Circuit Court for Frederick County
Case No.: C-10-CR-18-000120

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 869

September Term, 2019

TRAVIS EDDINS

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: August 10, 2020

*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.

Travis Eddins, the Appellant herein, was convicted by a jury in the Circuit Court for Frederick County of first-degree rape, first-degree assault, and second-degree assault. The Honorable Scott Rolle sentenced Eddins to life imprisonment with all but forty years suspended for the first-degree rape count; the other two counts were merged into the first-degree rape.

Eddins, in asking us to reverse his convictions, posits the following questions for our review:

> 1. Was it error for the trial court to refuse to admit into evidence that the complaining witness was due to be sentenced for her crimes, on the day that she went to the hospital, instead, and alleged that she had been raped?
>
> 2. Was it error to refuse to admit evidence that the complainant actually had an infection that could explain some of the physical symptoms that the State used to corroborate the allegation of rape?
>
> 3. Was it error to deny the motion for mistrial?

For the reasons that follow, we shall answer Eddins's questions in the negative and shall affirm the judgments of the Circuit Court.

MOTIVE TO TESTIFY FALSELY

Prior to trial, Eddins's counsel filed a motion in limine asking that he be permitted to impeach the credibility of the victim, whom we shall refer to as S.,[1] by asking her

[1] To protect the privacy of the victim in this case, we shall refer to her as "S." *See White v. State*, 223 Md. App. 353, 362 n.1 (2015).

whether she was to be sentenced for resisting arrest and interfering with a lawful arrest[2] related to a different incident to which she already pled guilty and for which she was to be sentenced on the day she had reported she was raped by Eddins. S. had not appeared for sentencing on the day she was raped, however, because she went to the hospital for an examination. She, nonetheless, was later sentenced prior to Eddins's trial.

Defense counsel posited that the convictions could be used in impeachment because they related to S.'s credibility with respect to the crimes themselves, the admissibility of which is governed by Rule 5-609.[3] He also contended that, pursuant to Maryland Rule 5-

[2] The crimes for which S. was to be sentenced were resisting arrest and interfering with a lawful arrest, both of which are defined by Section 9-408 of the Criminal Law Article, which, in pertinent part provides:

> (b) A person may not intentionally:
> (1) resist a lawful arrest; or
> (2) interfere with an individual who the person has reason to know is a police officer who is making or attempting to make a lawful arrest or detention of another person.
> (c) A person who violates this section is guilty of a misdemeanor and is subject to imprisonment not exceeding 3 years or a fine not exceeding $5,000 or both.
> (d) The unit of prosecution for a violation of this section is based on the arrest or detention regardless of the number of police officers involved in the arrest or detention.

Md. Code (2004, 2012 Repl. Vol.).

[3] Rule 5-609, impeachment by evidence of conviction of crime, provides:

> (a) Generally. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime

(continued . . .)

616(a)(4),[4] the fact that S. was to be sentenced for her offenses on the day she alleged Eddins had raped her showed that she had motive to lie about the allegations against him.

The State, conversely, argued that the crimes for which S. had been sentenced did not bear on her credibility and, therefore, could not be used in impeachment pursuant to Rule 5-609, as we held in *Banks v. State*, 213 Md. App. 195 (2013). With respect to a motive to lie, the State posited that S. had no reason to lie about Eddins raping her, contending that S. later appeared and was sentenced. The State further posited that evidence would be adduced at trial that would reflect that S. did have a hearing scheduled

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> relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or objecting party.
> (b) Time Limit. Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.
> (c) Other Limitations. Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:
> (1) the conviction has been reversed or vacated;
> (2) the conviction has been the subject of a pardon; or
> (3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.
> (d) Effect of Plea of Nolo Contendere. For purposes of this Rule, "conviction" includes a plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.

[4] Rule 5-616(a)(4) provides that: "The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . [p]roving the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely."

on the day of the rape, but urged that it being a sentencing for crimes related to resisting arrest was not relevant.

