Circuit Court for Wicomico County
Case No.: C-22-CR-19-000359

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1919

September Term, 2019

COLLIE WILSON, IV

v.

STATE OF MARYLAND

Leahy,
Friedman,
Wells,

JJ.

Opinion by Leahy, J.

Filed: July 12, 2021

*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.

Collie Wilson IV, appellant, was convicted by a jury sitting in the Circuit Court for Wicomico County of second-degree assault.[1] The court sentenced him to five years' imprisonment, suspending all but one year, to be followed by two years of supervised probation. On appeal, Mr. Wilson presents the following questions for our review,[2] which we have consolidated and rephrased as follows:

I. Did the trial court abuse its discretion in denying Mr. Wilson's motion for a mistrial?

II. Did the trial court err or abuse its discretion in admitting a statement made by Mr. Wilson which the State had not disclosed in discovery?

Finding no error or abuse of discretion by the trial court, we will affirm.

BACKGROUND

On March 11, 2019, Mr. Wilson was charged with second-degree assault, in violation of Maryland Code (2002, 2012 Repl. Vol., 2019 Supp.), Criminal Law Article, § 3-203, and intoxicated endangerment in violation of Maryland Code (2016, 2019 Supp.), Alcoholic Beverages Article, § 6-320. Mr. Wilson's trial took place on November 26,

[1] Mr. Wilson was acquitted of intoxicated endangerment.

[2] The questions presented in Mr. Wilson's opening brief are:

"1. Did the trial court err in admitting evidence of an assault other than the assault charged?

2. Assuming arguendo that the trial court sustained the objections to the evidence of the other assault, did the trial court abuse its discretion in denying the motion for mistrial?

3. Where the State failed to disclose during discovery a statement made by Mr. Wilson, did the trial court err in admitting the statement?"

2019. The jury heard testimony from Jamison Post—a trauma nurse in the emergency department of the Salisbury Peninsula Regional Medical Center and the State's only witness—and Mr. Wilson.

Ms. Post testified that, in the early morning hours of November 3, 2018, she was working the overnight shift, when Mr. Wilson arrived in the emergency department in handcuffs, accompanied by police. She observed Mr. Wilson, upon his arrival at the hospital, being "belligerent, slurring his words, yelling at people, completely uncontrollable, [and] thrashing around," which she attributed to alcohol intoxication. Ms. Post further testified that she recalled Mr. Wilson smelling of alcohol and "screaming, you're number 1, you're number 7, you're number 42." She also stated that "[Mr. Wilson] was going to fight with [the] physician."

Ms. Post further explained that Mr. Wilson was sedated "to make him more manageable." He was placed on a stretcher in an examination room, where he remained in handcuffs. Ms. Post checked on Mr. Wilson hourly. At approximately 4:45 a.m., Ms. Post examined Mr. Wilson's vital signs and observed him resting quietly. Upon observation, she noticed that Mr. Wilson had moved "to the top of the stretcher and the top quarter of him was kind of hanging off." Ms. Post placed one hand on Mr. Wilson's shoulder and the other hand on his wrist to readjust his position on the stretcher.

While working on a computer in Mr. Wilson's room, Ms. Post "heard something" and turned around to see that he was "back at the top of the stretcher." She adjusted his position a second time and returned to her work on the computer. When she turned back to Mr. Wilson, she observed that he had slid to the end of the stretcher a third time. She

again placed one hand on his shoulder and the other hand on his wrist and said, "Collie, knock it off." She testified that, at that point, Mr. Wilson grabbed her left wrist and "wrenched it, causing immense pain[.]" As she struggled to free herself from his grip, security personnel responded to her cries for help and assisted her in removing her wrist from Mr. Wilson. As a result of the altercation, Ms. Post suffered multiple torn ligaments in her left wrist. She testified that she received physical therapy over the course of one year for the injury. Ms. Post further testified that she formally filed charges against Mr. Wilson about four months following the incident on March 11, 2019.

Mr. Wilson was called by the defense to the testify and answer, "one brief question." Mr. Wilson testified that he did not remember anything that happened after he was sedated at the hospital on November 3, 2018.

