UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0811

September Term, 2015

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RENE DE LEON

v.

STATE OF MARYLAND

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Wright,
Arthur,
Reed,

JJ.

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Opinion by Reed, J.

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Filed: July 20, 2016

Rene De Leon, the appellant, was convicted by a jury of multiple counts of theft in connection with his performance of business activities in the area of residential mortgage refinancing. On appeal, he presents four questions for our review, which we have rephrased as follows:[1]

1. Did the circuit court err in not granting a mistrial after the cross-examination testimony of Dimelo Coreas?

2. Did the trial court err in not granting a mistrial based on the testimony of two of the State's witnesses, Maria Martinez and Cindy Miranda?

3. Did the trial court err in allowing certain documents produced by the State into evidence despite the fact that they were provided to the defense only a week before trial?

4. Was the evidence sufficient to sustain the appellant's convictions?

[1] The appellant presents the questions in his brief as follows:

1. Did the trial court prejudicially err in not granting a mistrial after witness Dimelo Coreas belligerently and without provocation accused trial defense counsel for defending the Defendant, while thwarting his own cross-examination in front of the jury, with unduly prejudicial comments?

2. Did the trial court prejudicially err in not granting a mistrial after the prosecutor attempted to bolster and elicit truth-based testimony from Maria Martinez and Cindy Miranda?

3. Did the trial court prejudicially err in allowing the introduction of multiple State exhibits, including complex deed and contract documents that were provided to the defense only a week before trial, and in contravention of Rule 4-263 and the Due Process Clause of the Constitution?

4. Was the evidence legally sufficient to support convictions for theft and fraud under *State v. Coleman*?

For the following reasons, we answer the first three questions in the negative and the fourth in the affirmative. Therefore, we affirm the judgment of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

On February 20, 2014, the appellant was indicted in the Circuit Court for Montgomery County on two counts of theft scheme with a value between $10,000 and $100,000 (Counts One and Two), three counts of mortgage fraud (Counts Three, Five, and Seven), and two counts of theft with a value between $1,000 and $10,000 (Counts Four and Six). The indictments came after three individuals—Ms. Maria Martinez, Mr. Dimelo Coreas, and Ms. Sonaly Maque—alleged that they paid the appellant $4,000.00, $3,000.00, and $22,500.00, respectively, in exchange for mortgage refinancing services that he ultimately never performed.

Ms. Martinez, Mr. Coreas, and Ms. Maque all testified for the State at the appellant's jury trial, which took place on January 12-14, 2015, the Honorable Ronald B. Rubin presiding. Ms. Martinez testified that the appellant, to whom she was referred by a friend, offered to conduct a "modification" of her mortgages. After she tendered payment, and while the appellant was supposedly working on her case, she received a "foreclosure notice" in the mail. This led her to believe that the appellant was not actually working on her modifications. Therefore, she asked him to sign a promissory note indicating that he would refund the $4,000.00 she had already paid him. Ms. Martinez testified that although the appellant did sign the promissory note, she was never issued a refund because the next time she returned to his office, it was closed and empty.

Mr. Coreas was the next to testify on behalf of the State. He testified that the appellant had agreed to perform mortgage "modification" services on his behalf in exchange for $3,000.00. Like Ms. Martinez, Mr. Coreas began receiving communications from the bank regarding his unpaid mortgage. The appellant assured him that the modification was ongoing and that the calls were just a normal part of the process. Soon thereafter, the appellant cleared out his office and disappeared. During cross-examination, Mr. Coreas became belligerent when responding to defense counsel's questions. At one point, he implied that defense counsel was partly to blame for defending the appellant. Due to Mr. Coreas' hostility, the trial judge asked the jury to leave the courtroom. The trial judge proceeded to ask the witness if he was able to continue his testimony on cross-examination without "editorializing" or giving defense counsel "lip," but the witness responded in the negative. Therefore, the trial judge excused Mr. Coreas as a witness and acquitted the appellant of the single count that was dependent upon Mr. Coreas' testimony. When the jury returned to the courtroom, the judge instructed them to "disregard in its entirety the testimony of that last witness, all of it. Put it out of your minds. Please do that."

Ms. Maque's testimony painted a similar picture. She testified that the appellant had agreed to assist her in refinancing her two Montgomery County properties. According to her, the appellant "executed documents to create a foreign corporation to shelter approximately $300,000.00 of her [wealth] while the refinancing was processed." Appellant's Br. at 8-9. Ms. Maque testified that the appellant instructed her not to open

any mail she received from her bank, but to forward it him instead. Eventually, she, too, became suspicious of the appellant and contacted the police.

