Circuit Court for Frederick County
Case No. 10-K-17-060527

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 177

September Term, 2019

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MICHAEL DAVID SHANE BULLIS

v.

STATE OF MARYLAND

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Graeff,
Reed,
Gould,

JJ.

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Opinion by Reed, J.

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Filed: October 21, 2020

A jury sitting in the Circuit Court for Frederick County convicted Michael Bullis ("Appellant") of fourth-degree sexual offense and second-degree assault. The circuit court sentenced Appellant to a term of one year for fourth-degree sexual offense, merged his conviction for second-degree assault for sentencing purposes, and ordered him to register as a sex offender. On appeal, Appellant raises two questions, which we have slightly rephrased for clarity:[1]

> I. Did the trial court err when it failed to ask potential jurors during *voir dire* about biases potentially influenced by the "Me Too" movement?
>
> II. Did the trial court err by permitting the State to offer expert testimony from a witness who was not disclosed as an expert, in addition to admitting evidence based upon that expert testimony?

We answer both questions in the negative and affirm the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

On October 13, 2017, Appellant was charged in an eight-count indictment for sexual offenses he was alleged to have committed against his half-sisters, J.C. (Counts 1 through

[1] Appellant presents the following questions:

1. Did the trial court err or abuse its discretion when it failed to ask potential jurors during *voir dire* about potential biases influenced by the "Me too" Movement?

2. Did the trial court err in permitting the State to offer expert testimony from a witness that was not disclosed as an expert and in admitting evidence based on that expert testimony that was not timely disclosed?

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5) and D.C. (Counts 6 through 8).[2] The instant appeal involves only the charges pertaining to D.C.[3]

A jury trial was held over three days in January of 2019. The State called six witnesses in its case in chief, including D.C. and detectives from the Frederick City Police Department ("FCPD") who investigated the case. In his own case, Appellant testified, called his wife, Rosemary Hill ("Ms. Hill"), and called three character witnesses. In rebuttal, the State recalled D.C. and called her godmother, Karen Swopes ("Ms. Swopes").

At the time of trial, D.C. was 21 years old. She is the second youngest of eight siblings: five brothers, including Appellant, and two sisters, including J.C., who was the youngest. D.C. and her siblings all share the same mother, but do not all share the same father. Their mother died on August 25, 2016, when D.C. was 19 and J.C. was 14. Appellant is the second oldest in the family and was 36 years old at the time of trial. When his mother died, Appellant, who was in the Army stationed in El Paso, Texas, decided to leave the service and move back to Frederick, Maryland with his wife and teenage son, C., to be closer to his family. In March 2017, Appellant, Ms. Hill, and C. moved into a three-

[2] To respect and protect the privacy of the child involved in this matter, they will be referred to by their initials. *See Raynor v. State*, 440 Md. 71, 75 n.1 (2014) (declining to use sexual assault victim's name for privacy reasons); *State v. Mayers*, 417 Md. 449, 451 (2010) (identifying an 18-year-old sexual assault victim by her initials).

[3] J.C. died by suicide prior to the trial in this case. Appellant successfully moved to sever the counts pertaining to her and to preclude any evidence of the allegations made by her from coming before the jury. The jury was not made aware that J.C. was dead.

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bedroom rowhome in downtown Frederick. **[T2 75]** J.C. was then living with Ms. Swopes, her godmother, but began staying with Appellant and Ms. Hill on a regular basis, spending the night in the guestroom. D.C. would come and visit about once a week, often late at night.

D.C. testified that one of those visits occurred on Saturday, April 23, 2017. Late that night, D.C. texted Appellant to see if she could stop by for a visit.[4] Appellant replied that he and J.C. were awake, and that D.C. could come over. When D.C. arrived, it was very late, possibly after midnight. Ms. Hill was awake for a few minutes, but soon went to bed. D.C. did not remember seeing J.C. or C. Appellant and D.C. drank Everclear[5] and smoked cigarettes together. D.C. testified that she became "really, really drunk." She stated that she and Appellant were smoking cigarettes on the back porch when Appellant led her to a tent in the backyard. They lay down inside the tent. Appellant started "touching [her] body[,]" fondling her breasts. He then reached insider her pants and penetrated her vagina with his finger, up to his first knuckle. D.C. pushed him away and crawled out of the tent.