Judge Rolle denied the motion in limine, after oral arguments, ruling:

> Okay. The Court is here on . . . the Defense motion in limine to allow the use of prior cases of the complainant and request for hearing. This particular piece of evidence that the Defense wishes to be able to introduce involves the complaining witness's conviction for resisting arrest and related offenses back in 2017.
>
> The Defense argues that the fact that the complaining witness was charged and convicted with resisting arrest and hindering police goes directly to her credibility. The State argues otherwise, including pointing out a case, Banks v. State, which, frankly, the Court was not familiar with. Banks v. State is 213 Md. App. 195.
>
> However, that case seems to indicate that there is nothing in the elements of this offense, which is the offense the complaining witness was charged with, that tends to show one is unworthy of belief, which is interesting because the initial thoughts of the Court, as I was hearing the evidence, was along those lines, and there is a case now, even though the Defense argues they're not intending to use the conviction itself, they're intending to use the fact that she did these acts is directly related to her credibility.
>
> The Court does not believe that the probative value of this evidence outweighs the prejudicial. I do not think that this piece of evidence goes directly to the complaining witness's credibility at all. It certainly is not behavior anybody admires, but it's not anything directly related to credibility.
>
> So even considering the Banks case and the arguments of counsel, the Court believes that the motion – will deny the motion in limine[.]

At trial, S. testified that, on the day she had been raped by Eddins, she had a "court date" scheduled in the afternoon but did not make it because she "was in the hospital" and "rescheduled" the appearance for "a later date."

At the close of the State's case, counsel for Eddins requested that the Court "readdress" his pre-trial motion in limine, contending that it was "not the charge, but the

fact that she would try to avoid going to a sentencing" which was "relevant to her credibility." Judge Rolle denied the renewed motion.

In closing, counsel for Eddins argued that S. had fabricated the allegations against Eddins in order to avoid the "court date" she had on the same day:

> Now you can infer that [S.'s] desire to sleep in suggests that she didn't want to go to court because remember when she was asked during cross-examination if she had something to do today, what was her initial response to [defense co-counsel]? Her answer was, no, I have nothing else to do today. No, nothing. And [defense co-counsel] prompted her, didn't you have someplace – oh, well, I guess I had to go in court later in the day. She really, that showed you she didn't want to be at that court proceeding, whatever it was.
>
> Also, she also told you she knows how to dress for court, remember that? And she told you that and that brings up the question, was she planning on going to court in the stretch leggings and shirt that eventually were taken away by the crime scene technician or was she going to go to court in the white dress? I think you can infer that her clothing suggests she had no intention of going to court that day.
>
> But how to avoid court? . . . So, she decides she can get a postponement in this matter if she's the victim of a crime. And maybe she thinks if she just makes the accusation, the whole thing will just fade away, but the fact that we're all sitting here proves that it doesn't just fade away. The man is on trial for rape. This doesn't fade away.

It appears that Eddins wanted to either impeach S. with the convictions related to resisting arrest and interfering with a lawful arrest, contending that they directly related to her credibility, and/or with the fact that she faced sentencing on the day she had been raped. Neither argument, however, can prevail.

It is settled in Maryland that a witness's credibility may not be impeached with a conviction for resisting arrest.[5] *Banks*, *supra*, 213 Md. App. 195. Eddins, nevertheless, argues that Judge Rolle violated his confrontation rights by limiting cross-examination of S. because, he posits, Rule 5-616(a)(4) permitted him to attack her credibility by raising the issue that she was set to be sentenced on the day of the rape for the crimes of resisting arrest and interfering with a lawful arrest. In addressing this contention, Eddins does not parse out its bases, whether under Rule 5-616(a)(4) or with respect to his confrontation rights,[6] or otherwise state how Judge Rolle abused his discretion in precluding defense counsel from further inquiring into S.'s "court date."

[5] In *Banks v. State*, 213 Md. App. 195 (2013), after analyzing the elements of resisting arrest, as delineated in Section 9-408 of the Criminal Law Article, Maryland Code (2004, 2012 Repl. Vol.), as well as caselaw interpreting the statutory law and its common-law predecessor, we concluded that "[t]here is nothing in the elements of this offense that identifies conduct" which tends to show that an individual convicted of resisting arrest is "unworthy of belief." *Id.* at 205 (quoting *State v. Westpoint*, 404 Md. 455, 484 (2008)). Accordingly, we held "that evidence of a conviction for resisting arrest is not admissible to impeach a witness's credibility[.]" *Banks*, 213 Md. App. at 207. With respect to the crime of interfering with a lawful arrest, because the offenses of resisting arrest and interfering with a lawful arrest are so closely related in their elements, are contained in the same subsection, and carry the same penalty, a conviction for interfering with a lawful arrest pursuant to Section 9-408(b)(2) is also not a permissible impeachment device under Rule 5-609. *See Nicolas v. State*, 426 Md. 385 (2012).