The court then explained the charges to the jury, stating:

> Second degree assault is charge number one.[3] That is causing offensive physical contact to another person. In order to convict the

[3] Maryland Code (2002, 2012 Repl. Vol., 2019 Supp.), Criminal Law Article, § 3-203, defines "Assault in the second degree." The Code states:

(a) *Prohibited.* – A person may not commit an assault.

Maryland Code (2002, 2012 Repl. Vol., 2019 Supp.), Criminal Law Article, § 3-201(b), defines "Assault" by stating:

> 'Assault' means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings.

In *Snyder v. State*, 210 Md. App. 370, 379 (2013), we explained, "[i]n Maryland, first and second-degree assault are statutory crimes. We also made clear that "statutory second-degree assault encompasses three types of common law assault and battery: (1) the 'intent to frighten' assault, (2) attempted battery and (3) battery." *Id.* at 380.

> defendant of second degree assault, the State must prove: that the defendant caused physical harm to Jamison Post; that the contact was the result of an intentional or reckless act on the part of the defendant and was not accidental; and that the contact was not consented to by Jamison Post or was otherwise legally justified.
>
> Excuse me.
>
> The verdict sheet will describe the second count as intoxicated endanger.[4] I think if that's what the statute says, it says that. But I think it really means intoxicated endangerment. To convict the defendant of this crime, the State must prove: that the defendant was intoxicated; and that he endangered the safety of another individual.

At the requests of Mr. Wilson's counsel, the court also explained to the jury:

> As you will recall, hopefully you will remember, when I defined second degree assault, I said the defendant has to have caused physical harm to Jamison Post, that his contact with her was the result of an intentional act or a reckless act, and that it was not consented to or otherwise legally justified.
>
> Reckless means conduct that under all circumstances shows a conscious disregard of the consequences to other people and is a gross departure from the standard of conduct that a law-abiding person would observe.

[4] Maryland Code (2016, 2019 Supp.), Alcoholic Beverages Article, § 6-320 defines "Disorderly intoxication." Under the article it states:

> (a) Prohibited. – An individual may not:
> (1) be intoxicated and endanger the safety of another individual or property; or
> (2) be intoxicated or consume an alcoholic beverage in a public place and cause a public disturbance.

After closing arguments from both parties, the jury convened for deliberations. The jury found Mr. Wilson "Guilty" of second-degree assault and "Not guilty" of intoxicated endangerment.

Mr. Wilson timely filed a notice of appeal on November 26, 2019. We include additional detail pertinent to our discussion below.

DISCUSSION

I.

a. Reference to Prior Assault

Ms. Post testified as the State's only witness. When asked what prompted Mr. Wilson's visit to the hospital, the following transpired:

> [PROSECUTOR]: And do you know what [Mr. Wilson] was in the hospital for that day?
>
> THE WITNESS: He was brought in because he was –
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> THE COURT: Basis for your objection. You just can't object. You have to tell me [why] you're objecting.
>
> [DEFENSE COUNSEL]: Yes, Your Honor. I think she can testify as to his – the reason he was brought into the hospital injury-wise, but I don't think she can testify as to why he was brought into the hospital without it being hearsay.
>
> THE WITNESS: Well, can I say something, Your Honor?
>
> THE COURT: Well, let's try to – Do you have a response, [prosecutor] to [defense counsel's] objection?
>
> [PROSECUTOR]: Your Honor, I would just say that I don't know if we've quite gotten to the objection. I don't

think she said yet where – in terms of injury. I think it's relevant to why he was there and the level of care she was giving when the incident happened.

THE COURT: All right. I guess [defense counsel] is objecting to the initial reason he was brought to the hospital? Is that what you're saying?

[DEFENSE COUNSEL]: Yes.

THE COURT: But certainly the witness can testify as to what she observed at the hospital[?]

[PROSECUTOR]: Yes.

[DEFENSE COUNSEL]: Correct, Your Honor.

THE COURT: All right. So let's – let's do it like that, Ms. Post, if you can.

[PROSECUTOR]: Okay. Thank you.

THE WITNESS: Yes, sir.

[PROSECUTOR]: So what – what injuries was he coming in for?

THE WITNESS: ***Mr. Wilson had assaulted a Fruitland Police –***

[DEFENSE COUNSEL]: Objection, Your Honor.