D.C. explained that the next thing she remembered was waking up on the couch inside the house, while Ms. Hill was in the kitchen. D.C. left quickly without saying

[4] The timestamps for the text messages are inaccurate. There was testimony that the times convert to "coordinated universal time" when the cell phone data is downloaded, which is 4 or 5 hours later than Eastern Standard Time depending upon whether daylight savings time is in effect. Because no witnesses attempted to convert the timestamps from the text messages at trial, we shall rely on the witness testimony to establish the approximate times the text messages were sent.

[5] Everclear has an extremely high alcohol content, like "rubbing alcohol." [**T1 172]**

anything to Ms. Hill because she "didn't want it to be real." D.C. testified that the following day, Appellant sent D.C. a text that read "I'm an ass and I'd like to talk when you're free and willing[.]" D.C. responded, "OK I can be there in like 5, I just got out of work[.]" Appellant responded, "As long as you are up for a walk . . ." D.C. said, "OK[.]" Appellant told her to get him from the back porch when she arrived. According to D.C., she agreed to meet with Appellant because she wanted to tell him not to do to J.C. what he had done to her. During their walk, he apologized and "promise[d]" he wouldn't "do it to [J.C.]" D.C. did not go to the police or tell anyone else what had happened at that time. She wanted to "push it back and not ever remember it ever again." Weeks later, D.C. outlined that she went to lunch with Ms. Hill, told her what Appellant had done and Ms. Hill was understanding and supportive. D.C. explained that she told Ms. Hill "because of [J.C.], because [she] didn't want it to happen to [J.C.]"

In August 2017, the Frederick County Police Department began investigating Appellant. Detective Rebecca Skelly ("Detective Skelly") was the lead investigator.[6] Detective Skelly testified that on August 4, 2017, she contacted Appellant by telephone, advised him that she was conducting an investigation, and asked if he would be willing to meet with her. She noted that Appellant did not ask any questions and agreed to meet with her three days later, on August 7, 2017 at 2 p.m. On August 8, 2017, Detective Skelly

[6] For context, the criminal investigation into Appellant was initiated after J.C. reported to her therapist that Appellant had raped her in a tent in the backyard. That complaint gave rise to a CPS investigation and a criminal investigation. Appellant was aware of the CPS investigation by the time Detective Skelly contacted him. However, none of this information was before the jury.

interviewed D.C. D.C. disclosed the April 23, 2017 incident, but at that time was unsure of the precise date. She recalled that D.C. told her that Appellant had sent her a text message the following day apologizing, and D.C. provided her cell phone to Detective Skelly. However, Detective Skelly noted that she was unable to locate any text messages between Appellant and D.C. on D.C.'s cell phone.

Detective Skelly testified that on August 9, 2017, she applied for a search warrant for Appellant's house, which was executed the same day. She mentioned that the police seized a tent from the garage and Appellant's cell phone. During the search, Detective Skelly stated that she observed an area in the far-left corner of Appellant's backyard where the grass was "brown and dead." Inside an attached garage, Detective Skelly detected a strong smell of bleach. A tent was piled in "a big heap" one corner of the garage. The garage floor was wet under the tent and Detective Skelly could tell that bleach had been applied to the tent. She asked Appellant if he had taken the tent down recently and whether he had mopped it. He replied that he had taken the tent down several weeks earlier and had mopped it with bleach because it was mildewed.

Over defense objection, Detective Jeffrey Putnam ("Detective Putnam") was admitted as an expert in cellphone data extraction. He testified that he extracted the contents of Appellant's cell phone and provided a searchable report to Detective Skelly and Detective David Dewees ("Detective Dewees"). A search of the report revealed the text messages exchanged between Appellant and D.C. on and around April 23, 2017. Detective Putnam testified that on average, he performed 150 cellphone downloads every

year. Detective Putnam then explained that the cellphone extraction on Appellant's phone took three days, consisting of "over 100 gigabytes with an SD card."