[6] The Confrontation Clause of the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, confers upon a criminal defendant the right "to be confronted with the witnesses against him." U.S. Const., amend. VI, cl 5; *see also* Md. Const. art. 21. The right of confrontation "includes the opportunity to cross-examine witnesses about matters relating to their biases, interests, or motives to testify falsely." *Martinez v. State*, 416 Md. 418, 428 (2010) (citing *Davis v. Alaska*, 415 U.S. 308, 316–17, 94 S. Ct. 1105, 39 L.Ed.2d 347 (1974) and *Marshall v. State*, 346 Md. 186, 192 (1997)).

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Although Rule 5-616(a)(4) permits a party to impeach a witness's credibility by asking questions which are directed at "[p]roving the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely," Eddins cites no authority for the proposition that he was entitled to go beyond that which he was permitted to do. Eddins did have the opportunity to impeach S. about her "court date" and did argue that she falsified her accusations based upon a supposed motive to not appear in court. As a result, we hold that Judge Rolle properly excluded Eddins from asking S. about her convictions for resisting arrest and interfering with a lawful arrest, or about the purpose of her "court date" on the date of the rape. *See Montague v. State*, 244 Md. App. 24, 65–66 (2019), *cert. granted*, 467 Md. 690 (2020) (noting that where a defendant's

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A party's right to cross-examine a witness, however, is not without limitations. *Martinez*, 416 Md. at 428 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L.Ed.2d 674 (1986) and *Smallwood v. State*, 320 Md. 300, 307 (1990)). Trial judges retain wide discretion to impose "reasonable limits on cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." *Martinez*, 416 Md. at 428 (citing *Lyba v. State*, 321 Md. 564, 570 (1991)). A trial judge properly exercises their discretion to limit cross-examination only after a defendant has been afforded the constitutionally required "threshold level of inquiry" that "expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting *Martinez*, 416 Md. at 428). A defendant's rights, however, are violated where the jury is deprived of "sufficient information to make a discriminating appraisal" of the witness's testimony. *Marshall*, 346 Md. at 194 (internal citation omitted).

We need not address Eddins's constitutional contention, because we generally avoid addressing constitutional arguments when an issue can be properly disposed of on a non-constitutional ground. *See Parker v. State*, 408 Md. 428, 435 (2009). We note, however, that Eddins's constitutional argument fails because he was permitted to cross-examine S. about the court date she had on the day of the rape and did argue that her required appearance provided motive.

confrontation rights are not violated, a trial judge does not abuse their discretion where they limit the cross-examination of a witness after providing "a defendant in a criminal case the 'threshold inquiry' required by the Confrontation Clause").

EVIDENCE OF A SEXUALLY TRANSMITTED DISEASE

Before trial, the State filed a motion in limine to exclude a diagnosis of chlamydia that S. had received at or about the time of the rape, contending that it was not relevant to the issue of whether Eddins had raped her and that the "inflammatory and prejudicial value of admitting" the diagnosis "outweigh[ed] any minimal probative value." At a hearing on the motion, Defense counsel, however, argued that the diagnosis provided an "alternate" explanation for some of the symptoms experienced by S. on the day of the rape.

Before Judge Rolle issued a final ruling on the State's motion, the State proposed that defense counsel, instead of using the word "chlamydia," be allowed to ask the forensic nurse, who had conducted an examination of S. on the day of the rape, whether there were any "medical conditions" that could have caused the symptoms S. experienced following the rape. Counsel for Eddins, however, did not accept the State's proposal, positing that he should be able to introduce the chlamydia diagnosis and that the trial court could provide, as a way to allay the concerns of prejudice, a limiting instruction and/or posit voir dire questions relating to the impermissibility of inferring promiscuity from evidence of a sexually transmitted disease. Judge Rolle reserved ruling on the State's motion until hearing whether the defense intended to argue that "while the complaining witness had chlamydia, the defendant did not."