Ms. Cindy Miranda, a financial crimes detective in the Montgomery County Police Department, also testified at trial. During Detective. Miranda's testimony, defense counsel objected when a question was asked and answered regarding the fact that on March 18, 2013, the appellant was arrested near his place of work in relation to an unrelated case in Prince George's County. The court sustained this objection because evidence of the prior, unrelated arrest is inadmissible under Md. Rule 5-404(b). Defense counsel also moved for a mistrial or, in the alternative, for a judgment of acquittal on all counts based on this testimony. The court, however, denied both of these motions.

Before trial, the State dismissed two counts of mortgage fraud against the appellant. Then, during trial, the court granted the appellant's motion for judgment of acquittal on the remaining mortgage fraud count and, as indicated *supra*, acquitted the appellant of the theft count pertaining to his dealings with Mr. Coreas. Therefore, only three of the original seven counts remained: two counts of theft with a value between $10,000 and $100,000, and one count of theft with a value between $1,000 and $10,000. Ultimately, the jury convicted the appellant on all three of these counts.

## DISCUSSION

### I. MOTIONS FOR MISTRIAL

### Standard of Review

We have previously explained that, if preserved, the decision whether or not to grant a mistrial

> rests within the trial court's discretion. *See Med. Mutual Liab. Ins. Soc'y. of Md. v. Evans,* 330 Md. 1, 19, 622 A.2d 103 (1993) ("Whether to order a mistrial rests in the discretion of the trial judge, and appellate review of the denial of the motion is limited to whether there has been an abuse of discretion."). *See also Parker v. State,* 189 Md. App. 474, 493, 985 A.2d 72 (2009).

*Bradley v. Bradley*, 208 Md. App. 249, 265 (2012). Such an abuse of discretion occurs where the discretion exercised by the trial judge was

> "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons," or when "no reasonable person would take the view adopted by the [trial] court." In *Touzeau v. Deffinbaugh,* 394 Md. 654, 669, 907 A.2d 807, 816 (2006), quoting *Jenkins v. State,* 375 Md. 284, 295–96, 825 A.2d 1008, 1015 (2003), we said that abuse occurs when the judge "exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." Citing *In re Adoption/Guardianship No. 3598,* 347 Md. 295, 312, 701 A.2d 110, 118–19 (1997), we added in *Touzeau* that abuse may be found "when the court acts 'without reference to any guiding rules or principles'" or where the ruling under consideration is "'clearly against the logic and effect of facts and inferences before the court,' or when the ruling is 'violative of fact and logic.'" *Touzeau,* 394 Md. at 669, 907 A.2d at 816.

*Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 677 (2008).

### *i. Motion for Mistrial during the Testimony of Mr. Coreas*

#### A. The Contentions of the Parties

The appellant argues the "un-prompted and unduly prejudicial comments" made by Mr. Coreas on cross-examination violated his constitutional rights of confrontation and due process. Appellant's Br. at 16 (emphasis omitted). Therefore, he asserts the trial court erred where it did not grant a mistrial on the basis of Mr. Coreas' testimony. The appellant contends that because "[e]rrors of this type are so intrinsically harmful as to require automatic reversal," all three of his convictions should be overturned. *Id.* (quoting *Neder v. United States*, 527 U.S. 1, 7 (1999)).

The appellant also argues that in addition to affecting his case on a constitutional level, the "un-prompted, non-responsive and unduly prejudicial comments [of Mr. Coreas] contained irrelevant, non-probative and unduly prejudicial testimony . . . that affected his case at a structural level." Appellant's Br. at 16-17. He asserts the cross-examination testimony of Mr. Coreas violated Maryland Rules 5-401, 5-402, 5-403, and 5-611, which govern how the trial court shall "control the interrogation of witnesses and the presentation of evidence." Appellant's Br. at 16 (quotations omitted). The appellant contends these "structural" violations, like the alleged constitutional violations, require reversal of his convictions. According to the appellant, "the prejudicial utterances and gestures by . . . [Mr.] Coreas could not . . . [be] undone by the court, . . . challenged on cross-examination[,]" or erased from the jury's mind by a curative instruction from the bench. *Id.* at 16.

Lastly, the appellant argues the circuit court erred by abdicating its own obligation to make an independent decision where it "allow[ed] the State's Attorney to elect between a mistrial [and] a dismissal of the counts based on Mr. Coreas' testimony." *Id.* at 18.

