Circuit Court for Baltimore City
Case No. 121138009

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1632

September Term, 2022

COREY POINTER

v.

STATE OF MARYLAND

Wells, C.J.,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: January 5, 2024

In March 2021, Ebony Forrest was walking to her rental car to retrieve a drink. On her way there, she was stopped by her former acquaintance Corey Pointer, who demanded repayment of a debt. The two argued for some time, but eventually Ms. Forrest walked away. As she did so, Mr. Pointer punched her in the back of the head. Suddenly, gunshots were fired in their direction and Ms. Forrest was shot multiple times. She immediately suspected Mr. Pointer was the culprit. Eventually, Mr. Pointer was arrested and charged with multiple crimes and tried in the Circuit Court for Baltimore City.

The day before trial, Ms. Forrest showed the prosecution text messages between herself and Mr. Pointer involving a money dispute. Mr. Pointer filed a motion *in limine* to exclude the texts and the court denied it. Later in the trial, Mr. Pointer requested a self-defense instruction, but the circuit court denied his request. He was convicted of first-degree assault and related crimes.

On appeal, Mr. Pointer argues that (1) the circuit court erred in admitting text messages that, he says, violated discovery rules and (2) the circuit court erred in denying his request for a self-defense instruction. We affirm the circuit court's judgment.

I. BACKGROUND

Ms. Forrest and Mr. Pointer were once acquaintances. In their spare time, they created rap music together, but their relationship deteriorated after Mr. Pointer sold Ms. Forrest marijuana in February 2021. Ms. Forrest was supposed to pay $175 for the ounce of marijuana she received. Instead, Ms. Forrest gave Mr. Pointer $125 and offset the

difference by paying for Mr. Pointer's studio time. At the time, she believed this settled her debt.

On March 22, 2021, Ms. Forrest was sitting on a porch next to Mr. Pointer's grandmother's home. She got up to retrieve alcohol from her rental car. As she walked back to the porch, Mr. Pointer confronted her. He asserted that Ms. Forrest still owed him money and they argued. Ms. Forrest decided to walk away, but as she did, Mr. Pointer punched her in the back of the head—right where she had sutures and staples from a recent surgery. As Mr. Pointer punched Ms. Forrest, he berated her about the money owed and told her to get his gun from the rental car. Ms. Forrest tried to get to her car, but suddenly she was shot in the "ankle, . . . face, . . . finger on [the] right hand, . . . chest, and under [the] arm." Because Ms. Forrest was shot from behind, she didn't see who fired the gun. Nonetheless, she believed Mr. Pointer shot her. After the shooting, Ms. Forrest saw Mr. Pointer steal her belongings as he shouted at bystanders to back off. Ms. Forrest was hospitalized for several weeks and was unable to speak during that time. It was not until April 14, 2021, that Ms. Forrest told police that Mr. Pointer shot her.

Mr. Pointer was arrested and "charged with attempted murder, [first-degree] assault, reckless endangerment, armed robbery, robbery, theft, and handgun related offenses." On July 20, 2022, the day before trial, Ms. Forrest met with the State to discuss the case. During the meeting, Ms. Forrest revealed text messages between herself and Mr. Pointer that discussed a dispute over money. The State sent the text messages to defense counsel that afternoon. On July 21, 2022, Mr. Pointer filed a motion *in limine* to exclude the text

messages. He argued that in light of how late the text messages were disclosed, the texts should be excluded "based on a violation of discovery and fairness." The court disagreed and concluded that "[p]ursuant to the discovery rules . . . there [wasn't] a violation."

On July 25, 2022, Mr. Pointer asked the circuit court to give the jury a self-defense instruction. He argued that a self-defense defense was "generated. There's no doubt that his car was shot up. And if, in fact, his car was shot up, maybe that's a legitimate reason for him to fire at her." The circuit court denied Mr. Pointer's request, finding no basis for the instruction.

Mr. Pointer was convicted of first-degree assault, robbery, and reckless endangerment. On November 7, 2022, the court sentenced him to twenty-five years' imprisonment, suspending all but fifteen years for the first-degree assault conviction, and a consecutive fifteen years for the robbery conviction. The reckless endangerment conviction merged with the first-degree assault. Mr. Pointer timely appealed.

II. DISCUSSION

Mr. Pointer raises two issues[1] on appeal, which we rephrase slightly: (1) whether the circuit court erred in admitting the text messages between Mr. Pointer and Ms. Forrest,

[1] Mr. Pointer's brief listed his Questions Presented as:

1. Did the trial court err in admitting certain text messages in violation of the discovery rules?
2. Did the trial court err in refusing Mr. Pointer's request for a self-defense instruction?

Continued . . .

and (2) whether the circuit court erred in refusing to give a self-defense instruction. We see no error in either regard.