Detective Dewees testified, over objection, that he searched the extraction report for certain terms and discovered two PDF documents downloaded onto Appellant's phone on the morning of August 7, 2017, the day that Appellant was scheduled to be interviewed by Detective Skelly. The documents, titled "Questions Protocol for Investigation of Sex Abuse" and "Interviews of Suspects," pertained to interview techniques employed by police with suspects in sexual assault investigations. He further testified that 100 gigabytes of data could contain up to 1 million documents.

Sabrina Swann, a crime scene technician, swabbed the tent for DNA on August 14, 2017. It still had "residual areas of wetness" at that time. Amy Kelly, a forensic scientist with the Maryland State Police admitted as an expert in serology and DNA analysis, testified that she analyzed the swabs and found that there were no sperm or skin cells of any kind present. She explained that it was unusual to find the absence of skin cells in a sample taken from a tent that had been used. She testified that bleach destroys DNA and is used by her laboratory to clean equipment between tests.

In his case, Appellant presented testimony from three character witnesses -- his sister-in-law; his father-in-law; and a close family friend – all of whom testified that he had a reputation for truthfulness and peacefulness. Ms. Hill, Appellant's wife, testified that Appellant put the tent up in their back yard in March 2017 when they first moved in and took it down at some point in July because it was attracting mosquitos and smelled like

mildew. She acknowledged that D.C. came to visit late at night periodically and would spend time with Appellant after Ms. Hill was in bed. She denied that she and Appellant ever had Everclear in their home. She also denied that D.C. disclosed the sexual assault to her. Appellant testified that he took the tent down in late July because of mosquitos and cleaned it with bleach. He denied that he ever touched D.C. on her breasts or penetrated her with his finger. He testified that the text message he sent to D.C. around April 25, 2017 in which he said he was "an ass" pertained to a heated discussion they had had concerning D.C.'s conduct at work, of which Appellant disapproved.

After deliberations, the jury acquitted Appellant of the most serious charge of second-degree sexual offense and convicted him of the two lesser charges of fourth-degree sexual offense and second-degree assault.[7] The circuit court sentenced Appellant to a term of one year for fourth-degree sexual offense, merged his conviction for second-degree assault for sentencing purposes, and ordered him to register as a sex offender. This timely appeal followed.

[7] At the time the alleged sexual offenses occurred, it was a second-degree sexual offense to commit a "sexual act" with another by "force or threat of force." *See* Md. Code, Crim. Law § 3-306(a)(1) (2002, 2012 Repl. Vol.), *repealed by* Acts 2017, c. 161, § 1, eff. Oct. 1, 2017. A "sexual act" includes "an act . . . in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening" if the act may "reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party." Crim. Law § 3-301(d)(1)(v).

As pertinent, it is a sexual offense in the fourth degree to engage in "sexual contact with another without the consent of the other[.]" Crim. Law § 3-308(b). "'Sexual contact' . . . means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." Crim. Law § 3-301(e)(1).

## DISCUSSION

### A. Voir Dire

Appellant contends the trial court erred by declining to ask the jury venire his requested Question No. 28:

> 28. Due to the nature of recent publicity regarding sexual offenders and the "Me Too Movement["] would you have any difficulty serving as a juror because of your reading, listening or viewing information pertaining to alleged sexual abuse that has been given significant attention in the media over the past year?

During *voir dire*, the trial court posed the following pertinent questions:

> . . . I've described the charges in this case, and, as you are aware, the case involves allegations of sexual misconduct or abuse. Now that you know that, is there any member of the prospective jury panel that feels that those charges would cause in him or her such prejudice that he or she might not be able to render a fair and impartial verdict?
>
> Is there any member of the prospective jury panel who believes that he or she would have difficulty in attending to this case because of the nature of the charges?
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> ***
>
> Is there any member of the prospective jury panel or member of your immediate family who has ever been a member of or contributed to an organization which advocates rights of victims of sexual abuse?

