Circuit Court for Baltimore City
Case No.: 117024024

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1171

September Term, 2017

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ALVIN SPRIGGS

v.

STATE OF MARYLAND

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Meredith,
Kehoe,
Berger,

JJ.

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Opinion by Kehoe, J.

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Filed: June 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.

On May 26, 2017, following a jury trial in the Circuit Court for Baltimore City, appellant Alvin Spriggs was convicted of first-degree murder, use of a firearm in the commission of a crime of violence, and possession of a regulated firearm by a person with a disqualifying conviction.[1] He was sentenced to a term of life imprisonment plus fifteen years.[2] Appellant timely appealed and raises the following questions for our review, which we rephrase slightly:

1. Did the administrative court abuse its discretion by denying appellant's request for postponement?
2. Did the trial court abuse its discretion by denying appellant's motion to disqualify a witness as a sanction for the State's discovery violation?

For the reasons set forth below, we shall affirm the judgments.

*Background*

Appellant does not challenge the sufficiency of the evidence supporting his convictions, so we will summarize the evidence in the light most favorable to the State in order to place appellant's contentions in context. *See Washington v. State,* 180 Md. App. 458, 461 n.2 (2008).

On the afternoon of July 24, 2016, Todd Dillard, Jr. walked out of Soul Source, a restaurant on Edmondson Avenue in Baltimore City, crossed the intersection, and walked up North Pulaski Street. Jerrie McKinney, an acquaintance of Dillard, was waiting for her take-out order in a white sedan parked on Edmonson Avenue. McKinney heard gunfire,

[1] T4: Official Transcript of Proceedings (Jury Trial), Volume IV of IV, Friday, May 26, 2017.

[2] D: Official Transcript of Proceedings (Disposition), Wednesday, July 26, 2017.

and Kesha Hannah, who was driving the vehicle, pulled onto Edmondson Avenue and turned left on North Pulaski Street. As they turned the corner, McKinney saw that Dillard was being chased by a man holding a gun. When Dillard fell to the ground, the man stood over him and shot him. Hannah, who had been driving slowly up North Pulaski Street, turned left onto Harlem Avenue. The gunman then entered Hannah's vehicle on the rear passenger side. McKinney identified appellant, whom she had seen around the neighborhood, as the man that she saw shoot Dillard and then enter Hannah's car.

Hannah circled the block and proceeded up North Pulaski Street again, and McKinney exited the vehicle to check on Dillard. According to McKinney, Hannah drove away with appellant, but returned to North Pulaski Street approximately ninety seconds later. When McKinney entered the vehicle, she saw that appellant was no longer in the back seat. Hannah and McKinney then left the scene.

McKinney's testimony was corroborated by Shadae Artson, who witnessed the shooting through the basement window of her home on North Pulaski Street. Artson was identified as an eyewitness by Baltimore City police, and in December 2016, she identified appellant as the gunman in a photographic array. She also provided a videotaped statement to police investigators. Taurean Shannon, who also lived on North Pulaski Street, testified that he saw a "red shirt" run past his front window and jump into a white car. The car then drove toward Harlem Avenue.

The State also introduced into evidence surveillance camera footage from the restaurant that showed Hannah parking a white sedan on Edmondson Avenue before she

and McKinney entered Soul Source. Exterior camera footage showed Dillard leaving the restaurant, and a white sedan driving through the intersection of Edmonson Avenue and North Pulaski Street several times.

On January 24, 2017, appellant was indicted on charges of first-degree murder, use of a firearm in the commission of a crime of violence, and possession of a firearm by a person with a disqualifying conviction. Hannah was charged as an accessory after the fact to murder.

*The State's Postponement Request*

On May 22, 2017, the date that the case was set for trial, the parties appeared before the administrative judge.[3] The prosecutor requested a postponement of trial because the State had not disclosed police body camera footage or cell phone records that it had just received, or a witness statement that had been made available through open discovery but had not been turned over to the defense. The State also sought to specially set the trial date because travel arrangements had not been made for McKinney, who was living out-of-state. Defense counsel objected to the State's postponement request. The administrative judge noted that defense counsel was opposed to the postponement, and finding that there was no good cause, denied the State's request.