The State responds that this issue is unpreserved, for three reasons. First, the State argues the appellant affirmatively requested a mistrial or dismissal of the count based on Mr. Coreas' testimony. Therefore, the State asserts that where the court dismissed the count based on Mr. Coreas' testimony, it granted a form of relief that was affirmatively requested by the appellant. Second, the State contends that defense counsel "acquiesced" in the circuit court's decision to dismiss the count based on Mr. Coreas' testimony. According to the State, defense counsel's satisfaction with the court's ruling is evidenced by fact that he responded, "Thank you, Your Honor," and proceeded to request no further relief, such as a mistrial. Finally, the State contends this issue is unpreserved because none of the appellant's arguments on appeal were presented to the court below.

If this issue is preserved for appeal, then the State argues "the trial court properly exercised its discretion where it denied [the appellant's] mistrial motion." Appellee's Br. at 13. The State points to the factors the Court of Appeals outlined in *Carter v. State*, 366 Md. 574 (2001), to assist courts in determining whether a reference to improper evidence by a witness so prejudiced the defendant that it denied him a fair trial.[2] The State asserts

[2] The factors are:

> [(1)] whether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; [(2)] whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; [(3)] whether the

that "[a]n application of the[ *Carter*] factors to the exercise of the trial court's discretion in this case demonstrates that the trial court did not err in denying [the appellant]'s motion for mistrial. Furthermore, the State contends the curative instruction was sufficient to remedy any prejudice the appellant might have suffered from Mr. Coreas' testimony because it was given in a "timely, accurate, and effective" manner. Appellee's Br. at 15 (quoting *Carter*, 366 Md. at 589).

Finally, the State argues that contrary to the appellant's assertion, the court did not abdicate its duty by allowing the State's Attorney to choose between a mistrial and dismissal of the count based on Mr. Coreas' testimony. While it acknowledges that the court did, in fact, ask the State's Attorney which remedy he preferred, the State contends that "the court did not make its ruling based on the State's preference." Appellee's Br. at 16. Instead, according to the State, "[t]he court had already said it did not believe a mistrial was necessary." *Id.*

**B. Analysis**

As indicated *supra*, the appellant argues the trial court committed reversible error by not granting a mistrial after Mr. Coreas refused to answer the defense counsel's questions on cross-examination and indicated that he was "very upset because . . . you [defense counsel] are his defender." The judge promptly asked the jury to leave the room,

> witness making the reference is the principal witness upon whom the entire prosecution depends; [(4)] whether credibility is a crucial issue; [and (5)] whether a great deal of other evidence exists[.]

*Carter*, 366 Md. at 590 (quoting *Rainville v. State*, 328 Md. 398, 408 (1992)).

and a bench conference ensued between the judge, the prosecutor, defense counsel, and the witness. During that conference, the judge asked the witness whether he would cooperate if he allowed the cross-examination to continue. The witness indicated that he was unwilling to cooperate by answering the questions asked of him by defense counsel. Therefore, the judge excused the witness. Defense counsel then moved for "a mistrial, or in the alternative, to dismiss the charges against Mr. De Leon based on Ms. Coreas' testimony." The court proceeded to grant the motion for judgment of acquittal with respect to the charge relating to Mr. Coreas, and defense counsel responded "Thank you, Your Honor," without making any objection to the denial of the mistrial.

We hold that the appellant waived his right to appeal whether the circuit court erred in denying his motion for mistrial based on Mr. Coreas' hostile behavior on cross-examination. Defense counsel affirmatively requested a mistrial or dismissal of the charge that hinged on Ms. Coreas' testimony. His request was thus disjunctive in nature. Therefore, "[b]ecause he received [one of] the remed[ies] for which he asked, [the] appellant has no grounds for appeal." *Klauenberg v. State*, 355 Md. 528, 545 (1999).

Even assuming, *arguendo*, that defense counsel's request was conjunctive in nature (*i.e.*, that he had requested a mistrial and dismissal of the charge based on Mr. Coreas' testimony) such that he did not "receive the remedy for which he asked," *id.*, this issue would still have been waived. By responding "Thank you, Your Honor" without objecting to the denial of the mistrial, defense counsel acquiesced in the trial court's ruling. When this happens, there is no basis on which to appeal. *See Parker v. State*, 402 Md. 372, 405

(2007) ("A litigant who acquiesces in a ruling is completely deprived of the right to complain about that ruling[.]"); *Grandison v. State*, 305 Md. 685, 765 ("By dropping the subject and never again raising it, [appellant] waived his right to appellate review"), *cert. denied,* 479 U.S. 873 (1986). Moreover, defense counsel's acquiescence to the court's ruling lends further support to the conclusion that defense counsel received—in one of its forms—the very relief he requested.

For the reasons above, we hold that the issue of a mistrial based on the testimony of Mr. Coreas has been waived for purposes of appeal.