Near the end of *voir dire*, the court asked the parties if there were any questions it had neglected to ask. The following colloquy ensued:

> [Defense Counsel]: I understand the Court has considered the questions that have been presented. The only question that I would ask in addition to those are No. 28, which is listed on page 4, regarding to the publicity associated with the Me-Too movement and a lot of attention that has been directed towards allegations of sexual abuse.

> [The Court]: I think we've covered that pretty well with these other questions about sexual abuse. I'm going to decline to give that one.
>
> [Defense Counsel]: Yes, Your Honor. Other than that, I believe the Court has consolidated numerous questions that I had into far fewer.

We review a trial judge's decision not to ask a requested *voir dire* question for abuse of discretion. *Pearson v. State*, 437 Md. 350, 356 (2014).

Maryland allows limited *voir dire*, the "sole purpose of [which] is to ensure a fair and impartial jury by determining the existence of cause for disqualification[.]" *Washington v. State*, 425 Md. 306, 312 (2012); *see also Kazadi v. State*, 467 Md. 1, 46 (2020) ("[W]e continue to stand by the well-established principle that Maryland employs limited *voir dire* – that is, in Maryland, *voir dire's* sole purpose is to elicit specific cause for disqualification, not to aid counsel in the intelligent use of peremptory strikes." (internal quotation marks and citation omitted)). "If the proposed question does not further the goal of uncovering bias among prospective jurors, the trial court will not abuse its discretion in refusing to pose the question." *Washington*, 425 Md. at 325. Further, in assessing "whether to ask a proposed *voir dire* question, a trial court should weigh the expenditure of time and resources in the pursuit of the reason for the response to the proposed *voir dire* question against the likelihood that pursuing the reason for the response will reveal bias or partiality." *Pearson*, 437 Md. at 360 (cleaned up).

"There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a "collateral matter [is] reasonably liable to have undue influence over" a prospective juror." *Id.* at 357 (quoting *Washington*, 425 Md. at

313 (citation omitted)). The "collateral matter" category comprises "biases directly related to the crime, the witnesses, or the defendant[.]" *Washington*, 425 Md. at 313 (citation omitted).

Here, Appellant contends that his Question 28 was directed at a collateral matter that was likely to have an undue influence over prospective jurors because it pertained to "biases that are directly related to the crime" and thus, that the trial court lacked discretion not to ask the question. (citing *Pearson*, 437 Md. at 377.) He emphasizes that the case was a quintessential "he said, she said" scenario and that D.C. did not make an immediate report of the alleged sexual assault to the police, reporting it only after the police contacted her. Further, he asserts that the potential bias Question 28 sought to ferret out was not adequately covered by the other questions asked by the court because the "'Me Too' movement[8] has had a significant impact on society and attitudes towards accusations of sexual assault."

[8] The #MeToo movement was founded by Tarana Burke more than a decade ago and came to new prominence in October 2017, after women came forward publicly with allegations of sexual harassment and assault by producer Harvey Weinstein. *See, e.g.*, Anna North, *The #MeToo Movement and Its Evolution, Explained*, VOX (Oct. 11, 2018, 3:15 PM), https://www.vox.com/identities/2018/10/9/17933746/me-too-movement-metoobrett kavanaugh-weinstein (describing the evolution of the #MeToo movement and the countless personal experiences--for example, 1.7 million tweets in ten days--shared by way of the #MeToo hashtag); Lesley Wexler, *#MeToo and Law Talk*, 2019 U. Chi. Legal F. 343, 345-47 (2019) (discussing how American conversations about the #MeToo movement are rooted in the law, even in nonlegal settings). "Believe women" is a popular slogan of the movement that arose out of the confirmation hearings for Supreme Court Justice Brett Kavanaugh in October 2018. *See* New York Times, *"We Believe Women": Protestors Rally Against Kavanaugh*, (available at:

(Continued…)

The State responds that Question 28 was not a "mandatory *voir dire* question." the state elaborated that the question was not phrased in such a way as to identify any specific area of bias. Even if it was a mandatory area of inquiry, which the State maintains it was not, it argues that the trial court fairly covered any potential bias pertaining to reports of sexual assault with its earlier questions. We agree.

