to the State, supports the finding that Mr. Boswell-Johnson confessed voluntarily.

To be admissible, a confession must be voluntary under Maryland non-constitutional law, the due process clause of the Fourteenth Amendment of the United States Constitution, and Article 22 of the Maryland Declaration of Rights, and it must have been obtained in conformity with *Miranda v. Arizona*.[5] *Knight v. State*, 381 Md. 517, 531–32 (2004). "In Maryland, when the State intends to use a confession or admission given by the defendant to the police during custodial interrogation, the prosecution must, upon proper challenge, establish by a preponderance of the evidence that the statement satisfies the mandates of *Miranda v. Arizona*, and, that the statement is voluntary." *State v. Tolbert*, 381 Md. 539, 557 (2004). Mr. Boswell-Johnson does not dispute that the police complied with *Miranda*, but does dispute the finding that his confession was voluntary.

We assess statements against the totality of the circumstances. *Perez v. State*, 168

[5] 384 U.S. 436 (1966).

Md. App. 248, 268 (2006). "We look to all of the elements of the interrogation to determine whether a suspect's confession was given to the police through the exercise of free will or was coerced through the use of improper means." *Winder v. State*, 362 Md. 275, 307 (2001). And we look at a variety of non-constitutional factors:

> where the interrogation was conducted; its length; who was present; how it was conducted; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court Commissioner following arrest[;] and whether the defendant was physically mistreated, physically intimidated or psychologically pressured.

Hof v. State, 337 Md. 581, 596–97 (1995) (citations omitted). Another factor that applies here includes any delay in presentment. *Odum*, 156 Md. App. at 202–03.

At the time of the confession, Mr. Boswell-Johnson was pursuing a business degree, managed and supervised employees at Safelite Autoglass, and was familiar with the criminal justice system. A full viewing of the twenty-six-hour encounter reveals no threats, inducements or promises by the police to induce a confession. Mr. Boswell-Johnson had food, water, opportunities to use the bathroom, and breaks where he could sleep. Indeed, he exhibited an unusually high degree of cooperation during the whole interrogation. Although Mr. Boswell-Johnson's witness, Mr. Greathouse, characterized the initial encounter with police as aggressive, the court found the officers' testimony at the suppression hearing to be more credible, and there is nothing clearly erroneous about that conclusion.

It's true that a twenty-six-hour interrogation is unusually long, but that alone doesn't

make it involuntary. In fact, "[a] confession may not be excluded from evidence solely because the defendant was not taken before a judicial officer after arrest within any time period specified by Title 4 of the Maryland Rules." CJ § 10-912(a). A violation "is only one factor, among others, to be considered by the court in deciding the voluntariness and admissibility of a confession." CJ § 10-912(b). And for the reasons discussed above, any delay in presentment here was justified by the investigation itself (and, specifically, by Mr. Boswell-Johnson's statement, bolstered by video evidence, that he threw the murder weapon in a dumpster). Under the circumstances, the circuit court did not err in denying Mr. Boswell-Johnson's motion to suppress his statement.

B. Mr. Boswell-Johnson Was Not Entitled, Under The Doctrine Of Completeness, To Show The Entire Interrogation Video To The Jury During Cross-Examination.

During trial, Mr. Boswell-Johnson sought to admit his entire interrogation video into evidence during defense counsel's cross-examination of Detective Boulden. Counsel made this request after the State was permitted to admit excerpts of the video on direct. Mr. Boswell-Johnson argues that the doctrine of completeness allowed him to admit and play the full statement at that juncture of the trial. The State agrees that the jury should have been able to consider the entire recording to assess voluntariness—and indeed, it was admitted in full later on—but disagrees that the doctrine of completeness required the whole recording to be admitted contemporaneously, during cross-examination of Detective Boulden.

We review decisions involving the doctrine of completeness for abuse of discretion.

Otto v. State, 459 Md. 423, 446 (2018). "An abuse of discretion exists where 'no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.'" *Id.* (*quoting Alexis v. State*, 437 Md. 457, 478 (2014)).

The doctrine of completeness derives from two sources. The *first*, the common law, allows a party to admit other portions of a conversation or writing during their case-in-chief when the opposite party has admitted part of it. *Smith v. Wood*, 31 Md. 293, 296–97 (1869). The *second*, Maryland Rule 5-106, partially codifies the common law, but allows writings or recorded statements also to be admitted earlier in the proceeding:

> When part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

See Conyers v. State, 345 Md. 525, 541 (1997) ("Maryland Rule 5-106 does not change the requirements for admissibility under the common law doctrine or allow the admission of otherwise inadmissible evidence, except to the extent that it is necessary, in fairness, to explain what the opposing party has elicited."). But the rest of a writing or recorded statement is inadmissible if:

> (a) No utterance relevant to the issue is receivable;
>
> (b) No more of the remainder of the utterance than concerns the same subject, and is explanatory of the first part, is receivable;
>
> (c) The remainder thus received merely aids in the construction of the utterance as a whole, and is not in itself testimony.

