Circuit Court for Montgomery County
Case No. C-15-CR-22-001048

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1461

September Term, 2024

CALLEN E. BAKER

v.

STATE OF MARYLAND

Wells, C.J.,
Reed,
Harrell, Glenn T. Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: April 24, 2026

A jury empaneled in the Circuit Court for Montgomery County convicted appellant, Callen E. Baker, and his co-defendant Zachary Ciccantelli, of 18 counts of first-degree assault, conspiracy to commit first-degree assault, use of a firearm in the commission of a felony, and reckless endangerment. The jury acquitted both defendants of conspiracy to commit first-degree murder. The court sentenced Baker to a total of 30 years' incarceration.

This appeal followed. Baker presents four questions for our review, which we have slightly rephrased:

I. Did the trial court abuse its discretion by refusing to propound the Witness Promised Benefit pattern jury instruction;

II. Did the trial court abuse its discretion by refusing to declare a mistrial in response to the State's closing argument;

III. Did the trial court abuse its discretion in denying Baker's request for a mistrial after the State's failure to disclose a recorded interview of a key witness until after the close of the State's case;

IV. Did the trial court abuse its discretion by precluding Baker from calling a witness?

For the reasons that follow, we hold the trial court did not abuse its discretion or otherwise err with respect to any of the issues Baker raises. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Underlying Facts

On March 1, 2022, a group of young men were filming a music video outside an apartment complex in Rockville, Maryland. At approximately 3:45 p.m., multiple gunshots rang out. No bullets struck anyone, but gunfire shattered windows and penetrated the walls

of nearby apartments where residents, including families with children, were going about their daily lives.

A bystander, Brandon Lee, testified that approximately twenty seconds before the shooting, he observed a male nearby talking on a phone as though on a FaceTime call. Lee then heard gunshots but did not observe the shooter. Officers from the Rockville City Police Department and Montgomery County Police Department responded. A firearms examiner later determined that twenty-one cartridge cases were recovered at the scene, fired from at least five different firearms, though only one firearm was recovered, which was inoperable.

Detective Ranae McEvoy, the lead detective, reviewed surveillance footage and observed a white vehicle speeding on Monroe Street near a school bus, captured the vehicle's tag, and observed a subject dressed in all black near the apartment's staircase running backwards toward the vehicle, with activated brake lights, which indicated a second person was inside the vehicle. This vehicle was a rental leased to Steven Verosto, who had a then-nineteen-year-old son, Alex Verosto ("Verosto").

Verosto, the State's key witness at trial, testified that he was childhood friends with Baker and reconnected with him in February 2022. Baker introduced Verosto to Ciccantelli before March 1, 2022. On the day of the shooting, Baker texted Verosto to meet up. Verosto drove the white rental car to a residence in Rockville where Baker, Ciccantelli, and a third male got into the car. The group made several stops during the day. At some point, Baker and Ciccantelli received a phone communication that appeared to anger them.

Later that afternoon, the men drove to Talbott Street, exited the vehicle, and told Verosto to sit in the backseat. The others put on ski masks and told Verosto to keep his head down. They drove for several minutes and stopped. Verosto testified that he saw Ciccantelli open the car door, get out, and run approximately fifteen feet, followed by the sound of gunshots.

Additional evidence corroborated Verosto's account. Phone records confirmed communications among Baker, Ciccantelli, and an individual named Felton on March 1, 2022, and a stipulation established that Verosto, Baker, and Ciccantelli were together that day until approximately 2:15 p.m. Baker's phone records contained references to 703 Monroe Street (where the apartment complex was located) and to firearms. Detectives also recovered a communication from April 29, 2022, in which Baker and Ciccantelli argued about the return of a firearm that Ciccantelli said he was throwing into a lake.

B. Detective McEvoy's Interviews of Verosto

On July 14, 2022, Detective McEvoy met with both Verosto and his father at the Frederick County Sheriff's Office and conducted a recorded interview, which was introduced at trial as State's Exhibit 317-A-H. It was undisputed that during this interview, Detective McEvoy pressed Verosto to be more forthcoming about the events of March 1, 2022.