***ii. Motions for Mistrial during the Testimonies of Ms. Martinez and Detective Miranda***

**A. The Contentions of the Parties**

The appellant argues the circuit court committed reversible error where it did not grant a mistrial after the prosecutor continually asked "truth" questions of Ms. Maque to bolster her credibility. Furthermore, the appellant asserts reversal of his convictions is warranted due to the fact that the prosecutor elicited testimony from Detective Miranda that the defendant was previously arrested in connection with a matter that "lacked any logical or legal nexus to any relevant piece of evidence in the [present] case." Appellant's Br. at 19. The appellant contends that any probative value Detective Miranda's testimony might have had – such as the ability to show that he "had a propensity to commit crimes" or "was a person of general criminal character" – was substantially outweighed by its prejudicial effect on the jury. *Id.* at 20 (quoting *Williams v. State*, 342 Md. 724, 737 (1996)).

The State responds first to the allegation of error concerning the testimony of Ms. Maque. Preliminarily, the State argues we should decline to review this issue because the appellant "failed to provide any citation to the record as to which parts of [Ms.] Maque's testimony he finds objectionable." Appellee's Br. at 17. However, in the event this issue is reviewable on appeal, the State asserts reversible error was not committed because defense counsel "sought no further relief in the form of a curative instruction or mistrial" after his objection during Ms. Maque's testimony was sustained. *Id.* at 19-20.

Next, the State responds to the appellant's contention that the circuit court erred by not granting a mistrial based on Detective Miranda's testimony about the prior unrelated arrest. The State contends this issue, too, is unpreserved. The State acknowledges that, right after Detective Miranda testified about the prior arrest, defense counsel moved for (1) a mistrial, (2) a judgment of acquittal on all counts, and (3) for the testimony at issue to be stricken from the record. However, according to the State, defense counsel "acquiesced in the court's ruling to strike the testimony of Detective Miranda and did not ask the court to revisit his mistrial request," which ultimately went unaddressed. *Id.* at 20. Thus, the State argues that by dropping this issue altogether before the trial court, the appellant has waived his right to raise it on appeal.

Preservation notwithstanding, the State asserts "Detective Miranda's testimony was not so overwhelmingly prejudicial that it warranted the extreme sanction of a mistrial." *Id.* at 24. The State characterizes Detective Miranda's testimony as "inconsequential," a characterization which, according to the State, is evidenced by the fact that the appellant

stipulated to its substance: that he had certain documents in his possession at the time they were recovered by police. Therefore, the State contends Detective Miranda's credibility was not crucial to the case. For that reason, and because the court instructed the jury on multiple occasions to disregard the stricken testimony, the State argues there was no prejudicial error warranting reversal.

**B. Analysis**

For the following reasons, we shall hold that the issue of whether the circuit court committed an abuse of discretion where it refused to order a mistrial based on the testimony of Ms. Maque or Detective Miranda is unpreserved for appeal.

Regarding the testimony of Ms. Maque, the appellant argues:

> Similarly, the court warned the prosecutor not to ask "truth" questions of witness Sonaly Maque, but the prosecutor disregarded those warnings and bolstered the witness' credibility by continually asking those questions of Ms. Maque.

Appellant's Br. at 19. This represents the entirety of the appellant's argument as to why the circuit court abused its discretion where it did not grant a mistrial based on Ms. Maque's testmimony. As the State has indicated, "because [the appellant] failed to provide any citation to the record as to which parts of Maque's testimony he finds objectionable, . . . this Court [is] left to guess." Appellee's Br. at 17-18. Therefore, there is nothing for us to review. *See Van Meter v. State*, 30 Md. App. 406, 408 (1976) ("We cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position.").

The appellant also argues the trial court committed reversible error by not granting a mistrial based on Detective Miranda's testimony that the appellant was arrested in an unrelated case near his place of work on March 18, 2013. Again, we hold that the appellant has waived his right to appeal this issue.

The following is portion of the trial transcript contains Detective Miranda's testimony about the prior arrest and defense counsel's subsequent motion for mistrial:

> [Prosecutor]: Did you go to, on February 13th did you, 2013 – I'm sorry. March 18th of 2013 did you go to Ms. Maque's place of work?
>
> [Defense counsel]: Objection.
>
> THE COURT: Well, you can say, "Yes, I did," "No, I didn't." You may answer it, "Yes, I did," "No, I didn't."
>
> [Det. Miranda]: I went across the street.
>
> [Prosecutor]:Okay. And what, if anything, happened at that location?
>
> [Defense counsel]: Objection.
>
> THE COURT: Well, without telling us what anybody said, you can describe what you saw.
>
> [Det. Miranda]: Mr. De Leon, the defendant, was arrested.
>
> * * *
>
> [Defense counsel]: Objection. Move to strike.
>
> (Bench conference follows:)
>
> [Defense counsel]: *Your Honor, respectfully, I have to move for a mistrial.*

THE COURT: How long has she been a cop?