Id. at 541–42. And completeness notwithstanding, "the utterance must be relevant, its

prejudice must not outweigh its probative value, and the doctrine does not allow into evidence an utterance that is otherwise inadmissible hearsay to become admissible solely because it is derived from a single writing or conversation." *Lindsey v. State*, 235 Md. App. 299, 319 (2018).

When the State introduced portions of the interrogation video during Detective Boulden's direct testimony, Mr. Boswell-Johnson could have designated excerpts to play in response. But defense counsel never specified which portions of the recorded statement would have completed those partial statements—counsel asked only to admit the entire twenty-six-hour recording. In other words, "there was no proffer . . . of what the balance of the statement that [Mr. Boswell-Johnson] sought to introduce said, nor was it included in the record before us, even as merely marked by identification." *Kouadio v. State*, 235 Md. App. 621, 637 (2018). This leaves us with "no practical ability to determine . . . what precisely the balance of the recorded statement would have revealed–what questions and answers were recorded that, in fairness, should have been available to the jury." *Id.* So although Mr. Boswell-Johnson's characterization of the doctrine of completeness is correct, the circuit court did not abuse its discretion when it denied counsel's request to admit the *entire* recorded statement.

C. Mr. Boswell-Johnson's Right To Confrontation Was Not Unduly Limited.

Third, Mr. Boswell-Johnson argues that his constitutional right to confront witnesses was restricted improperly when the circuit court denied his request to publish the full interrogation video during Detective Boulden's cross-examination, and that this

decision prevented the jury from evaluating the voluntariness of his statement. He points to Maryland Rule 5-616(a)(4), which allows the credibility of a witness to be "attacked through questions asked of the witness, including questions that are directed at . . . [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely[.]" The State responds that because Mr. Boswell-Johnson's counsel never proffered "which specific portions [he] intended to use and for what purpose, meaningful review of this issue is impossible." The State relies on Maryland Rule 5-103(a), which requires both an objection to a ruling that excludes evidence and an offer of proof.

We agree with the State. Rule 5-616 deals with the impeachment of a witness through questions or extrinsic evidence. Mr. Boswell-Johnson never asserts that his ability to ask questions was inhibited, nor does he label the recording as extrinsic evidence. Instead, he argues that the court erred by excluding the entire statement to the jury during cross-examination.

Rule 5-103(a)(2) provides that there is no error in excluding evidence unless a party is prejudiced and "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." The offer of proof allows the court to determine whether the error was prejudicial, *University of Md. Med. Sys. Corp. v. Waldt*, 411 Md. 207, 235 (2009), and to pass judgment on, avoid, or correct any errors in the proceedings. *Braxton v. State*, 57 Md. App. 539, 549 (1984). Thus, "[w]here evidence is excluded, a proffer of substance and relevance must be made in order to preserve the issue for appeal." *Pickett v. State*, 222 Md. App. 322, 345 (2015)

(cleaned up).

Mr. Boswell-Johnson never proffered to the trial court what the full recording of the interrogation would reveal and why it needed to be played during cross-examination of Detective Boulden. He says, in his brief, only that "the trial court impermissibly limited [defense counsel's] ability to affectively (sic) cross-examine the witness on a very crucial and relevant portion of the trial for the sake of the State's unfair trial tactics." But "[a] claim that the exclusion of evidence constitutes reversible error is generally not preserved for appellate review absent a formal proffer of the contents and materiality of the excluded testimony." *Muhammad v. State*, 177 Md. App. 188, 281 (2007). For the reasons we already have discussed, the trial court did not abuse its discretion in declining to play the entire video, and Mr. Boswell-Johnson's all-or-nothing request to play the entire video failed to preserve any objection with regard to portions that might otherwise have been relevant and played properly during cross-examination.

D. The Circuit Court Did Not Err When It Declined To Grant A Mistrial.

Finally, Mr. Boswell-Johnson argues that the circuit court should have declared a mistrial as a sanction for the State's failure to comply with discovery disclosures mandated by Maryland Rule 4-263(c) and (d)(1). Those Rule sections provide that the State must, with due diligence, identify all discovery that must be disclosed, including all written and oral statements of the defendant.[6] Mr. Boswell-Johnson argues that the State failed to

[6] Md. Rule 4-263(c) states the following:

> (1) Due Diligence. The State's Attorney and the defense shall

provide defense counsel with statements made by him during a ride-along, and that those statements prejudiced him when the State elicited them during its direct examination of Detective Boulden.