On August 4, 2022, Detective McEvoy conducted another in-person meeting with Verosto, which was recorded on body-worn camera but never disclosed to the defense. The existence of this recording came to light unexpectedly during Verosto's cross-examination

at trial, when he testified that he had met with detectives for approximately an hour at a second interview and that the interview was also recorded. Defense counsel raised the issue at the bench, and the prosecutor initially said the recording did not exist.

After further investigation, it was confirmed that a body-worn camera recording of the August 4 interview did exist. The State obtained a copy and disclosed it to defense counsel. Neither Ciccantelli nor Baker alleged intentional withholding of the recording by the prosecutors, and the trial court found the State was "just as surprised as everybody else" by its existence.

The August 4 recording contained statements by Detective McEvoy confronting Verosto about inconsistencies between his July 14 interview and evidence recovered from his phone. The recording also contained statements by the detective that could be interpreted as communicating an expectation of favorable treatment in exchange for cooperation—such as telling Verosto that if he continued to cooperate, the detective would work with the State's Attorney to keep him as a witness rather than a defendant.

After reviewing the August 4 recording, Baker moved for a mistrial. He argued if the undisclosed interview video had been disclosed in a timely manner, he would have called Verosto a "liar" in his opening statement and his cross-examinations would have been different. The trial court recognized a discovery error had occurred but asked whether there was any cure short of a mistrial.

The court denied the mistrial request, finding the content of the August 4 interview was "very similar" to Verosto's other interviews and that the prejudice could be cured. The

court offered several remedies: additional time to prepare; the opportunity to recross-examine both Verosto and Detective McEvoy; admission of favorable portions of the August 4 video through Detective McEvoy; curative instructions; and additional leeway in closing argument. Baker declined the opportunity to take additional time and declined to recall Verosto for cross-examination. The State re-opened its case and introduced a redacted version of the August 4 recording through Detective McEvoy.

After the discovery dispute, co-defendant Ciccantelli sought to call James DeLorenzo, an attorney who represented Verosto, as a defense witness. Baker joined in the request. Counsel proffered that DeLorenzo would testify that he had asked the prosecutor for "assurances" that Verosto would not be charged if he cooperated, that the prosecutor initially said she could not provide such assurances, but that she then made a follow-up comment suggesting the fact Verosto had not already been charged "should mean something." Counsel conceded, however, that Verosto himself appeared unaware of his attorney's conversation with the State.

The trial court declined to permit DeLorenzo to testify, finding it would be "improper" and agreeing with the State that the proffered testimony risked implicating attorney-client privilege and was of limited relevance given Verosto's own unawareness of DeLorenzo's actions.

Baker also sought to have the court instruct the jury pursuant to Maryland Pattern Jury Instruction 3:13 ("MPJI-Cr 3:13"), the Witness Promised Benefit instruction. The instruction provides the jury may consider the testimony of a witness who testifies as a

result of "a benefit" or "an expectation of a benefit," but "should consider such testimony with caution." The State opposed the instruction. The trial court acknowledged "that there was some inducement that was there" but concluded the evidence was "not strong enough to generate this instruction." The court determined the general Maryland Pattern Jury Instruction 3:10 ("MPJI-Cr 3:10"), Credibility of Witnesses, adequately covered the issue.

C. Closing Argument Dispute

During the State's rebuttal closing argument, the prosecutor made several remarks that defense counsel challenged. Among other things, the prosecutor characterized the defense as "disingenuous" for asking the jury to speculate about evidence not in the record; said that the State "stands behind the truth"; stated that when "the law is not on your side" and "the facts are not on your side . . . then you sling mud"; accused counsel of suggesting there was "dignity" in giving the defendants "a pass"; and characterized a defense argument as a "scare tactic."