A. The Circuit Court Did Not Err In Admitting The Text Messages.

A "circuit court is vested with broad discretion in administering discovery." *Alarcon-Ozoria v. State*, 477 Md. 75, 90 (2021). If there was a discovery violation, we review the court's decision to impose a sanction (or not) for abuse of discretion. *Id.* at 91. "[A]ny discovery violation [is reviewed] for harmless error." *Id.* And "'[i]f the trial judge erred because the State did in fact violate the discovery rule, we consider the prejudice to the defendant in evaluating whether such error was harmless.'" *Id.* (*quoting Williams v. State*, 364 Md. 160, 169 (2001), *abrogated on other grounds by State v. Jones*, 466 Md. 142 (2019)). Prejudice exists when the defendant "is unduly surprised and lacks adequate opportunity to prepare a defense, or when the violation substantially influences the jury. The prejudice that is contemplated is the harm resulting from the *nondisclosure*." *Thomas v. State*, 397 Md. 557, 574 (2007) (emphasis added).

To determine whether Mr. Pointer's text messages were admitted properly, we first must evaluate whether the admittedly last-minute disclosure of the text messages violated

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The State's brief listed the Questions Presented as:

1. Did the trial court properly find that the State did not commit a discovery violation?
2. Did the trial court properly deny Pointer's request for a self-defense instruction?

the rules of discovery. And this turns in some measure on whether the source of the text messages, Ms. Forrest, falls within those rules.

"Maryland Rule 4-263 governs discovery in criminal cases in the circuit courts." *Id.* at 567. Under this rule:

> [t]he obligations of the State's Attorney . . . extend to the material and information that must be disclosed under this Rule *and* that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office *or* has *reported* to the attorney's office in regard to the particular case.

Md. Rule 4-263(c)(2) (emphasis added). Although prosecutors must disclose a variety of information voluntarily, the source of that information matters. The Supreme Court of Maryland has held consistently that "mandatory disclosure *only* extends to the State's Attorney's Office, its support staff, and agents who regularly participate in the investigation or prosecution of a case, or who have participated in the specific case." *Alarcon-Ozoria*, 477 Md. at 99. For instance, in *Alarcon-Ozoria*, the Supreme Court held that the "scope of the State's discovery obligations did not extend to a jail call recording in the possession of a state correctional facility," because the facility "was not part of the State's Attorney's Office, nor did it participate in the investigation or prosecution of [this] case." *Id.* And as such, the facility was not a party that "reports" to the State, despite its inherent connection with the prosecution. *See id.* So although Rule 4-263 does not define the term "report" explicitly, courts must be careful to not expand the definition so much that it would lead to an illogical or unreasonable result. *Id.* at 99.

Mr. Pointer argues that the circuit court erred because it did not recognize the late-arriving text messages as a discovery violation. There are two primary reasons Mr. Pointer believes the circuit court erred. We disagree with both.

First, Mr. Pointer alleges that Ms. Forrest's multiple pre-trial meetings with the State amounted to "reporting" to the prosecution and thus that the State *had* to produce the text messages to the defense in a timely manner. This argument fails in several ways. For one, the prosecution gave Mr. Pointer the text messages as soon as it could. More importantly, Rule 4-263 didn't even oblige the State to produce the text messages under these circumstances. Mandatory disclosure is required only in narrow circumstances. *Id.* ("[M]andatory disclosure *only* extends to the State's Attorney's Office, its support staff, and agents who regularly participate in the investigation or prosecution of a case, or who have participated in the specific case."). And although there are no set criteria for what qualifies as "reporting" to the State, it appears there needs to be some formal and substantial involvement with the State's case. *See Thomas*, 397 Md. at 569 (while the Supreme Court of Maryland did not decide whether an FBI agent "reported" to the State, it found significance in the fact that the agent "participated in the investigation . . . , arrested petitioner, and . . . wrote a report in the matter"). Here, Ms. Forrest met with the State to discuss the case and prepare her testimony, a level of involvement more akin to *Alarcon-Ozoria*, where the Court found no "reporting" because "a correctional facility generally takes no part in the investigation or prosecution of someone who happens to be detained in that facility." 477 Md. at 98. Although Ms. Forrest was a key witness, she wasn't

"reporting" to the State in a manner that would bring her within the mandatory discovery requirement. Ms. Forrest was not involved substantially in creating and developing the prosecution's case. And if Maryland Rule 4-263 were to apply to witnesses and victims like Ms. Forrest, it would "significantly expand the scope of the rule[,]" beyond the scope articulated by the Supreme Court. *See id.* at 99. Therefore, there was no violation of Rule 4-263 here.