We review the circuit court's denial of a motion for mistrial for abuse of discretion. *Raynor v. State*, 201 Md. App. 209, 227 (2011). It's true that a mistrial is one possible sanction for a violation of Rule 4-263. *See* Md. Rule 4-263(n) (listing all possible sanctions). But a mistrial "is an extraordinary act which should only be granted if necessary to serve the ends of justice." *Hunt v. State*, 321 Md. 387, 422 (1990). And "[w]e will not reverse a trial court's denial of a motion for mistrial unless the defendant was so clearly prejudiced that the denial constituted an abuse of discretion." *Id.*

Before reaching the question of sanctions, though, it's not obvious that the State

> exercise due diligence to identify all of the material and information that must be disclosed under this Rule.
>
> (2) Scope of Obligations. The obligations of the State's Attorney and defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Md. Rule 4-263(d)(1) states the following:

> Without the necessity of a request, the State's Attorney shall provide to the defense:
>
> (1) Statements. All written and oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements.

committed a discovery violation. The issue is more one of linguistic confusion about how to describe the statements Mr. Boswell made during the ride-along:

> [DEFENSE COUNSEL]: Objection, Your Honor. May we approach?
>
> THE COURT: Yes.
>
> (Counsel approach the bench.)
>
> [DEFENSE COUNSEL]: I don't recall ever seeing a statement, an oral statement that was supposedly made by Mr. Boswell-Johnson on a ride along. This is outside of the–
>
> [THE STATE]: There are no notes to that. I thought I gave you the notes concerning the statements made during the ride along.
>
> [DEFENSE COUNSEL]: The problem we have, Your Honor, is [the State] and I did talk about notes for Detective Cruz prior to the ride along because there is nothing in the log about being taken out for a ride along.
>
> [THE STATE]: There is mentions on the log about him being taken out and brought back in. There is nothing worded ride along.
>
> [DEFENSE COUNSEL]: Right. And I did not know until right now he purportedly made statements, particularly statements of this nature. I will say this, had I been aware, I would have asked for a motion to suppress for that I wasn't–

The court then attempted to ascertain whether Mr. Boswell-Johnson's counsel was provided with the notes:

> THE COURT: You did not provide evidence of [statements] made by the Defendant.
>
> [THE STATE]: Yes. We provided notes concerning the oral statements, correct.
>
> [DEFENSE COUNSEL]: Your Honor, but what–when I learned of it we were in trial and I didn't learn until [the State] and I contacted–
>
> THE COURT: You said you were provided with notes but you

> were not provided until trial started.
>
> [DEFENSE COUNSEL]: I was not aware until trial started that–
>
> THE COURT: Were you provided the notes regarding oral statements during the ride along?
>
> [DEFENSE COUNSEL]: May I take a break to look at the notes to see exactly what they say?
>
> THE COURT: Were you provided notes about an oral statement made during a ride along?
>
> [DEFENSE COUNSEL]: I can't say whether I was or wasn't.
>
> [THE STATE]: I didn't give you any new notes recently, correct?
>
> [DEFENSE COUNSEL]: No. I can't say whether I was provided anything with respect to a ride–I know in looking through the discovery, at least from the statements, it's nothing that said he made statements during a ride along that I was ever aware of. In fact, I didn't even know there was a ride along until after trial started.

The court then dismissed the jury and Detective Boulden (because he was on the stand at the time) to inquire into the merits of defense counsel's assertion that he did not receive the notes:

> THE COURT [TO THE STATE]: All right. . . . I guess the allegation is being made that you did not provide these notes.
>
> [THE STATE]: Your Honor, there is nothing new provided at all.
>
> THE COURT: So then you do have notes that reflect–
>
> [THE STATE]: I do, in my hand. If you can mark these.
>
> THE DEPUTY CLERK: State's Exhibit 141 marked for identification.
>
> [THE STATE]: Judge, I have notes here authored by Detective Cruz, it says 1212 hours, that's referring to February 3rd, it says–

> THE COURT: Before you go any further, specifically you are referring to State's Exhibit Number?
>
> [THE STATE]: 141. It says, will be taken–and it's got a D with parenthesis around it on a ride. And the next note is 1238, arrived at 6575 Pennsylvania Avenue. And then it says Detective Gurry driver, Detective Jamie Boulden and listed the whole route going down.
>
> THE COURT: Okay.
>
> [THE STATE]: And then 13:57 it says, AV back on, because they arrive back. That's the notes I was referring to with counsel concerning the fact that a ride along took place.
>
> THE COURT: Okay. So when did you inform defense counsel that statements were made by the Defendant outside of the interview room?
>
> [THE STATE]: Let me just look back through the notes.