The court sustained an objection to the "pass" comment, struck it, and directed the jury to disregard it. Defense counsel, with the court's permission, reserved additional objections until after the argument concluded. The court then denied the motion for mistrial, finding the "combined effect" of the remarks did not "come[] anywhere close" to warranting a mistrial. Upon defense request, the court delivered a curative instruction reminding the jury that arguments of counsel are not evidence and directing them to "disregard any language about giving [the defendants] a pass."

The jury convicted Baker of all charges for assault, conspiracy to commit assault,

use of a firearm, and reckless endangerment, and acquitted him (along with Ciccantelli) of conspiracy to commit first-degree murder. Baker was sentenced to a total of 30 years' incarceration. This appeal follows.

STANDARD OF REVIEW

The applicable standards of review are woven into the discussion of each issue below. Generally, however, we review a trial court's denial of a motion for mistrial, its decisions regarding jury instructions, and its rulings on the admissibility of evidence for abuse of discretion. *Carter v. State*, 366 Md. 574, 589 (2001) ("[A] decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be disturbed on appeal unless there is abuse of discretion."); *Stabb v. State*, 423 Md. 454, 465 (2011) ("A Maryland appellate court reviews a trial court's refusal or giving of a jury instruction under the abuse of discretion standard."); *Akers v. State*, 490 Md. 1, 24–25 (2025) ("[T]he trial judge's discretionary ruling of the admissibility of evidence under Rule 5-403 [ ] is subject to the abuse of discretion standard."). We exercise independent de novo review to determine whether a discovery violation occurred, though the remedy for any such violation remains within the sound discretion of the trial court. *Cole v. State*, 378 Md. 42, 56 (2003).

DISCUSSION

I. The Trial Court Did Not Err in Declining to Propound the Witness Promised Benefit Jury Instruction.

A. Parties' Contentions

Baker argues the trial court committed reversible error by refusing to propound the Witness Promised Benefit pattern jury instruction, MPJI-Cr 3:13. He contends the evidence at trial generated that instruction because the State's case depended on Verosto's credibility. Baker claims Verosto was not prosecuted in exchange for his cooperation. Baker emphasizes that MPJI-Cr 3:13 is qualitatively different from the general credibility instruction in MPJI-Cr 3:10, because MPJI-Cr 3:13 explicitly instructs the jury to treat the testimony of a witness who has received or expects a benefit "with caution," language absent from the general instruction. Baker relies on *United States v. Prawl*, 168 F.3d 622, 628–29 (2d Cir. 1999), and argues that the general credibility instruction fails to specifically alert the jury to the unique dangers of testimony by a cooperating witness. In his reply brief, Baker further argues that the error was not rendered harmless by his prior opportunity to attack Verosto's credibility, citing *Taylor v. Kentucky*, 436 U.S. 478, 488–89 (1978), for the proposition that arguments of counsel cannot be a substitute for jury instructions.

The State contends the Witness Promised Benefit instruction is not mandatory upon request where the trial court gives the general witness credibility instruction, relying on *Preston v. State*, 218 Md. App. 60, 73–74 (2014), *aff'd*, 444 Md. 67 (2015). The State argues the content of the requested instruction was fairly covered by other instructions addressing witness credibility, and that any error was harmless beyond a reasonable doubt because defense counsel exhaustively attacked Verosto's credibility throughout trial.

B. Analysis

Under Maryland Rule 4-325(c), "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." The rule further states, however, "[t]he court need not grant a requested instruction if the matter is fairly covered by instructions actually given." Md. Rule 4-325(c). *See also Preston*, 218 Md. App. at 73–74 ("[T]he decision whether to give the jury a particularized credibility instruction is left to the sound discretion of the trial judge.").

The general witness credibility instruction, MPJI-Cr 3:10, instructs the jury "[they] are the sole judge of whether a witness should be believed. [They] need not believe any witness, even if the testimony is uncontradicted. [They] may believe all, part, or none of the testimony of any witness."[1] MPJI-Cr 3:13, however, serves to caution the jury that

[1] MPJI-Cr 3:10 CREDIBILITY OF WITNESSES states in its entirety: "You are the sole judge of whether a witness should be believed. In making this decision, you may apply your own common sense and life experiences.