THE WITNESS: – Department –

THE COURT: ***All right. It doesn't matter whether he –***

[DEFENSE COUNSEL]: Your Honor, move [for] a mistrial.

THE COURT: ***– it doesn't matter what he did, ladies and gentlemen of the jury. He could have come back from the moon on the space shuttle. It doesn't matter.*** He was at the hospital with a certain injury, correct?

THE WITNESS: He didn't have an injury, Your Honor.

THE COURT: All right.

[DEFENSE COUNSEL]: Your Honor, I move for a mistrial.

THE COURT: All right. Well, she can testify to that. You're saying she did not – he did not have an injury?

THE WITNESS: No, sir.

THE COURT: All right. Ask another question. Let's keep moving forward.

(Emphasis added).

In its instructions to the jury prior to the jury's deliberation, the court again admonished the jury to only consider the evidence properly before them:

> [E]vidence is the testimony from the witness stand and the physical evidence or exhibits admitted into evidence which you will see. You evaluate the evidence in the light of your own experiences. You draw whatever conclusions you believe are reasonable from that evidence justified by common sense and your own experiences.
>
> ***If I did not allow a question to be answered, you're to disregard the question. If an answer was blurted out, you're to disregard the answer.***
>
> The fact that the defendant was charged by way of a charging document, that's not evidence of guilt. It's simply the manner in which the State brings charges against a defendant.

b. Parties' Contentions

Mr. Wilson argues that Ms. Post's reference to his assault of a police officer was inadmissible hearsay. He contends that trial court "fail[ed] to render a ruling, by sustaining or overruling the objection to the testimony of the other assault." According to Mr. Wilson, the trial court's failure to instruct the jury to disregard the testimony equated to the trial

court "effectively admit[ting]" the statement as prior "bad act" evidence under Md. Rule 5-404(b). Mr. Wilson also asserts that the trial court's response, to Ms. Post's reference to the assault, did not cure the prejudice to him and therefore a mistrial was the only appropriate sanction. Finally, he contends that the trial court further confused the issue by improperly instructing the jury to "disregard an answer" that was "blurted out."

The State responds that Mr. Wilson's contentions are not preserved, as he failed to request an explicit ruling on his objection, failed to move to strike Ms. Post's response, and failed to request a curative instruction. The State rejects Mr. Wilson's argument that the reference to the prior assault was admitted in violation of the hearsay rules or Maryland Rule 5-404(b), contending that the court made no ruling on the statement. Lastly, the State asserts that the challenged testimony was an unsolicited "blurt," which the trial court properly remedied with a curative instruction, and therefore, a mistrial was not warranted under the circumstances.

c. Analysis

Although at trial, defense counsel's initial objection—as Ms. Post was beginning to make her statement—was that the State would be eliciting inadmissible hearsay. On appeal, Mr. Wilson adds that Ms. Post's statement referred to a prior bad act and was admitted in violation of Maryland Rule 5-404(b). Ordinarily, "evidence of a defendant's prior criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial." *State v. Faulkner*, 314 Md. 630, 633 (1989) (quoting *Straughn v. State*, 297 Md. 329, 333 (1983)). Assuming that the reference to Mr. Wilson assaulting a police officer earlier the same evening was inadmissible, we agree with the State that Ms. Post's

statement constituted a "blurt," as it was an "abrupt and inadvertent nonresponsive statement made by a witness during his or her testimony." *Washington v. State*, 191 Md. App. 48, 100 (2010) (citing *State v. Hawkins*, 326 Md. 270, 277 (1992)). Because the prosecutor asked what injuries Mr. Wilson presented when he arrived in the emergency department, the comment that he "had assaulted" a police officer was not solicited by the prosecutor nor was it responsive to the prosecutor's question.

Defense counsel objected to Ms. Post's inadvertent comment and immediately requested a mistrial. Defense counsel urges that the trial court erred by failing to rule on the objection; however, because defense did not request a ruling, or move to strike the answer, there is no ruling on the objection before us to review. *See State Roads Comm'n v. Berry*, 208 Md. 461, 466-67 (1955) (holding that, "it is … necessary for the purpose of appeal that some timely objection be made and that the court rule upon the question[,]" otherwise "there is nothing for the [appellate court] to review and no basis for the contention that the trial court committed reversible error.") (citations omitted). Here, the trial court responded to the defense's request for a mistrial by admonishing the jury that Ms. Post's comment was irrelevant. Based on this sequence of events, we agree with the State that the issue before us is not whether the court erred in admitting hearsay or evidence of a prior assault but, rather, whether a mistrial was the proper remedy for Ms. Post's comment and whether the court abused its discretion in denying Mr. Wilson's motion for a mistrial.