Following the hearing on the State's motion in limine, but before trial, Eddins's counsel also filed a motion in limine. The defense moved to exclude all or part of a recorded jail call during which Eddins asked his mother "to do some quick research on the Internet about chlamydia." At a hearing on the defense's motion, counsel for Eddins contended that the court had already excluded the use of the word "chlamydia," so that the State could not now attempt to use a recording where Eddins used it:

> This Court has already ruled that I can't even use the word chlamydia. So now the State seeks to use a recording where the defendant uses the word chlamydia. Well, then, in doing so, the State is going to have to modify the motion in limine, because if the State gets to use the word chlamydia, I get to use the word chlamydia. It seems to be what's good for the goose is good for the gander.
>
> But if the Court -- I believe the Court's decision is correct. I think the term medical condition is the appropriate response and that chlamydia, because it is so embarrassing to the victim and it does provoke these, these great thoughts of promiscuity, that the victim should be protected in that matter and therefore the Court's prior ruling regarding chlamydia is foundational, it's correct, and it's the proper course of action. And since the Court has already made such a ruling, then the rest of this entire audio recording should be precluded as well. That's the first part.
>
> The second part is, the State is seeking to bootstrap. They're seeking, even if the Court were to change the prior motion in limine and now allow the word chlamydia to be used, the State is now attempting to use his use of the word chlamydia and his search for what the symptoms are to all of a sudden include that as – that must be proof that he committed this rape. They're trying to show that it's some kind of guilty conscience when in fact he was doing simple investigation of his own case, Your Honor, and he didn't ask whether, what the – if you listen carefully, he doesn't ask what the symptoms are in men. He asks what the symptoms are, period, and his mother assumed it's in men and starts looking for information just on men and doesn't provide any other information, and the defendant doesn't ask any other questions specifically about men or women. He simply asks.
>
> Your Honor, this is far more prejudicial than probative, and it is just as prejudicial to the defendant now as it was to the victim, and so if the Court is seeking to deny this motion, then they must also revise their other motion and allow the Defense to confront the witness with the fact that she had chlamydia at the time of this alleged offense.

The State, in response, indicated that it only intended to use the recording as rebuttal evidence. Judge Rolle, again, reserved ruling on whether the word "chlamydia" could be used at all.

Prior to start of voir dire, the following colloquy occurred, during which the parties indicated their understanding not to reference "chlamydia":

> [THE STATE]: And, Your Honor, and so just for clarification, we're going to refer to it as a medical condition in the –
>
> THE COURT: Everyone understands that, especially from your –
>
> [DEFENSE COUNSEL]: I understood that last week.
>
> THE COURT: -- concession.
>
> [THE STATE]: Okay. I'm sorry. I was not sure.
>
> THE COURT: Right. And the State has – the Defense has conceded and, in fact, now indicates they go along with that ruling.
>
> [THE STATE]: Thank you.
>
> THE COURT: All right. Anything else on that one?
>
> [DEFENSE COUNSEL]: No, Your Honor.

During S.'s cross-examination, she testified that a few days after the rape, she had been diagnosed with a "medical condition." The forensic nurse also testified at trial that the symptoms she observed during the forensic exam of S. could have been caused by a "medical condition" rather than a sexual assault. Eddins's counsel then asked the forensic nurse whether she was "aware that [S.] was afflicted with a, with a medical condition?"

The forensic nurse requested clarification, and counsel for Eddins, after a bench conference, withdrew the question:

> [DEFENSE COUNSEL]: Did you, you said you reviewed part of her lab work. Were you aware that she was afflicted with a, with a medical condition?
>
> [NURSE]: Afflicted? Can you, I'm sorry, I –
>
> [DEFENSE COUNSEL]: May we approach briefly?
>
> THE COURT: You may.
>
> (Bench Conference follows:)
>
> [DEFENSE COUNSEL]: I don't want to go over any lines.
>
> THE COURT: Right. Keep it down. I, just, she's where not to –
>
> [THE STATE]: Your Honor, I –
>
> THE COURT: -- because you're going to ask the wrong question and it's going to come out, I –
>
> [DEFENSE COUNSEL]: I'm just going to ask her if she knows that she had an infection.
>
> THE COURT: But, but she explains further, so, she's going to. I'm telling you, she's going to, so, how do you want to handle this?
>
> [THE STATE]: I think you already asked if other things and she –
>
> [DEFENSE COUNSEL]: Okay.
>
> [THE STATE]: -- said, yes, bacterial infections.
>
> [DEFENSE COUNSEL]: That's fine.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: That's fine.

THE COURT: Thank you.

[DEFENSE COUNSEL]: I'll withdraw the question.

During argument, counsel for Eddins posited that the results of the forensic exam were inconclusive as to a rape having occurred, as the forensic nurse testified that a "medical condition" could have been the cause of the symptoms she observed during her examination of S.