In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as:

(1) the witness's behavior on the stand and manner of testifying;
(2) whether the witness appeared to be telling the truth;
(3) the witness's opportunity to see or hear the things about which testimony was given;
(4) the accuracy of the witness's memory;
(5) whether the witness has a motive not to tell the truth;

when a witness testifies for the State after receiving or expecting some form of favorable treatment, the jury should weigh that testimony carefully because the witness may have been motivated to shape his account in order to secure that advantage.[2]

We agree with the State that the trial court did not err. This Court's decision in *Preston* is instructive. In *Preston*, the defendant was convicted of first-degree murder based in part on the testimony of an eyewitness for whom the State had provided rent-free protective housing. 218 Md. App. at 63–64. The defense sought the MPJI-Cr 3:13 instruction, arguing the timing of the witness's cooperation permitted the inference that she cooperated in expectation of a benefit. *Id.* at 64, 67. The trial court declined to give the instruction, and this Court affirmed, holding as a matter of first impression that the decision

(6) whether the witness has an interest in the outcome of the case;
(7) whether the witness's testimony was consistent;
(8) whether other evidence that you believe supported or contradicted the witness's testimony;
(9) whether and the extent to which the witness's testimony in court differed from the statements made by the witness on any previous occasion; and
(10) whether the witness has a bias or prejudice.

You are the sole judge of whether a witness should be believed. You need not believe any witness, even if the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness."

[2] MPJI-Cr 3:13 WITNESS PROMISED BENEFIT states in its entirety: "You may consider the testimony of a witness who [testifies] [has provided evidence] for the State as a result of [a plea agreement] [a promise that he will not be prosecuted] [a financial benefit] [a benefit] [an expectation of a benefit]. However, you should consider such testimony with caution, because the testimony may have been influenced by a desire to gain [leniency] [freedom] [a financial benefit] [a benefit] by testifying against the defendant."

whether to give MPJI-Cr 3:13 is committed to the sound discretion of the trial judge. *Id.* at 73–74. We explained that the general credibility instructions, which address the possibility of bias and motive to testify falsely, ordinarily cover the same concerns the Witness Promised Benefit instruction is designed to address. *Id.*

In this case, the trial court acknowledged "there was some inducement" in the evidence but found the inducement was not "strong enough to generate [a MPJI-Cr 3:13] instruction." This determination was reasonable. Although Detective McEvoy's statements to Verosto could be interpreted as encouraging cooperation with the suggestion that doing so might forestall criminal charges, the evidence did not establish a concrete arrangement between Verosto and the State. And both Verosto and Detective McEvoy denied the existence of any formal benefit, promise, or agreement. Verosto testified that he never asked for immunity or a written agreement, and the detective consistently maintained she did not have the authority to make such promises.

Importantly, as we held in *Preston*, the substance of MPJI-Cr 3:13 was fairly covered by the general credibility instruction in MPJI-Cr 3:10, which directed the jury to consider, among other factors, a witness's possible motives or interests in testifying. As this Court recognized in *Preston*, Baker's counsel retained the ability to argue to the jury that Verosto's potential motive for cooperating should affect the weight given to his testimony. Defense counsel here made extensive use of that opportunity, attacking Verosto's credibility at length during opening statement, cross-examination, and closing

argument. Indeed, Baker told the jury during his opening statement that Verosto's "story" had "contradictions" and that Verosto had a "motive to lie."

Baker's reliance on *Prawl*, 168 F.3d at 628–29, is misplaced. That case involved a plea agreement—an undisputed benefit covered by MPJI-Cr 3:13—which does not exist here, particularly where Verosto himself testified that he did not seek a benefit from the State and the detective testified that she made no promises as well.