[Defense counsel]: *Your Honor, I move to strike her testimony*

* * *

THE COURT: You've got a 17-year detective, and she starts blurting out stuff about "I arrested the guy" when it's not an issue, a controversy, relevant to anything, "I went across the street" –

* * *

[Prosecutor]: Upon his arrest, in the car is the power of attorney paperwork that they were going to try to have Ms. Maque sign, which corroborates Ms. Maque's, her testimony. Further –

THE COURT: Corroborates what?

[Prosecutor]: Ms. Maque's –

THE COURT: You want to talk about an arrest and discussions in the squad car. I don't know who you usually try these cases in front of, but not today.

[Prosecutor]: Well, they also retrieved the laptop, which is –

THE COURT: Fine. I ruled on the objection in front of me. Objection sustained.

(Bench conference concluded.)

THE COURT: *The jury will disregard the last question and the last answer.*

[Prosecutor]: On that day, Detective, did you have contact with the defendant in a vehicle?

[Det. Miranda]: Yes, I did.

[Defense counsel]: Objection again.

Another bench conference followed immediately after this last question and objection. This time, however, the judge asked the jury to leave the courtroom. The prosecutor and defense counsel proceeded to enter into a documentary stipulation that rendered unnecessary any further questioning of Det. Miranda. Therefore, the court dismissed Det. Miranda before the jury returned to the courtroom. However, at no time did defense counsel ask the court to revisit his motion for mistrial, which remained unruled upon. Thus, "[b]y dropping the subject and never again raising it, [appellant] waived his right to appellate review." *Grandison*, 305 Md. at 765.

Even if this issue were not waived, which it has been, then reversal of the appellant's convictions would still be unwarranted by Detective Miranda's testimony. A mistrial "is [a] rather . . . extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Nash v. State*, 439 Md. 53, 69 (2014) (quoting *Burks v. State*, 96 Md. App. 173, 187 (1993)). Here, Detective Miranda's testimony did not cause "overwhelming prejudice" to the appellant. *Id.* Indeed, her statement regarding the prior arrest was isolated in nature. Furthermore, sometime after the jury returned to the courtroom, an unidentified juror asked the judge specifically, "[A]re we to disregard the testimony we just heard?," to which the judge responded, "Yes, sir." This was the second time the jury was instructed to disregard the testimony about the prior arrest (the first when the court instructed the jury to "disregard the last question and the last answer," shortly after the statement about the arrest was

elicited). The court punctuated the importance of disregarding stricken testimony at the conclusion of the trial:

> THE COURT: [T]he following things are not evidence and you should not give them any weight or consideration.
>
> First, *any testimony that I struck or told you to disregard is not evidence . . .*
>
> Also, what's not evidence, questions that I did not allow a witness to answer. That's not evidence and the objections of the lawyers is not evidence either. Ladies and gentlemen, when I did not permit a witness to answer a question, you must not speculate as to the possible answer. *If after an answer was given, I ordered that the answer be stricken or disregarded, sometimes I use the words interchangeably, you must disregard both the question and the answer during your deliberations.*

Thus, on three separate occasions the court instructed the jury to disregard Det. Miranda's statement. For this reason, combined with the isolated nature of Detective Miranda's statement, the "extreme sanction" of a mistrial would not have been warranted even if this issue were preserved for appeal.

For the reasons stated above, we hold that the issue of a mistrial based on the testimonies of Ms. Maque and Detective Miranda is unpreserved.

## II. ADMISSIBILITY OF DOCUMENTS PROVIDED A WEEK BEFORE TRIAL

### A. The Contentions of the Parties

The appellant argues his "convictions should be overturned because the State's Attorney introduced several documents and exhibits," including various land records pertaining to the victims' properties and public documents concerning a foreclosure action

against one of Ms. Maque's properties, "that were . . . [only] provided . . . to the Defense . . . a week prior to the trial," in violation of Maryland Rule 4-263. Appellant's Br. at 20-21.