The decision to grant a mistrial is an "extraordinary remedy," and "the trial judge has considerable discretion regarding when to invoke it." *Whack v. State*, 433 Md. 728,

751-52 (2013) (quoting *Powell v. State*, 406 Md. 679, 694 (2008)) (quotation marks omitted). "Ordinarily, the exercise of that discretion will not be disturbed upon appeal absent a showing of prejudice to the accused[,]" which is both "real and substantial." *Washington*, 191 Md. App. at 99 (quotation marks and citations omitted). "The determining factor as to whether a mistrial is necessary is whether the prejudice to the defendant was so substantial that he was deprived of a fair trial." *Kosh v. State*, 382 Md. 218 (2004) (quotation marks and citation omitted).

The Court of Appeals has established an analytical framework for determining whether the prejudice resulting from a "blurt out" is "real and substantial enough" to warrant a mistrial. *Washington*, 191 Md. App. at 100. The analysis includes consideration of the following factors:

> whether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

Id. at 100 (quoting *Rainville v. State*, 328 Md. 398, 408 (1992) (in turn quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)); *accord Carter v. State*, 366 Md. 574, 590 (2001). We have noted that the analysis of the so-called *Guesfeird* factors is "open-ended and fact-specific." *Washington*, 191 Md. App. at 100. "But, no single factor is determinative in any case, nor are the factors themselves the test. . . . Rather, the factors merely help to evaluate whether the defendant was prejudiced." *McIntyre v. State*, 168 Md. App. 504, 524 (2006) (citations omitted).

In cases where an inadvertent statement causes incurable prejudice, the Court of Appeals has held that mistrial is the appropriate sanction. In *Guesfeird*, the defendant was convicted of sexually abusing a teenage girl. When asked about reporting the abuse to school authorities, the complainant responded "… that is when I took the lie detector. …" 300 Md. at 656-57. Defense counsel objected, and at a sidebar, requested a mistrial. *Id.* at 657. The court overruled defense counsel's objection, denied his motion for a mistrial, and, over his objection, gave a cautionary instruction. *Id.* The Court of Appeals applied the above-referenced factors and determined that the defendant had been clearly prejudiced by the reference to the lie detector test by the State's principal witness. *Id*. at 667. The Court noted that, because the complainant's uncorroborated testimony conflicted directly with the defendant and all other witnesses, "credibility was the crucial issue for the jury." *Id*. at 666. The Court held that the trial court committed reversible error by denying the defendant's motion for a mistrial. *Id*. at 667.

In *Rainville*, the defendant was convicted of sexual abuse and assault and battery of a young girl. While testifying about the child's report of the assault, the mother of the child stated that the child was not afraid to tell her what had happened because, she said, the defendant was "in jail for what he had done" to her brother. *Rainville*, 328 Md. at 401. Defense counsel objected and requested a mistrial. *Id*. at 401-02. The trial judge denied defendant's motion for a mistrial and instead gave a curative instruction. *Id*. at 402.

The Court of Appeals applied the *Guesfeird* factors to analyze the mother's reference to the defendant's incarceration for an unrelated sexual offense and found that the mother's remark was "particularly prejudicial because the defendant had not been

convicted of any sexual offenses," and "it was highly likely" that the jurors had assumed that the defendant had committed a sexual offense against the brother. *Id*. at 407. Though the mother's comment had been "isolated, unsolicited, not made by a principal witness, not dispositive of the defendant's credibility, and [was] not affecting a crucial issue[,]" those factors did not diminish its prejudicial effect. *Id*. at 408. The Court concluded that the "inadmissible evidence … had such a devastating and pervasive effect that no curative instruction, no matter how quickly and able given, could salvage a fair trial for the defendant." *Id*. at 410.