Second, Mr. Pointer claims that the late disclosure "seriously prejudiced [his] defense." He states that he "planned his defense strategy based on the facts and information supplied to date; and that this late-provided text exchange was a surprise . . . made on the eve of trial leaving the defense unable to procure the phone or messages that might put this exchange into context." But even if there had been a discovery violation, he wasn't prejudiced. The late-breaking disclosure revealed twenty-seven text messages and Mr. Pointer was a party to all of them. These were not text messages that Mr. Pointer could not have known existed. *Cf. Alarcon-Ozoria*, 477 Md. at 87, 110 (The State received a recording of a phone call the morning of trial and immediately shared it with the defense. Although the evidence was provided at the last minute, the court found no prejudice because the defendant was a part of the call and had attempted to mask his identity by entering a different pin.). Also, Mr. Pointer had the texts the day before trial started. Next, the texts were related to the money dispute between Mr. Pointer and Ms. Forrest. There was no surprise there: Mr. Pointer knew that the State's theory revolved around the money he claimed that Ms. Forrest owed him. Moreover, the texts did not make or break Mr.

Pointer's case because the State used various pieces of evidence[2] that supported its overall theory. Finally, and perhaps most importantly, Mr. Pointer did not request a continuance when he received the text messages late in the process. This suggests that the text messages were not so incriminating or remarkable that Mr. Pointer truly needed extra time to prepare his defense. *Thomas*, 397 Md. at 575 ("[P]etitioner did not ask for a continuance because he did not need one; he simply sought the windfall of exclusion."). Exclusion was the only remedy Mr. Pointer sought, but "exclusion of evidence should be ordered only in *extreme* cases." *Id.* at 573 (emphasis added). This is not an extreme case, and we see no error in the court's decision not to exclude the text messages at trial.

B. The Circuit Court Did Not Err In Refusing To Give A Self-Defense Instruction.

"The court may, and at the request of any party shall, instruct the jury as to the applicable law . . . ." Md. Rule 4-325(c). When a circuit court refuses to give a jury instruction, we review that decision for abuse of discretion. *Bazzle v. State*, 426 Md. 541, 548 (2012). We consider three factors when deciding whether the court abused its discretion: "'(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.'" *Id.* at 549 (*quoting Stabb v. State*, 423 Md. 454, 465 (2011)).

[2] For instance, the State presented the following: (1) Ms. Forrest's backpack, which was recovered from Mr. Pointer's Acura, (2) Ms. Forrest's medical records, and (3) testimony provided by witnesses.

Here, the parties do not dispute that the first and third factors were met. The only issue is whether the requested self-defense instruction was generated by the facts of the case.

Self-defense is available when a defendant proves the following:

> (1) [he] actually believed that he . . . was in immediate or imminent danger of bodily harm;
>
> (2) [his] belief was reasonable;
>
> (3) [he was not] the aggressor or [did not] provoke the conflict; *and*
>
> (4) [he] used no more force than was reasonably necessary to defend himself . . . in light of the threatened or actual harm.

Jones v. State, 357 Md. 408, 422 (2000) (emphasis added). "A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle*, 426 Md. at 550. But there has to be evidence on which a jury rationally could support a finding that Mr. Pointer acted in self-defense:

> The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge. The task of this Court on review is to determine whether the criminal defendant produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired.

Dishman v. State, 352 Md. 279, 292 (1998) (citation omitted). Although the onus is on the appellant, he only needs to provide "some evidence" that supports the requested instruction, meaning the threshold is low. *Bazzle*, 426 Md. at 551. Lastly, "[i]n evaluating whether competent evidence exists to generate the requested instruction, we view the

evidence in the light most favorable to the accused." *General v. State*, 367 Md. 475, 487 (2002).

Mr. Pointer's brief summarized his self-defense argument, which turned entirely on the fact that Mr. Pointer's car had suffered ballistic damage of its own:

> Mr. Pointer's gun was actually in Forrest's rental car at the time of the shooting, that she went back to the car to get the gun, and that there were one or two minutes between when Forrest said that Mr. Pointer struck her and that she was shot, in conjunction with the fact that Mr. Pointer's car had suffered ballistic damage, factually supported a theory that Forrest retrieved a gun from her rental car and shot at Mr. Pointer. Therefore, the testimony generated evidence that there was use of force against the complaining witness and a reasonable belief of the defendant that he was in immediate or imminent danger of bodily harm warranting a self-defense instruction.

But this recitation of the events never connects the events of this case to any threat to Mr. Pointer's life or bodily harm. If anything, the different strands remain unwoven. Mr. Pointer confronted Ms. Forrest because he wanted to be repaid. When she refused, Mr. Pointer punched her in the back of the head. He did so without provocation. Then, at one point during the altercation, Mr. Pointer demanded that Ms. Forrest bring him *his* gun. Ms. Forrest did not attempt to retrieve the gun to shoot him—Mr. Pointer told her to get it. None of this is ever connected to the ballistic damage to Mr. Pointer's car—at most, he tried to leave the suggestion that she shot his car, but he never explained how that even could have happened. Although the bar for generating evidence to support a jury instruction is low, we agree with the circuit court that Mr. Pointer hasn't surmounted that threshold here. The facts demonstrate that Mr. Pointer was the primary aggressor and Ms. Forrest

was the sole victim, and they establish no factual support for a jury to find his were actions justified legally. The circuit court did not abuse its discretion in refusing to give a self-defense instruction.

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