The State asserts that we should refuse to consider this issue because the appellant neither specifies to which "documents and exhibits" he is referring, nor provides any authority as to why the alleged violation of Rule 4-263 requires reversal in this instance. However, the State makes a number of arguments on this issue. First, the State contends the appellant "was aware of the addresses at issue nearly seven months prior to the trial and could have obtained the *public* land records on his own." Appellee's Br. at 29 (emphasis added). The State's second argument is specific to the land records pertaining to the properties owned by Ms. Martinez: The State argues these documents were "merely . . . cumulative" because "Martinez testified, without objection, that she owned the properties." *Id.* at 30. Finally, the State asserts the appellant was not prejudiced by the late disclosure of the documents at issue because the documents were only relevant to counts other than those on which the appellant was ultimately convicted.[3] Furthermore, the State contends that if the appellant is referring to the untimely disclosure of a contract between Ms. Martinez and American Home Solutions, then prejudice is clearly lacking because the

[3] According to the State, the documents produced a week before trial were relevant only to one count of mortgage fraud against Ms. Martinez and one count of mortgage fraud against Ms. Maque. The former count was dismissed prior to trial, and the latter was the subject of a motion for judgment of acquittal filed by the appellant at the close of the State's case, which the court granted.

appellant had once provided Ms. Martinez with the contract and was thus fully aware of its existence.

**B. Standard of Review**

The Court of Appeals has outlined the standard of review that applies to issues of evidentiary admissibility as follows:

> Our standard of review on the admissibility of evidence depends on whether the "ruling under review was based on a discretionary weighing of relevance in relation to other factors or on a pure conclusion of law." *Parker v. State,* 408 Md. 428, 437, 970 A.2d 320, 325 (2009) (quoting *J.L. Matthews, Inc. v. Md.–Nat'l Capital Park & Planning Comm'n,* 368 Md. 71, 92, 792 A.2d 288, 300 (2002)). Generally, "whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court" and reviewed under an abuse of discretion standard. *Ruffin Hotel Corp. of Md., Inc. v. Gasper,* 418 Md. 594, 619, 17 A.3d 676, 691 (2011) (internal quotation marks omitted). However, we determine whether evidence is relevant as a matter of law. *State v. Simms,* 420 Md. 705, 725, 25 A.3d 144, 156 (2011). The *de novo* standard of review applies "[w]hen the trial judge's ruling involves a legal question." *Parker,* 408 Md. at 437, 970 A.2d at 325. Although trial judges have wide discretion "in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence." *Simms,* 420 Md. at 724, 25 A.3d at 155.
>
> Even where there is error, this Court will not reverse a lower court's judgment for harmless error. *Crane v. Dunn,* 382 Md. 83, 91, 854 A.2d 1180, 1185 (2004). Rather, the complaining party must demonstrate that the error was prejudicial, or in other words, "the error was likely to have affected the verdict below." *Id.* "Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice." *Brown v. Daniel Realty Co.,* 409 Md. 565, 584, 976 A.2d 300, 311 (2009) (quoting *Flores v. Bell,* 398 Md. 27, 34, 919 A.2d 716, 720 (2007)). In these

> circumstances, we have consistently stated that the appellate inquiry focuses on "not the possibility, but the probability, of prejudice." *Crane,* 382 Md. at 91, 854 A.2d at 1185 (citing *State of Md. Deposit Ins. Fund Corp. v. Billman,* 321 Md. 3, 17, 580 A.2d 1044, 1051 (1990)).

*Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48-49 (2016), *reconsideration denied* (Apr. 21, 2016).

**C. Analysis**

As indicated above, the appellant argues reversible error occurred where the trial court admitted certain documents that the State turned over to defense counsel only one week before trial. Here, again, the appellant does not provide any citations to the record to indicate which documents he is referring to. Instead, he merely refers to "mounds of documentary evidence," and "public documents concerning the alleged victim's properties . . . [and] a foreclosure action in one of Sonaly Maque's properties." Appellee's Br. at 25 (quoting Appellant's Br. at 20-21). The State speculates, however, that the appellant is alleging reversible error pertaining to the admission of State's Exhibits 1, 2, 3, 15, and 16.[4]

As an initial matter, we agree with the State that the appellant's argument lacks the requisite record citations and supporting legal authority. For this reason, it is well within our license to decline consideration of this issue. *See Van Meter*, 30 Md. App. at 408 ("Surely it is not incumbent upon this Court, merely because a point is mentioned as being

[4] The exhibits contain the public land records for 3916 Minden Road, the public land records for 12007 Livingston Street, Ms. Martinez's contract with American Home Solutions, the public land records for 18801 McFarlin Drive, and the public land records for 18704 Curry Powder Lane, respectively. Each of the aforementioned addresses is an address of one of the victim's properties.

objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested." (quoting *State Roads Comm. v. Halle*, 228 Md. 24, 32 (1962))). Nevertheless, because a brief review of the record allowed us to ascertain that the documents, the admission of which the appellant finds objectionable, are indeed State's Exhibits 1, 2, 3, 15, and 16, we shall proceed to the merits of this issue.