This back-and-forth revealed confusion regarding the questions the State was asking of Detective Boulden, not any failure on the State's part to disclose the notes:

> [THE STATE]: Judge, two things, I reviewed the notes of Detective Boulden and reviewed the notes of Detective Cruz concerning the ride along that took place. I do believe the ride along was documented. I do believe the statements that–the oral statements that the Defendant made were documented. Here is the issue I had, the issue to look back at the court reporter's transcript from the questions that were objected to and the mistake is mine. I asked Detective Boulden what the Defendant said next. I did not say Detective Boulden, what did he say next on the ride along meaning just tell me what he said on the ride along. After confirming with Detective Cruz quickly without saying what Detective Boulden said, I confirmed the Defendant didn't make any statements about how he committed the crimes at 1314 Palmer Road during the ride along. He simply went ahead and told them the direction of how he got from Pennsylvania Avenue to the area of 1314 Palmer Road, where he parked and immediately how he got back to his apartment.
>
> So I asked a bad question and I think what the detective has done is started commingling the statements and what he was

> referring to as statements made at the statement which are audio video recorded rather than separate statements made during the ride along and they were not made. And that was my fault with the way I asked the question. I think he was thinking I wanted him to say what he did when he was here. That was my fault.

After testimony from Detectives Boulden and Cruz outside the purview of the jury, the court then heard arguments regarding defense counsel's motion for a mistrial:

> [DEFENSE COUNSEL]: I think a mistrial is warranted because here is the problem, Your Honor. Here is the problem, Your Honor, I think, clearly now the credibility of Detective Boulden has been raised. Those questions asked by the State, given the fact that they were very succinct, I think it's troubling for him to testify as a law enforcement officer, oh, I didn't understand I was just testifying to the ride along. One thing I will say, [the State] can try a case that he broke everything, de-compartmentalized everything. It's clear that's all we were talking about, what did he say next.
>
> And for this officer to get on the stand and say I thought we were talking about the interview room. I think that's not justice. And that's not what the State should stand for.
>
> [THE STATE]: What he said, Judge, when I say what happens next, what he said next, that's what the Defendant said happened next. That's not what he said during the ride along. But that's what he said happened next according to the statements that he got at the station.
>
> [DEFENSE COUNSEL]: You are right but that's not what happened next, the question was, what did he say next.
>
> [THE STATE]: What he said is actually true, Judge, that is what he said but he did not say it during the ride along.

The court reserved on the ruling for a mistrial, allowing for the possibility that cross-examination might clarify the issue:

> THE COURT: The Court has listened to the arguments of counsel and the Defendant's request regarding whether or not we should continue to proceed with this trial. Defendant's

> request for a mistrial, I'm going to reserve on that issue at this juncture.
>
> I do believe and agree with the defense that there are issues that the fact finder needs to make an evaluation and determination regarding the credibility of Detective Boulden but I'm sure between the direct examination of the State and in an attempt to clarify the sequence of events coupled with the cross-examination that I'm sure the defense will do on this particular issue of Detective Boulden, I'm confident that there is a possibility that the issue can be clarified for the fact finder and there would not be a need to grant the Defendant's request.
>
> But, again, I'm going to reserve on the issue. I'm going to see how this issue is going to play out in front of the jury.
>
> And certainly, Mr. Jones, if at some point you would like to renew your request I will hear further arguments. As of right now, I'm merely reserving on it.

And that was the end of it: the court never found that the State violated any discovery rule, and defense counsel didn't renew the motion.

On this record, it doesn't appear that the State violated any discovery rules, and we see no error in the court's decision not to grant a mistrial because of the State's confusing question. In any event, the trial judge "hears the entire case and can weigh the danger of prejudice arising from improper testimony, [and] is in the best position to determine if the extraordinary remedy of a mistrial is appropriate." *Hunt*, 321 Md. at 422. And defense counsel never renewed his motion for mistrial when he had the opportunity to do so at the end of the Detective's testimony. We see no prejudice to Mr. Boswell-Johnson from the confusion over the notes, nor any abuse of discretion in the way the court handled the issue.

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

The correction notice for this opinion can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1116s18cn.pdf