Before us, Eddins argues that the court erred in precluding the introduction of S.'s diagnosis of chlamydia during the nurse's testimony because, he avers, the diagnosis was "material, relevant and admissible," under the Maryland Rape Shield Statute.[7] He avers

[7] Section 3-319 of the Criminal Law Article, also referred to as the Rape Shield Statute, which governs the admissibility of evidence in rape and sexual offense prosecutions, provides:

> (a) Reputation and opinion evidence inadmissible. – Evidence relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence may not be admitted in a prosecution for:
> (1) a crime specified under this subtitle or a lesser included crime;
> (2) the sexual abuse of a minor under § 3-602 of this title or a lesser included crime; or
> (3) the sexual abuse of a vulnerable adult under § 3-604 of this title or a lesser included crime.
> (b) Specific instance evidence admissibility requirements. – Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that:
> (1) the evidence is relevant;
> (2) the evidence is material to a fact in issue in the case;
> (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and
> (4) the evidence:
> (i) is of the victim's past sexual conduct with the defendant;

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that he should have been permitted to introduce evidence which proved that S. had a specific medical condition that could have explained the cause of some of her symptoms and that oblique references to a "medical condition" did not suffice.

The State primarily contends that Eddins waived his argument because he conceded at a motions' hearing on the day of trial that the court's ruling with respect to "chlamydia" was "correct." Even if not waived, the State avers that the argument fails because the potential for unfair prejudice by the introduction of the chlamydia diagnosis substantially outweighed its probative value.

We agree with the State. Eddins may not now complain about the trial judge's decision to preclude the victim's chlamydia diagnosis from trial because he endorsed the State's suggestion of the term "medical condition" and acquiesced in its use, inferentially to avoid the State's use of the jailhouse call. *See Burch v. State*, 346 Md. 253, 289 (1997) (stating that a defendant "will ordinarily not be permitted to 'sandbag' trial judges by

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> (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
> (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
> (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.
> (c) Closed hearing. – (1) Evidence described in subsection (a) or (b) of this section may not be referred to in a statement to a jury or introduced in a trial unless the court has first held a closed hearing and determined that the evidence is admissible.
> (2) The court may reconsider a ruling excluding the evidence and hold an additional closed hearing if new information is discovered during the course of the trial that may make the evidence admissible.

Md. Code (1957, 2012 Repl. Vol.).

expressly, or even tacitly, agreeing to a proposed procedure and then seeking reversal when the judge employs that procedure").

No matter what, however, Eddins's argument is without merit, because he did elicit from the examining nurse the fact that S. suffered from a medical condition which might otherwise explain her symptoms, which was relevant to his argument that a rape did not occur. The addition of a specific diagnosis of chlamydia would not have enhanced the argument that a rape did not occur. *See Coleman v. State*, 321 Md. 586, 610–11 (1991) (holding that the trial judge did not abuse their discretion in limiting the defendant's cross-examination of a witness where defense counsel had elicited the testimony sought but, nonetheless, "wanted even more" leeway on cross-examination); Rule 5-611(a).[8] As a result, Judge Rolle did not abuse his discretion when he limited the cross-examinations of S. and the nurse in which, as even defense counsel recognized, any mention of chlamydia would be "so embarrassing to the victim" and it would provoke "great thoughts of promiscuity, that the victim should be protected" by employing "medical condition" instead.

MOTION FOR MISTRIAL

[8] Subsection (a) of Rule 5-611, the Rule which governs the scope of cross-examination, provides:

> The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

On the second day of trial, counsel for Eddins requested a mistrial based upon the opening statement of the prosecution. Eddins's counsel argued that the State had committed a discovery violation, in contravention of Rule 4-263(d)(6)(D),[9] for failing to immediately disclose statements S. made to the prosecution the day before trial began which allegedly differed from what she had told detectives following the rape. Defense counsel posited:

> [T]he Defense is going to move for a mistrial at this point in time. Your Honor, Rule 4-263(d)(6), (d) requires an oral statement of the witness not otherwise memorialized that is materially inconsistent with another statement made by the witness, which, you know, is legal speak for if somebody said something totally different than what they told somebody else, the State is required to hand that over.
>
> On I believe it was Sunday, the prosecution met with the alleged victim in this case. The alleged victim apparently obviously made a statement, and I guess they were preparing for trial. And, in doing so, a whole slew of information that was never before revealed became revealed, and the only way we knew about it was during the opening statement by [one of the prosecutors], and we were stunned.
>
> Your Honor, the number of things are phenomenal, and one of the more important things is [S.] tells originally Detective Ames that she is being strangled and then raped, and in the statement that she told the State yesterday, or the day before, she was raped then strangled, and there are a whole slew of inconsistencies that are not mentioned in the prior statement.