As the appellant correctly notes, Maryland Rule 4-263 governs discovery in the circuit court. The imposition of sanctions for violations of Rule 4-263 is committed to the sound discretion of the trial court. *See Breakfield v. State*, 195 Md. App. 377, 389 (2010). "[I]n exercising its discretion regarding sanctions, 'a trial court should consider: (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances.'" *Id.* (quoting *Thomas v. State*, 397 Md. 557, 570-71 (2007)). Applying these factors, we hold that the trial court did not abuse its discretion in admitting the documents at issue into evidence. We explain.

When the State moved to admit State's Exhibit 1 into evidence, the following colloquy occurred:

> [Prosecutor]: Your Honor, I'd offer State's 1. It's the land records of [3916 Minden Road].
>
> THE COURT: Counsel?
>
> [Defense counsel]: Can I approach, Your Honor?
>
> (Bench conference follows:)

THE COURT: Yes, sir?

[Defense counsel]: We respectfully object. I proffer the following to the Court. This document that is provided to the Court right now we did not receive in evidence. We simply received it -- we did not receive it in the evidence packet. We received this packet in the last five days. It is a public record, but we had no notice prior to this document being provided five days ago. We had no notice that the State was going to use this public record.

THE COURT: It's the deed to the house.

[Defense counsel]: I understand that, Your Honor. But we respectfully object. It's a violation of Rule 4-263.

THE COURT: *What's the prejudice?*

* * *

[Defense counsel]: *Well, they have 30 days to provide me with discovery they intend to use at trial. And to be provided with discovery five days before trial is not fair, Your Honor.*

THE COURT: Counsel?

[Prosecutor]: *It's a public record. I provided it on the day that I went and got it from our public land records. I mean, I PDF'd it, so I didn't have it in my possession. He could go and get it --*

THE COURT: Was information -- when if at all was information provided about this particular piece of land at 3916 Minden Road?

[Prosecutor]: *All the property records that I'm providing were in the original discovery -- not the records, but the addresses were in the original discovery that was provided and put out June 25, 2014.*

> THE COURT: *I can't even begin to fathom prejudice. Overruled.*

The above colloquy demonstrates that the trial court considered the relevant factors for whether to impose a sanction for the untimely delivery of the land records for 3916 Minden Road. We agree with the trial court that the appellant was not prejudiced by the violation of Rule 4-263. The documents in State's Exhibit 1 were *public* land records, and the address for the property to which the land records pertained was provided in the original discovery. Therefore, we hold that the trial court did not abuse its discretion where it admitted State's Exhibit 1 despite the discovery violation associated with the documents it contained. Likewise, because State's Exhibits 2, 15, and 16 also contained nothing more than public land records for properties whose addresses were turned over in the original discovery, we hold that the trial judge did not abuse his discretion where he admitted those exhibits into evidence.

Similarly, the court found that the appellant was not prejudiced by the admission of State's Exhibit 3, Ms. Martinez's contract with American Home Solutions. The prosecutor indicated that Ms. Martinez would testify that this document was given to her by the appellant himself. This testimony would, according to the prosecutor, negate any prejudice. The prosecutor also explained to the court that he turned the contract over to defense counsel after the Rule 4-263 deadline because the witness did not provide him with that document until a couple weeks before trial. Thus, the prosecutor proffered both an explanation as to why there was "[no] amount of prejudice to the opposing party," and a "reason[] why the disclosure was not made." *Thomas*, 397 Md. at 570-71 (holding that "the

. . . amount of prejudice to the opposing party" and "the reasons why the disclosure was not made [originally]" are factors for the trial court to consider when determining whether to impose sanctions for untimely discovery disclosures). We are satisfied, given these explanations, that the trial court did not abuse its discretion in admitting State's Exhibit 3.

For the aforementioned reasons, we hold that the trial court did not abuse its discretion in admitting the documentary evidence that was turned over to the defense a week before trial.

## III. SUFFICIENCY OF THE EVIDENCE

### A. The Contentions of the Parties

The appellant argues there is insufficient evidence to sustain his convictions because "the State did not present expert, testimonial or documentary evidence connecting the Innovative Solutions[5] bank account deposits[] to the withdrawals on the same operating account's balance sheet." Appellant's Br. at 22. Therefore, the appellant asserts the State failed to prove the *sine qua non* element of theft that is "the permanent deprivation of property or the failure to provide a service for value rendered." *Id.* at 23. (citing *State v. Coleman*, 423 Md. 666, 669 (2011)). The appellant contends that rather than proving theft by deception, the State pursued a theory of fraud in the inducement.

