

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 572

September Term, 2016

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MICHAEL SHORTER

v.

STATE OF MARYLAND

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Krauser, C.J.,  
Nazarian,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 7, 2017

\*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.

Accused of choking his ex-wife and throwing her to a table, Michael Shorter, appellant, was convicted of second degree assault following a bench trial, in the Circuit Court for Anne Arundel County. On appeal, Shorter contends that the trial court abused its discretion by denying his request to exclude five 911 calls as a discovery sanction, because the State did not provide him with a recording of those calls until the morning of his trial. Finding no abuse of discretion, we affirm.

Deciding whether to order any sanction for a discovery violation, and if so, which one, lies within the broad discretion of the trial court. *See Thomas v. State*, 397 Md. 557, 570 (2007). Abuse of discretion must be evaluated “in the context in which the discretion was exercised and requires a showing that the court’s decision is so far removed from any center mark that it is beyond the fringe of what [the reviewing] court deems minimally acceptable.” *King v. State*, 407 Md. 682, 696–97 (2009) (internal quotation marks and citations omitted).

“In exercising its discretion regarding sanctions for discovery violations, 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.” *Thomas*, 397 Md. at 570-71. When “fashioning a sanction, the court should impose the least severe sanction that is consistent with the purpose of the discovery rules[.]” which is “to give a defendant the necessary time to prepare a full and adequate defense[.]” *Id.* at 571. Thus, “[t]he exercise of discretion contemplates that the trial court will ordinarily analyze the facts and not act, particularly to exclude, simply on the basis of a violation disclosed by the file.”

*Taliaferro v. State*, 295 Md. 376, 390 (1983). Indeed, because exclusion of evidence is “one of the most drastic measures that can be imposed,” it is “not a favored sanction.” *Thomas*, 397 Md. at 572.

To be sure, the 911 calls were an important piece of evidence that the State relied on during its case-in-chief, and they should have been turned over to Shorter prior to the day of trial. Nevertheless, based on the factors set forth in *Thomas*, we are not persuaded that the trial court’s refusal to exclude the 911 calls constituted an abuse of discretion. Here, there was no evidence that the prosecutor acted in bad faith and, although the actual recording of the 911 calls was not turned over to Shorter, the State provided him with timely notice that it intended to introduce the 911 calls at trial. Moreover, as a remedy for the discovery violation, the trial court allowed Shorter to review the calls prior to the start of trial and invited defense counsel to bring any issues to its attention after he had done so. But, after reviewing the calls, Shorter neither requested a continuance nor raised any specific arguments about how his defense would be prejudiced based on the content of the calls.

On appeal, Shorter nonetheless claims that, because of the late disclosure of the calls, he “had almost no time to take [the 911 calls] into account in formulating [his] defense strategy.” However, Shorter could have requested a continuance after reviewing the calls and did not do so. Because the trial court’s remedy satisfied the goal of discovery – to permit appellant to prepare his defense and protect him from unfair surprise – he was

not entitled to the windfall of complete exclusion of the 911 calls. Thus, his claim is without merit.

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