The Court of Appeals has identified mandatory areas of inquiry including bias arising from racial bias, *see Hernandez v. State*, 357 Md. 204, 225 (1999) (holding that "any defendant, of whatever race, is entitled to have the trial court propound a requested *voir dire* question specifically directed at uncovering racial bias"); religious bias, *see Casey v. Roman Catholic Archbishop*, 217 Md. 595, 607 (1958) ("if the religious affiliation of a juror might reasonably prevent him from arriving at a fair and impartial verdict in a particular case because of the nature of the case, the parties are entitled to ferret out, or . . . have the court discover for them, the existence of bias or prejudice resulting from such affiliation"); or bias for or against a witness in the action based upon his or her "occupation, status, category, or affiliation[.]" *Thomas v. State*, 454 Md. 495, 512 (2017). The court also must ask prospective jurors, if requested, whether they have "strong feelings" about the crimes charged. *See Collins v. State*, 463 Md. 372, 377 (2019).

https://www.nytimes.com/video/us/politics/100000006124263/kavanaughprotests-washington-yale.html) (last visited Jan. 5, 2020).

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In the instant case, the only mandatory area of inquiry to which Question 28 arguably was directed pertains to "strong feelings" about the crimes charged.[9] Question 28 did not specifically address strong feelings about the crimes with which Appellant was charged, but rather sought to determine if prospective jurors' knowledge of a social movement recognizing the prevalence of experiences of sexual harassment and sexual abuse among women (and men) and supporting disclosure of those stories would impact their ability to serve. That was not a mandatory area of inquiry and that the trial court did not abuse its discretion by declining to ask Question 28.

Even if Question 28 arguably fell within an area of mandatory inquiry, which it did not, we would nevertheless find no abuse of discretion because the trial court fairly covered the same area by asking the prospective jurors multiple questions designed to ferret out

[9] Appellant did not request a traditional "strong feelings" question in his proposed *voir dire* but did request numerous questions directed at prejudice arising from the charges, including Question 28. He requested questions asking if any prospective jurors felt prejudice towards him because he was charged with a sexual offense (Question 6); if any prospective jurors would have difficulty serving because the subject matter of the testimony would cover sexual contact (Question 7); if any prospective juror or his or her family members had been a victim or accused perpetrator of a sexual assault (Question 15(b) & (c)); if any prospective juror contributed to, worked for, or was affiliated with any organizations that worked with victims of sexual abuse (Questions 19 & 20); if any prospective juror considered him or herself an advocate for sexual abuse victims (Question 21); and if any prospective juror had personal experiences with sexual assault that would affect his or her ability to be fair and impartial (Question 25).

The trial court asked a variation of the strong feelings question but, as Appellant points out, did so in compound form. No objection to the form of the question was raised below, however, and it is not before us on appeal.

(Continued…)

bias or prejudice around sexual abuse and assault allegations. The questions asking if any prospective jurors had prejudices related to the charges, would have difficulty serving because of the nature of the charges, or had an affiliation with any organization that worked on behalf of sexual abuse survivors were more than sufficient to identify members of the venire who were disqualified to serve because of improper bias related to the charges.[10] Considering that it had asked those questions and questioned multiple jurors at the bench concerning their answers already, the trial court reasonably determined that "the expenditure of time and resources" involved in asking another question directed at the same area of bias was unnecessary. *Pearson*, 437 Md. at 360 (cleaned up).