[3] M: Official Transcript of Proceedings (Motions Hearing), Monday, May 22, 2017 - 9:52 a.m.

*Defendants' Motion to Disqualify Ms. Artson*
*and Their First Postponement Request*

The parties then appeared before the trial judge for a motions hearing.[4] After granting the State's motion to try appellant and Hannah jointly, the trial court heard defense motions regarding three conceded discovery failures by the State. The first two are no longer matters of controversary: the court ruled that the State could not introduce appellant's cell phone records. Additionally, the court ruled that the State could not introduce police body camera footage but "[i]f the defense wishes to put it in, defense is free to do so."

The third issue concerned Shadae Artson, an eyewitness. In its discovery, the State had disclosed that "Witness No. 2" (who turned out to be Artson) made a 911 call at the time of the shooting, that the same witness gave a statement to the police, and that the witness identified appellant as the shooter. However, the State did not disclose Artson's name or address but indicated to counsel that it would provide this information if requested by defense counsel. The trial judge found that the State had violated the discovery rule by redacting Artson's name and address from its initial disclosure. As a sanction, the court ordered the State to produce Artson within twenty-four hours for an interview with defense counsel. The court also delayed Artson's testimony forty-eight hours. Defense counsel, however, argued that forty-eight hours was not enough time to prepare for trial and asked to return to the administrative court to request a postponement. The court asked defense

[4] M2: Official Transcript of Proceedings (Motions Hearing), Monday, May 22, 2017 – 11:26 a.m.

counsel why he had objected to postponement earlier that day, to which defense counsel responded:

> [APPELLANT'S COUNSEL]: I'm just indicating to the Court that I objected because I would assume that they wouldn't have been able to get this evidence in. Now that they're going to be allowed to get it in, I'm not ready. I mean, it was a strategy by myself on behalf of my client; however, obviously it backfired and I don't want it to backfire in costing him.

Defense counsel ultimately received permission to return to the administrative court that afternoon to request postponement. Counsel did not do so.

*Appellant's Second Postponement Request*

On the morning of May 23, 2017, before jury selection, the prosecutor noted for the record that defense counsel did not return to the administrative judge the preceding day.[5] Defense counsel explained to the court that he did not do so because he thought he would be able to "catch up" on the materials disclosed in discovery. He then asked the trial court for permission to request a postponement because he was still unprepared. The judge denied the request, ruling that "[t]he chance was yesterday."

A short time later, defense counsel informed the trial court that the State had, just that morning, disclosed a permanent relocation agreement for McKinney and five pages of notes[6] prepared by the lead detective, and argued that, "If I would have had these notes yesterday, I would have asked for a postponement." The trial court once again denied

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[5] T: Official Transcript of Proceedings (Jury Trial), May 23, 2017. Volume I of IV.
[6] The notes in question concerned items recovered by the execution of a search warrant on appellant's residence. The information contained in the notes was included in the return on the search warrant. No evidence recovered from the search was introduced at trial.

defense counsel's request to return to the administrative judge, and the parties proceeded with jury selection.

*Appellant's Third Postponement Request*

On Wednesday, May 24, 2017, after the jury was selected but not sworn, defense counsel was permitted to return to the administrative court to request a postponement. Defense counsel argued that, based on the State's multiple late disclosures of evidence, that good cause was shown for postponement.[7] The prosecutor stated that, apart from Artson's identity, address, and videotaped statement, that she had disclosed most of the evidence challenged by defense counsel in the State's initial disclosure or made it available through open file discovery. Responding to defense counsel's specific complaint about the detective's notes, she stated that she disclosed the detective's most recent notes to the defense when she received them, which was the first day of trial. The administrative judge then questioned the parties as follows:

> THE COURT: So the State also asked for a postponement because they had additional discovery to disclose?
>
> [PROSECUTOR]: The body camera footage and Lotus notes of Detective–
>
> THE COURT: And you all continued to object; is that correct?
>
> [APPELLANT'S COUNSEL]: [The prosecutor] never said anything about Lotus notes because she hadn't given us –
>
> THE COURT: Well, it's noted on the postponement for us, State has additional discovery to disclose, State has to fly in an out of state witness, and it was –

[7] M3: Office Transcript of Proceedings (Motions Hearing), May 24, 2017.