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[9] Rule 4-263(d)(6)(D), the Rule which governs discovery in circuit court criminal matters, provides:

> (d) Disclosure by the State's Attorney. Without the necessity of a request, the State's Attorney shall provide the defense:
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> ***
>
> (6) Impeachment information. All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:
>
> ***
>
> (D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness[.]

> The reason this is a violation of the rule on discovery is the State did not hand this over immediately after the interview. They waited until after opening, and I sent an email to [the State] saying [co-counsel for the State]'s opening included a number of pieces of information from [S.] not previously reported or recorded. Please forward before 5:00 p.m. today a summary of [S.'s] interview with your office that occurred.
>
> At 5:55 p.m. – I'm sorry, at 5:43, we get the statement. Your Honor, we hadn't had the opportunity to go over any of this with my client to start with, and, number two, now that there are all these differences, if I had known about them before, I might have tried to go and reach out to Detective Ames, to other people, but I haven't had that opportunity.
>
> The State has violated the discovery rules. It's very clear that the State has the requirement of due diligence, and even if they had done it on Sunday night, it might have been behooven on the Defense to say we need a postponement, Your Honor.
>
> But now that the jury is sworn, the State has given openings and now we're in trial, I don't have the opportunity to now talk to witnesses because I invoked the rule on witnesses, and, therefore, I can't even talk to their witnesses. Your Honor, this is appalling. The number of changes in the victim's story – did we count them all – there are at least 10 significant differences.
>
> In the statement to Ames, [S.] just says all of a sudden he started strangling her. In this new version, the defendant gets up, walks in and out of the tent several times according to the victim, asks for a drink, gets juice from the victim. There's all of this new information that was never revealed in any other statement by the alleged victim in this case.

The State responded that S.'s statements were consistent with her previous pronouncements, albeit more detailed. The State also argued that no discovery violation had occurred, as the prosecution, on the first day of trial, had provided defense counsel with an email recounting the statements made by S., so that a mistrial was not appropriate. As a potential remedy for any supposed violation, however, the State suggested that counsel for Eddins "go talk to" the State's witnesses to address the alleged inconsistencies, with the trial judge's permission, notwithstanding the invocation of the rule on witnesses. Judge Rolle denied the request for a mistrial but allowed counsel for Eddins, if so desired,

"to speak to the witnesses," which included S., an individual S. dated at the time of the rape, S.'s friends, the forensic nurse, police officers, among others.

Counsel for Eddins, nevertheless, demurred, contending that there were significant differences among S.'s statements. Acknowledging that he could cross-examine S. about the allegedly inconsistent statements, counsel argued that, had he known of the "new" statements, he "would have made a different effort to attempt to find" individuals who lived near the location of the alleged rape. Judge Rolle reiterated that the motion was denied.

During S.'s cross-examination, counsel for Eddins used, in impeachment, the statements S. made to prosecutors on the eve of trial:

> [DEFENSE COUNSEL]: [O]n the day that this allegedly occurred back in December, you spoke with multiple detectives and nurses when you made these allegations, is that correct?
>
> [S.]: Yeah.
>
> [DEFENSE COUNSEL]: You told them your version of events?
>
> [S.]: Sure.
>
> [DEFENSE COUNSEL]: And they indicated to you that you needed to tell the complete picture of what happened, is that correct?
>
> [S.] Uh-huh.
>
> [DEFENSE COUNSEL]: And yet when you met with the State's Attorneys this past Sunday, you just remembered new details that you thought weren't important then but are important now, is that correct?
>
> [S.]: Yeah.
>
> [DEFENSE COUNSEL]: Like the details about the juice and the playful headlock?

[S.]: I've mentioned that a couple of times beforehand.

[DEFENSE COUNSEL]: Okay. But none of the officers included that information in their reports.

[THE STATE]: Objection. She doesn't know what's in their reports.

THE COURT: Sustained.

[DEFENSE COUNSEL]: And this allegedly occurred about seven and a half months ago now, if my math is correct?

[S.]: Yeah.