**B. Expert Testimony**

Appellant argues the trial court erred by implicitly finding that there was no discovery violation for two reasons. First, he asserts that the State violated its disclosure obligations under Rule 4-263(d) by not designating which of its witnesses would testify as

[10] The Appellant's reliance upon *Casey v. Roman Catholic Archbishop*, 217 Md. 595, 606-07 (1958), is misplaced. That was a civil negligence action arising from a slip and fall at a Catholic parish. *Id*. at 600-02. The plaintiff sued the archdiocese and requested that the trial court ask during *voir dire* if any prospective jurors were biased for or against the Catholic Church. *Id*. at 603-04. The trial court refused, instead asking a more general question asking if any prospective jurors had any "religious scruples or other reason" that would prevent them from being fair and impartial. *Id*. at 604. On appeal, the Court of Appeals reversed, emphasizing that the general question was insufficient to ferret out any bias prospective jurors might have for or against the Catholic Church that could impact the plaintiff's right to a fair trial. *Id*. at 606-07.

Unlike in *Casey*, where the plaintiff sought to discern if prospective jurors would be biased for or against a party to the litigation based upon their religious beliefs, here Appellant's Question 28 pertained to collateral social movement that had no direct bearing upon the witnesses or evidence at trial.

an expert *and* by not disclosing the "substance of the expert's findings and opinions, and a summary of the grounds for each opinion[.]" Second, he contends that the "massive data dump" on September 12, 2018 did not satisfy the State's discovery obligations because it was impossible for defense counsel to determine which, if any, of the multitude of documents contained in the data download would be relevant.

The State responds that it was not obligated to designate Detective Putnam as an expert so long as it disclosed him as a witness. It further contends that it did disclose that Detective Putnam would be the witness testifying as an expert on cell phone data extraction by disclosing that he was the person who downloaded Appellant's cell phone. It also disclosed the substance of his testimony, which was simply that he performed the extraction. Finally, the State maintains that it did not violate its discovery obligations by disclosing the PDF documents from the extraction report a few days before trial because that was when Detective Dewees located them.

This Court reviews *de novo* whether a discovery violation has occurred. *Thomas v. State*, 168 Md. App. 682, 693 (2006), *aff'd*, 397 Md. 557 (2007). However, "we apply an abuse of discretion standard to a Court's decision whether to strike testimony due to a discovery violation" *Silver v. State*, 420 Md. 415, 433 (2011) (citing *McLennan v. State*, 418 Md. 335, 352–53 (2011).

Rule 4-263 governs discovery obligations in criminal causes in the circuit court. It obligates the State to provide to the defense, "[w]ithout the necessity of a request," two pertinent categories of information:

> (3) State's Witnesses. As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;
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> ***
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> (8) Reports or Statements of Experts. As to each expert consulted by the State's Attorney in connection with the action:
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> (A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;
>
> (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
>
> (C) the substance of any oral report and conclusion by the expert;

Md. Rule 4-263(d). The State is obligated to make these disclosures "within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c)" *and* "is under a continuing obligation to produce discoverable material and information" by supplementing its discovery responses if it "obtains further material information[.]" Md. Rule 4-363(h)(1) & (j).

On the first day of trial, prior to jury selection, Appellant moved to preclude the State from offering expert testimony about the extraction of data from Appellant's cell phone and to exclude the two PDF documents found in the search of the extraction report. Appellant explained that the State had provided the extraction report to him in a zip file on September 12, 2018, which was more than four months before trial, but had only provided the two documents from the extraction report that it sought to introduce at trial on January 18, 2019, four days before trial began. Appellant argued that the State had not identified

who would provide expert testimony pertaining to the extraction of the data from the cellphone or the substance of his or her opinion, as required by Rule 4-263(d)(8).[11] In sum, Appellant argued that "although the extraction report was provided, I've never been provided exactly who was going to offer the information, what was his opinion and the information that was going to be provided, except[] on Friday when I received [the two PDF documents]."