[APPELLANT'S COUNSEL]: But the discovery was not the Lotus notes, it was not the notes of the Detectives, we were not told –

THE COURT: Okay. Well, now we're down to the Lotus notes.

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THE COURT: Well, but I guess it does make some difference to me that in fact you all were objecting when there was a question of having a witness available and then you make that particular strategic decision to object, hoping that, I assume, that the State may not be able to get its witness here and so therefore you made that decision and so the case was set…

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[PROSECUTOR]: [Substitute counsel] was here on behalf of [Counsel for Hannah] and [appellant's counsel] was here. I don't believe they voiced anything other than we object while we were at the bench, I don't think there was a huge jumping up and down but the Administrative Judge made the decision that she did, we went to Judge Doory, all of this was the[n] put on the record in front of Judge Doory. Judge Doory did invite us to come back to Administrative Court Monday afternoon and the decision was made not to go back in front of the Administrative Judge Monday afternoon. We then went back to Judge Doory Tuesday morning where defense counsel again asked for [sic] to go to Administrative Court and Judge Doory at that time refused the request. I don't believe I'm misstating any of the facts.

[APPELLANT'S COUNSEL]: And Tuesday is when we did get discovery of the notes and the –

[PROSECUTOR]: At that point, Your Honor, as soon as the—

THE COURT: Which I think the State wanted to ask for a postponement to disclose to you and you didn't want it.

[APPELLANT'S COUNSEL]: Well, we messed up.

THE COURT: You made that decision; right?

[APPELLANT'S COUNSEL]: Right.

[PROSECUTOR]: And, Your Honor, as soon as the Administrative Judge denied the State's postponement request, the State literally jumped through

> hoops to get this witness here incurring over $1,000 in travel expenses to get this witness here. The witness will be here and if this Court considers granting a postponement request, the State will still be asking that witnesses' [sic] testimony taken while that witness is in town now.
>
> THE COURT: Okay. I'm denying the request. All right. You can head back to Judge Doory's.

The case then proceeded to trial.

Analysis

1.

Appellant first contends that the administrative judge abused his discretion when he denied defense counsel's requests to postpone the trial. Appellant argues that the administrative judge's ruling was based solely upon defense counsel's objection to the State's postponement request rather than the "unfair surprise and impairment of the defense" caused by the State's multiple late disclosures of discoverable evidence. He contends that the error was not harmless beyond a reasonable doubt, and that reversal of his convictions is warranted.

The State responds that there was no abuse of discretion on the part of the judge in denying the request because: 1) defense counsel made a tactical decision to object to the State's postponement request with full knowledge that evidence had not been disclosed, 2) defense counsel forfeited the opportunity to request a postponement before jury selection, and 3) the evidence that appellant now complains of was either excluded or found by the administrative judge to be redundant. We hold that the court did not abuse its discretion when it denied appellant's postponement request.

Md. Rule 4-271 provides, in pertinent part, that "[o]n motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date." Generally, appellate courts "review[] for abuse of discretion a trial court's ruling on a motion to postpone." *Howard v. State*, 440 Md. 427, 441 (2014). An abuse of discretion occurs "only where no reasonable person would take the view adopted by the [trial] court … or where the court acts without reference to any guiding rules or principles[.] *Prince v. State*, 216 Md. App. 178, 203-04 (citations and internal quotation marks omitted), *cert. denied*, 438 Md. 741 (2014). "[A] trial court is under no obligation to grant a motion to postpone even when confronted with a discovery violation; i.e., under that circumstance, the trial court may exercise its discretion to fashion any remedy that it deems appropriate." *Howard,* 440 Md. at 444 (citing Md. Rule 4-263(n)). The "'party challenging the discretionary ruling on a motion for a postponement has the burden of demonstrating a *clear* abuse of discretion[.]'" *State v. Taylor*, 431 Md. 615, 646 (2013) (quoting *State v. Frazier*, 298 Md. 422, 452 (1984)) (emphasis in *Taylor*).