[DEFENSE COUNSEL]: So on Sunday when you spoke and talked to the State, your memory about what happened was better now than it was seven and a half months ago?

[S.]: Yeah, it had just happened. I was going through trauma.

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[DEFENSE COUNSEL]: Okay. And then at some point in your conversation with the State on Sunday – let me back up. You just testified that you were the one closest to [Eddins] during the sleeping arrangement, is that correct?

[S.]: Yep.

[DEFENSE COUNSEL]: But when you spoke with the State on Sunday, you said that . . . your boyfriend at the time, he was the one closest to the defendant.

[S.]: That's not what I said.

[DEFENSE COUNSEL]: So the State got it wrong when they said that you indicated that [your boyfriend] was closest to [Eddins], is that correct?

[S.]: It could have been misunderstood.

During closing arguments, counsel for Eddins stated that none of S.'s "stories are consistent with each other" and that she "change[d] the order[] of the details."

Initially, we note that, although Eddins's counsel posited the existence of inconsistencies between the statements, neither of the statements was included in the record so that we are unable to fully evaluate Eddins's claim of error. *See Francis v. State*, 208 Md. App. 1, 25–26 (2012), *cert. denied*, 430 Md. 645 (2013) (affirming the trial court's denial of a defense motion for mistrial which had been grounded on the State's failure to disclose various prior inconsistent statements because appellate counsel failed to cite any part of the record that set forth those statements).

In reviewing the meager record before us, we note initially that a "remedy for a violation of the discovery rules 'is, in the first instance, within the sound discretion of the trial judge.'" *Raynor v. State*, 201 Md. App. 209, 227 (2011), *aff'd*, 440 Md. 71 (2014) (quoting *Williams v. State*, 364 Md. 160, 178 (2001)); *see* Rule 4-263(n). Rule 4-263, the Rule which governs discovery in the circuit courts, "does not require the court to take any action; it merely authorizes the court to act." *Raynor*, 201 Md. App. at 227 (quoting *Thomas v. State*, 397 Md. 557, 570 (2007)). In the exercise of such discretion, a trial judge is to consider "the reasons why the disclosure was not made," "the existence and amount of any prejudice to the opposing party," "the feasibility of curing any prejudice with a continuance," and "any other relevant circumstances." *Raynor*, 201 Md. App. at 228 (quoting *Thomas*, 397 Md. at 570–71).

In fashioning a sanction, "the court should impose the least severe sanction that is consistent with the purpose of the discovery rules," *Thomas*, 397 Md. at 571, which is "to

prevent a defendant from being surprised and to give a defendant sufficient time to prepare a defense[.]" *Jones v. State*, 132 Md. App. 657, 678, *cert. denied*, 360 Md. 487 (2000). Less severe sanctions to remedy a discovery violation may include the granting of a continuance and/or encouraging the surprised party to cross-examine witnesses about the newly revealed statements. *See Raynor*, 201 Md. App. at 229, 231. Although a court may order a mistrial for a discovery violation, doing so "is an extraordinary act which should only be granted if necessary to serve the ends of justice." *Id.* at 228 (quoting *Barrios v. State*, 118 Md. App. 384, 396–97 (1997)). A mistrial should only be granted "when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Burks v. State*, 96 Md. App. 173, 187, *cert. denied*, 332 Md. 381 (1993). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he was deprived of a fair trial." *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 595 (1989)). In the present case, Judge Rolle properly exercised his discretion in denying the motion for mistrial.

While Eddins contends that the State gained a tactical advantage by not immediately disclosing the alleged inconsistent statements and that the trial court's remedy of being able to talk to witnesses was inadequate, as he should have been given time to investigate "the new facts alleged," search for additional witnesses, "discuss these developments with" Eddins, "or adjust trial strategy accordingly," Judge Rolle's remedy was well within his discretion.

The circumstances surrounding the alleged discovery violation did not warrant the extraordinary remedy of mistrial, because the State did provide S.'s statements to Eddins's

counsel within a reasonable time after accessing them and Judge Rolle did give Eddins's counsel the opportunity to talk to other witnesses; Eddins, however, did not request a continuance to garner additional time to question witnesses, investigate, etc. Eddins also had the opportunity to impeach S. with any inconsistencies in the statements. As a result, a mistrial was not warranted. *See Raynor*, 201 Md. App. at 229–231.

In conclusion, for the reasons articulated above, we affirm the judgments of the Circuit Court.

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