By contrast, we have applied the *Guesfeird* factors in cases in which an inadvertent statement did not cause incurable prejudice and held that a mistrial was not appropriate. In *Washington v. State,* 191 Md. App. 48, 96 (2010), for example, appellant asserted that a witness's statement made during trial was inadmissible hearsay and that a mistrial would be the proper remedy. *Id.* A State's witness had testified that Washington was "hostile" at the time two men were shot delivering a bed to Washington's apartment, despite being instructed several times not to characterize Washington's behavior. *Id.* at 97. Washington's counsel moved for a mistrial on this basis. *Id.* The court denied the motion for a mistrial and gave a curative instruction. *Id.* at 98. On appeal, Washington asserted that although the court gave a curative instruction, the witness's "testimony was so prejudicial that no curative instruction would have been adequate and that the trial court erred in not declaring a mistrial." *Id.* at 99. We concluded that the witness's testimony was a "blurt out" but that the prejudice resulting from the "blurt out" did not warrant a mistrial. *Id.* at 100.

We explained that the decision to declare a mistrial "'is committed to the sound discretion of the trial court. Ordinarily, the exercise of that discretion will not be disturbed upon appeal absent a showing of prejudice to the accused. In order to warrant a mistrial, the prejudice to the accused must be real and substantial; a mistrial should never be declared for light or transitory reasons.'" *Id.* at 99 (quoting *Wilson v. State*, 148 Md. App. 601, 666 (2002), *cert. denied*, 374 Md. 84 (2003)). We highlighted that although *Guesfeird* provided the framework for our analysis, "[e]very trial is different and the test articulated in *Guesfeird* is open-ended and fact-specific." *Id.* We also observed that we recognize "the trial court is better equipped than we are to 'ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters.'" *Id.* at 104 (citing *State v. Hawkins*, 326 Md. 270, 278 (1992)).

Applying the *Guesfeird* factors to the case before us, we conclude that the trial court did not abuse its discretion by denying the motion for a mistrial. Though Ms. Post was the State's only witness to testify to the events at issue, other factors minimized any prejudice resulting from her comment. Ms. Post's statement was unsolicited by the prosecutor and unresponsive to the prosecutor's inquiry as to Mr. Wilson's injuries. The reference was brief and no further details about the assault were mentioned. The facts presented weren't a close call as to whether Mr. Wilson or someone else committed the battery. Mr. Wilson does not dispute that he wrenched Ms. Post's arm to the point that several security officers had to pry Ms. Post, screaming in pain, free from his grip. Mr. Wilson testified only that he did not recall the events. Moreover, the jury's determination whether to believe the defense's theory of the case—that Mr. Wilson could not recall anything that happened once

he was sedated—would not have turned, logically, on what Mr. Wilson said or did before he was sedated.

The trial judge promptly responded to defense counsel's objection and stressed to the jury that anything that may have happened before Mr. Wilson arrived at the hospital was irrelevant. The Court of Appeals established "it is within the discretion of the trial court to decide whether a cautionary or limiting instruction should be given." *Carter*, 366 Md. at 588. "[I]n cases where a motion for a mistrial is made, the discretion of the trial court is not disturbed on appeal, except in the most plain and obvious instances of abuse." *Wilson v. State*, 261 Md. 551, 570 (1971) (citations omitted). Though the trial judge's comments to the jury in this case were unusual, we cannot say that they were necessarily ineffective, as the trial judge was in the best position to assess Ms. Post's testimony and evaluate any potential prejudice. "The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters. That is to say, the judge has his finger on the pulse of the trial." *Hawkins,* 326 Md. at 278. Moreover, defense counsel did not object to the court's instruction. *Cf. Carter*, 366 Md. at 584-86 (discussing cases where defense had objected to curative instructions).

Finally, we note that, in addition to admonishing the jury immediately following Ms. Post's comment, the trial judge also instructed the jury at the close of evidence to disregard answers that were "blurted out." Mr. Wilson did not request an alternative supplemental instruction, nor did he object to the instruction as given by the trial court. His challenge, now, to the trial court's supplemental instruction is therefore not preserved for review. *See* Md. Rule 4-235(e). *See also Walker v. State*, 343 Md. 629, 645 (1996)

("the failure to object to a jury instruction ordinarily constitutes a waiver of any later claim that the instruction was erroneous") (and cases cited); *accord Paige v. State*, 222 Md. App. 190, 200 (2015) ("Because defense counsel did not object to the supplemental jury instruction that was provided by the trial court at the time it was given, any question regarding the content of the supplemental instruction was not properly preserved for appellate review.").