The State responds that "[the appellant]'s sufficiency claim as to counts [two] and [three] is not preserved for this Court's review," Appellee's Br. at 31, because the appellant "never moved for judgment of acquittal as to count two and his theory as to why his motion

[5] Innovative Solutions Services LLC was the name of the company controlled by the appellant.

should have been granted as to count three is different than what he now raises on appeal." *Id*. at 32. Nevertheless, the State contends the evidence was sufficient to sustain all three of the appellant's convictions. Finally, the State argues that "[d]espite [the appellant]'s assertion that '[t]he State relied on a theory of fraud in the inducement,' the State argued in closing that the evidence established that [the appellant] committed 'theft by deception,'" which was the only modality of theft the jury received instructions on. *Id.* at 35 (quoting Appellant's Br. at 22).

**B. Standard of Review**

When it comes to issues pertaining to evidentiary sufficiency, "[o]ur standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Goines v. State*, 89 Md. App. 104, 108 (1991) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)). Thus,

> our concern is not whether the verdict below was in accord with the weight of the evidence, but rather, whether there was sufficient evidence at trial "that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt."

*State v. Stanley*, 351 Md. 733, 750 (1998) (quoting *State v. Albrecht*, 336 Md. 475, 479 (1994)).

### C. Analysis

While the record shows that there is likely merit to the State's preservation arguments regarding counts two and three, we shall, in any event, hold that the evidence was sufficient to sustain all of the appellant's convictions. We explain.

The appellant was convicted on three separate counts under Md. Code Ann., Crim. Law § 7-104(b), *amended by* 2016 Maryland Laws Ch. 515 (S.B. 1005), which, at the time of the appellant's convictions, provided:

> **Unauthorized control over property--By deception** (b) A person may not obtain control over property by willfully or knowingly using deception, if the person:
> (1) intends to deprive the owner of the property;
> (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
> (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Under the above statute, the definition of deception included "promis[ing] performance that the offender does not intend to perform or knows will not be performed." Md. Code Ann, Crim. Law § 7-101(b)(1)(vii). "[T]heft by deception is a specific intent crime requiring both an intent to deceive and an intent to deprive." *State v. Manion*, 442 Md. 419, 433-34 (2015) (citing *Coleman*, 423 Md. at 673), *reconsideration denied* (Apr. 17, 2015). "Given the subjective nature of intent, the trier of fact may consider the facts and circumstances of the particular case when making an inference as to the defendant's intent." *Manion*, 442 Md. at 434. Moreover, "the trier of fact can infer from a defendant's actions

and the surrounding circumstances whether the defendant had the requisite intent." *Id.* (quoting *Titus v. State*, 423 Md. 548, 564 (2011)).

Our review of the record confirms the State's representation of the evidence that it presented against the appellant:

> In this case, both Martinez and Maque paid substantial amounts of money to De Leon, often in cash at his request, with the understanding that he would assist them in refinancing the mortgages on their properties to lower their monthly payments. De Leon informed both victims that they should not open any mail that they receive from the banks, but, instead, should bring it to him. None of the properties were refinanced and all ended up in foreclosure. When the victims confronted De Leon he agreed to repay the money. However, that never occurred. In fact, neither of the victims heard from De Leon again–the door to the office where they previously had met him was locked and the office was empty. When Martinez called De Leon the number was disconnected. Based on this conduct, a rational trier of fact could reasonably infer that De Leon had the specific intent to commit theft by deception [under Md. Code Ann., Crim. Law § 7-104(b)(1) (2012 Repl. Vol.)].

Appellee's Br. at 37. The State argues that reversal of the appellant's convictions is unwarranted in light of the evidence that was presented, and we agree. The standard of review for evidentiary sufficiency is highly deferential. *See Manion*, 442 Md. at 431. It is our job to simply determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. Thus, while giving due deference to the jury's findings, we hold that the evidence was sufficient to sustain the appellant's convictions.

Lastly, we are unpersuaded by the appellant's argument that his convictions must be reversed under *Coleman v. State*. As the following indicates, the trial court specifically addressed the application of *Coleman* on the record:

> I've looked at the evidence in this case and compared it to that which was set forth by the Court of Appeals in [*Coleman*.] . . . This is not in my judgment a similar breach of contract case as the [C]ourt found in *Coleman* where the Court of Appeals concluded that the State was trying to enforce the single contract laws in the criminal case.
>
> Here, it is legally sufficient that the defendant in this case used some of the money that was received from the witnesses for his own purposes. Referenced specifically in footnote 7 of *Coleman*. In addition, there is the jury could find directly or circumstantially that the defendant did not give value for anything he allegedly did. In *Coleman*, the defendant gave value in exchange for the money and the Court of Appeals at page 676 found that was one of the fatal defects. And here, a jury reasonably could find that in exchange for the money that the defendant received from the folks who testified, he gave no value.

We agree.

For the aforementioned reasons, we hold that the evidence was sufficient to sustain the appellant's convictions.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**