Appellant, relying on *Morgan v. State*, 299 Md. 480 (1984), argues that good cause for postponement existed in this case, where the State disclosed new evidence on the eve of trial. In *Morgan*, the State failed to disclose testimony from two additional witnesses, a handgun that had just been recovered, and an FBI analysis report related to the handgun until a few days before trial. *Id.* at 483. The trial court denied the defendant's motion to suppress the evidence, but, on its own motion, postponed the trial to allow defense counsel

sufficient time to review the evidence. *Id.* at 483-84. The Court of Appeals affirmed, holding that the trial court did not abuse its discretion in finding good cause for a postponement. *Id.* at 488. *Morgan* does not particularly advance appellant's cause, however. That the trial court *can* grant a continuance to remedy a discovery violation does not mean that a court is *required* to grant a continuance whenever there is a discovery violation. *Howard*, 440 Md. at 444.

Appellant also analogizes the facts in this case to *Collins v. State*, 373 Md. 130, 143 (2003), in which the Court of Appeals concluded that the trial court erred by denying the defendant's request to continue trial over the weekend to review the evidence disclosed by the State on the fourth day of trial. Because the trial court had made no specific finding that the discovery rule had been violated, and therefore had not exercised its discretion in fashioning a remedy, the Court of Appeals reviewed the facts under a harmless error standard. *Collins,* 373 Md. at 147. Accordingly, the Court held that the State's late disclosure was prejudicial to the defendant and reversed, explaining that "it is not for us to determine what, if any, response the defense could have prepared had it known of the prior inconsistent statement. It is enough that the defense was denied an adequate opportunity to do so, to its prejudice." *Id.* at 148.

Appellant's reliance on *Collins* is misplaced. Here, the trial court made a specific finding that the State had violated the discovery rule and exercised its discretion to fashion a remedy relating to Artson's testimony. We therefore review the decision to deny the postponement for an abuse of discretion.

The issue before the administrative court was whether there was good cause for postponement based on the State's belated disclosure of the detective's progress notes, Artson's name, address, and videotaped statement, and McKinney's relocation agreement. During the hearing, the State explained that much of the evidence challenged by the defense had been made available in open file discovery. When defense counsel urged the court to postpone trial to allow more time to investigate the State's disclosures related to Artson, the administrative judge determined that defense counsel knew that the State had not disclosed Artson's name and address at the time he objected to the State's postponement two days earlier. The judge observed that, considering that the State had cited its need to disclose additional discovery as one of the reasons for its postponement request, that defense counsel's objection to the State's request was strategic—specifically, to prevent the State from calling McKinney as a witness.

Moreover, the State objected to defense counsel's postponement request, citing the expenses incurred to secure McKinney's presence at trial. In addition, the prosecutor noted that defense counsel had been given the opportunity to appear before the administrative judge to request postponement two days earlier but had chosen not to do so. Although appellant now argues that the administrative court should have postponed the trial to give defense counsel more time to investigate the State's disclosures related to Artson, the trial court had already ruled on the issue and crafted a remedy. Further, although the jury had not yet been sworn, the postponement hearing occurred after the jury had been selected. Under these circumstances, we are not persuaded that the administrative judge clearly

abused the wide scope of his discretion in denying appellant's motion to postpone. *See Taylor*, 431 Md. at 646.

2.

Appellant's second contention is that the trial court abused its discretion when it denied his motion to disqualify Artson as a witness based on the State's failure to timely disclose her identity and address. The State responds that the trial court properly exercised its discretion in crafting a remedy to the discovery violation.

Defense counsel, arguing that the State had failed to provide discovery, moved to disqualify Artson from testifying. The prosecutor responded that the witness should not be disqualified, and explained that, due to concerns for her safety, the State had redacted Artson's name and address from its initial disclosure. The prosecutor asserted that although Ms. Artson had been consistently identified as Witness No. 2 throughout its disclosures, her identity and address was available to the defense to review through open file discovery, and moreover, that the State would have disclosed the information if the defense had requested it. The trial court noted that the non-disclosure of required information about the State's witness was not done under the auspices of a protective order, but also observed that neither defendant had objected to the procedure, moved to compel disclosure, or sought out the information pursuant to open file discovery. The court then ruled as follows:

> THE COURT: All right. Ladies and gentlemen, I've heard your arguments and on this which we have categorized as a motion to disqualify the witness, Artson, I am going to deny the motion to disqualify. But I do find a violation