In sum, we hold that the trial court soundly exercised its discretion in determining that any prejudice arising from Ms. Post's blurt could be adequately remedied by the court's curative instructions, rather than ordering the extraordinary sanction of a mistrial.

II.

Admissibility of Statement Not Disclosed in Discovery

Mr. Wilson contends that the trial court erred by permitting Ms. Post to testify to a statement that he had made, which had not been provided to the defense in discovery. During Ms. Post's testimony, the following occurred:

[PROSECUTOR]:	Okay. You said that when – and I'm going to backtrack you a little bit here – when Mr. Wilson was being treated that evening, you talked about him being belligerent. What do you believe that was due to?
THE WITNESS:	Alcohol intoxication.
[PROSECUTOR]:	Okay. You said he was slurring and yelling, was that throughout the interaction with him?
THE WITNESS:	It was for quite a while.
[PROSECUTOR]:	Okay.

THE WITNESS:	He actually – once we got him to an exam room, which took a while, he kept screaming, you're number 1, you're number 7, you're number 42. I'm going to – you know. He was going to fight with [the] physician. He was going to do all of these various things but his –
[DEFENSE COUNSEL]:	Objection, Your Honor. May we approach?
THE COURT:	You don't have to approach. What's your objection?
[DEFENSE COUNSEL]:	Your Honor, our discovery requests includes any statements that are made by the defendant –
THE COURT:	Overruled.
[DEFENSE COUNSEL]:	– and none of these statements were provided to me in discovery.
THE COURT:	Overruled. Overruled. Go ahead.
THE WITNESS:	And so he smelled versely [sic] of alcohol. He was disheveled.

Mr. Wilson contends that the trial court erred in overruling his objection and finding that the State had not violated the rules of discovery in failing to disclose the statement to the defense in advance of trial.

"Discovery questions generally 'involve a very broad discretion that is to be exercised by the trial courts. Their determinations will be disturbed on appellate review only if there is an abuse of discretion.'" *Cole v. State*, 378 Md. 42, 55 (2003) (citation omitted). Though the factual findings of the trial court will not be upset unless clearly erroneous, the question of whether a discovery violation occurred is reviewed de novo. *Id*. at 56 (citing *Williams v. State*, 364 Md. 160, 169 (2001)).

Maryland Rule 4-263, which governs discovery in the circuit court, provides in pertinent part:

> (c) Obligations of the parties.
>
> (1) Due diligence. The State's Attorney and defense shall 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 the 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.
>
> (d) Disclosure by the State's Attorney. Without the necessity of a request, the State's Attorney shall provide to the defense:
>
> (1) Statements. **All written and all 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[.]

(Emphasis added)

Under Rule 4-263, the State is not obligated to automatically disclose any statements made by the defendant to non-State agents. *See Holland v. State*, 154 Md. App. 351, 375 (2003) (holding that a statement made to defendant's mother was not within the scope of prior version of what is now Rule 4-263(d)(1)). Mr. Wilson does not contend that the statement at issue was made to a State agent. The prosecutor's opening statements referenced Mr. Wilson's "belligerent" behavior, including yelling, (without surprise or objection by defense counsel). However, there is no indication in the record that the State was even aware of all of the things Ms. Post would testify that Mr. Wilson yelled. Mr.

Wilson's statement was, therefore, not subject to the rule of automatic disclosure, and there was no discovery violation.

Even if there had been a violation for non-disclosure, the remedy for the violation lies within the sound discretion of the trial court. *Raynor v. State*, 201 Md. App. 209, 227 (2011). The trial court "'has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction is at all necessary.'" *Francis v. State*, 208 Md. App. 1, 24 (2012) (quoting *Raynor*, 201 Md. App. at 227-28). The testimony had little prejudicial effect where defense counsel's theory was that Mr. Wilson could not recall what happened after he was sedated, and the testimony concerned Mr. Wilson's behavior prior before he was sedated. Accordingly, there was no abuse of discretion in the trial court's decision not to sanction the State.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.