The State responded that Detective Putnam was identified as a witness "way back in the initiation of the case, and in the supplements, it indicates that he is the one who did the cellphone download of the defendant's phone, and the cellphone download itself was provided September 12th of 2018." She explained that as the trial date approached, Detective Dewees "had some free time" and began searching the "voluminous" extraction file. He located the PDF documents the State intended to introduce at trial and those were immediately disclosed to defense counsel. The State maintained that it had complied with the Maryland Rules by disclosing Detective Putnam as a witness and that it was not

[11] Rule 4-263(d)(8) requires the State to provide to the defense without the necessity of a request:

> (8) Reports or Statements of Experts. As to each expert consulted by the State's Attorney in connection with the action:
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> (A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;
>
> (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
>
> (C) the substance of any oral report and conclusion by the expert;

obligated to categorize him as a lay witness or an expert witness under the authority of *Knoedler v. State*, 69 Md. App. 764 (1987). In the State's view, because it had disclosed Detective Putnam's name, identified him as the person who performed the cell phone extraction, and provided the extraction report, it was "somewhat disingenuous" for defense counsel to claim he did not know that the detective would "testify as an expert in terms of the cellphone download." The State emphasized that Detective Putnam's testimony would be "merely that he downloaded the cellphone and the contents itself is the report that was generated[.]"

Appellant's counsel responded that the State provided a "voluminous amount of information without any direction and not who was going to say what and what was actually going to be used[.]" The State replied that defense counsel could not claim unfair surprise because it knew well in advance of trial that the State planned to introduce the text messages extracted from Appellant's cell phone and it followed that a witness "was going to need to testify in that capacity" about the download of the cell phone.

The court reserved its ruling until after jury selection, and at that time, the trial court denied Appellant's motion to exclude Detective Putnam's expert testimony. At trial, Appellant did not *voir dire* Detective Putnam or question his expertise but asked for and was granted a continuing objection to his testimony based upon his earlier motion.

In *Knoedler*, this Court held that the State had complied with its discovery obligations under Rule 4-263 when it disclosed that a fire captain would testify at the defendant's trial for arson but did not identify him as an expert witness. *Knoedler*, 69 Md.

App. at 767. We held that nothing in the Rule "require[d] the State to categorize its proposed witnesses as expert or non-expert." *Id*. at 768. Thus, by identifying the fire captain as a witness at trial and making reports written by him available to the defense, the State had satisfied its discovery obligations. *Id*.

*Knoedler* is dispositive of Appellant's claim that the State was required to disclose that Detective Putnam would testify as an expert witness. The State's disclosure that Detective Putnam had performed the extraction of Appellant's cell phone and its disclosure of the actual extraction report satisfied its obligations under Rule 4-263(d)(8).[12] The substance of his expert testimony was that he performed the extraction and turned the report over to Detectives Skelly and Dewees. It is unclear what, if any, additional information the State could have provided pertaining to "the substance" of the expert testimony.

We are also not persuaded that the State's disclosure of the 100 gigabytes of data amounted to an "improper data dump." If anything, the State was at a disadvantage with respect to the cell phone extraction report considering that Appellant had some knowledge of the contents of his own cell phone. The size of the data extracted was outside of the State's control and it was unable to scour up to 1 million documents in the report for any relevant material. The State complied with its continuing duty to disclose by turning over the PDF documents immediately upon finding them and determining that it would introduce them at trial.

[12] The State proffered during argument on Appellant's motion that it disclosed that Detective Putnam was the person who downloaded Appellant's cell phone and defense counsel did not contest that proffer.

Finally, even if the trial court had erred in finding no discovery violation, which we conclude it did not, we would hold that such error was harmless. Where the State commits a discovery violation, but has acted in good faith, "the proper focus and inquiry is whether [appellant] was prejudiced, and if so, whether he was entitled to have the evidence excluded." *Thomas v. State*, 397 Md. 557, 572 (2007) (citation omitted). "[A] defendant is prejudiced only when he is unduly surprised and lacks adequate opportunity to prepare a defense, or when the violation substantially influences the jury." *Id*. at 574. Here, Appellant knew well in advance of trial that Detective Putnam had performed an extraction of his cell phone and had access to the actual extraction report. Shortly before trial, Appellant also received copies of two documents that would be introduced at trial from that report (in addition to the text messages). Under the circumstances, Appellant was not unduly surprised and had sufficient time to prepare his defense. We find no error in the court's rulings.

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