> of Maryland Rule 4-263(d) as to the disclosure of the witness. The question is, what is the proper sanction?
>
> Now, factoring in what the proper sanction is, causes me to deny the motion to disqualify the witness and look for a different sanction. What the State did was an informal way of self-ordering a protective order. But there was no objection and no motion to compel the discovery so that mitigates against the sanction to be implied. Plus the State had given the opportunity for counsel to come in and learn this information which counsel did not pick up, and in fact Mr. Rosenberg said it wasn't until last week that he tried to open it and found out that he couldn't do it.
>
> So what sanction is appropriate? I would have ordered that the discovery be permitted but the discovery has already been provided. Now, you have the name. Let's look at other methods the Court can use. Strike the testimony but that hasn't been ordered yet. Prohibit the party from introducing the evidence, the Court refuses to do that. Grant a mistrial, that's unnecessary at this point. Enter any other order appropriate under the circumstances. Now, one of the choices the Court could have done is provide for the defendant's to have the opportunity to, independent of the participation of the State, interview the witness.

In addition to ordering the State to produce the witness within twenty-four hours for an interview by defense counsel, the court also ordered that Artson's testimony be delayed forty-eight hours to give defense counsel time to prepare for trial.

The following day, while discussing pre-trial matters, counsel for Hannah indicated that he did not require the court to delay Artson's testimony. The court then engaged both defense counsel in the following discussion:

> [COUNSEL FOR HANNAH]: Judge, I just want to say this, I don't know about Mr. Rosenberg, but as far as Ms. Artson is concerned, they don't have to hold her off. She doesn't have to wait until Thursday.
>
> [APPELLANT'S COUNSEL]: *Oh, yeah, no, I could care less.*
>
> THE COURT: Bring her in whenever?

[APPELLANT'S COUNSEL]: *She could testify now.*

(Emphasis added.).

In short, although defense counsel initially objected to the trial judge's ruling, he later acquiesced.

Maryland Rule 4-263 governs discovery in criminal cases. One of the primary purposes of the discovery rule is "to assist defendants in preparing their defense and to protect them from unfair surprise." *Williams v. State*, 364 Md. 160, 172 (2001). Under Md. Rule 4-263(d)(3), the State must provide in discovery, "each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) … the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged[.]" The trial court, upon finding a violation of the discovery rule, may: order discovery of the undisclosed matter, grant a continuance, exclude evidence as to the undisclosed matter, grant a mistrial, or enter any other appropriate order. Md. Rule 4-263(n). Violation of the discovery rule does not automatically disqualify a witness from testifying. *Id.*

"The remedy for a violation of the discovery rules 'is, in the first instance, within the sound discretion of the trial judge.'" *Raynor v. State*, 201 Md. App. 209, 227 (2011) (quoting *Williams v. State*, 364 Md. 160, 178 (2001)). "The exercise of that discretion includes evaluating whether a discovery violation has caused prejudice." *Cole v. State,* 378 Md. 42, 56 (2003) (quoting *Williams*, 364 Md. at 178). A trial court contemplating

sanctions for a discovery violation, should, in its discretion, 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. *Thomas v. State,* 397 Md. 557, 570-71 (citations omitted). In crafting an appropriate sanction, the court "should impose the least severe sanction that is consistent with the purpose of the discovery rules." *Id.* at 571 (citations omitted). A court abuses its discretion where the ruling "'is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Smith v. State*, 232 Md. App. 583, 599 (2017) (quoting *Norwood v. State*, 222 Md. App. 620, 643 (2015)).

Here, the trial court found that the State violated the discovery rules when it unilaterally decided to withhold discoverable information about Artson's identity. To remedy the violation, the court considered the sanctions available, and, in its discretion, ordered the State to produce the witness for an interview by defense counsel within the day. The Court also delayed the witness' testimony for forty-eight hours in consideration of defense counsel's complaint that he needed time to prepare for cross-examination and to investigate the view from her basement window.

Moreover, appellant's current complaint that forty-eight hours was insufficient for trial counsel to prepare for Artson's testimony is not consistent with trial counsel's assertion that he "could care less" about the timing of Artson's testimony and that, as far as he was concerned, "[s]he could testify now."

We hold that the circuit court properly exercised its discretion on this issue.

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