Furthermore, even assuming the failure to give the particularized instruction was error, we are satisfied beyond a reasonable doubt that it was harmless. The defense exhaustively cross-examined Verosto regarding his interactions with the detective and prosecutor, his concern about being charged, and his understanding of any assurances. The jury heard this evidence directly, evaluated Verosto's demeanor and credibility over multiple days of cross-examination, and was instructed through MPJI-Cr 3:10 to consider Verosto's possible motives. Under these circumstances, the absence of MPJI-Cr 3:13 did not influence the verdict.

II. The Trial Court Did Not Abuse its Discretion in Denying Baker's Motion for Mistrial Based on the State's Rebuttal Closing Argument.

A. Parties' Contentions

Baker contends the trial court abused its discretion by refusing to declare a mistrial in response to the State's rebuttal closing argument, which he characterizes as repeatedly disparaging defense counsel. Among the challenged remarks, Baker highlights the State's accusations that defense counsel was "disingenuous," that the State "stands behind the truth," that defense counsel was "sling[ing] mud," and that counsel was asking the jury to

give defendants "a pass." Baker argues the combined effect of these remarks warrants reversal, relying on *Beads v. State*, 422 Md. 1, 8, 11 (2011), and *Carrero-Vasquez v. State*, 210 Md. App. 504 (2013).

The State argues the remarks were a permissible response to defense counsel's own arguments, that the trial court took appropriate curative action, and that Baker cannot demonstrate irreparable prejudice. The State also contends that challenges to the "stands behind the truth" and "sling mud" comments were not preserved because no contemporaneous objection was made.

B. Analysis

Generally speaking, "attorneys are afforded great leeway in presenting closing arguments to the jury[,]" and a prosecutor has considerable latitude to comment on the evidence and to draw reasonable inferences for the jury. *Degren v. State*, 352 Md. 400, 429–30 (1999). The Supreme Court of Maryland further detailed:

> Despite the wide latitude afforded [to] attorneys in closing arguments, there are limits in place to protect a defendant's right to a fair trial. Not every improper remark, however, necessarily mandates reversal, and "[w]hat exceeds the limits of permissible comment depends on the facts in each case." [*Wilhelm v. State*, 272 Md. 404, 415 (1974)]. We have said that **"[r]eversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused."** [*Jones v. State*, 310 Md. 569, 580 (1987)]. This determination of whether the prosecutor's comments were prejudicial or simply rhetorical flourish lies within the sound discretion of the trial court. On review, an appellate court should not reverse the trial court unless that court clearly abused the exercise of its discretion and prejudiced the accused.

Degren, 352 Md. at 430–31 (some internal citations omitted) (emphasis supplied). Moreover, improper remarks during closing argument also do not necessarily require reversal where the trial court takes curative action. *See Reidy v. State*, 8 Md. App. 169, 175–76 (1969) (collecting cases holding that curative instructions render improper prosecutorial comments harmless).

We need not resolve whether every challenged remark was preserved or, if preserved, improper, because we conclude that even assuming preservation and impropriety, the trial court did not abuse its discretion in denying the mistrial motion. Examining the challenged remarks in context, the State's rebuttal was largely responsive to the arguments defense counsel advanced. Baker's counsel and co-defendant's counsel made extensive use of thematic quotes, referenced transcripts not in evidence, characterized the State's case in pointed terms, and invoked the gravity of the jury's decision. The State's response—cautioning the jury against speculating about evidence not in the record, noting the State's reliance on the admitted evidence, and characterizing defense arguments as rhetorical rather than evidence-based—fell within the broad leeway afforded to prosecutors in closing argument. *See Degren*, 352 Md. at 431–32.

To the extent any individual remark approached the line of impropriety—particularly the "pass" comment—the trial court took prompt curative action. The court sustained the objection, struck the comment, and instructed the jury to disregard it. Before deliberations, the court delivered an additional curative instruction reminding the jury that arguments of counsel are not evidence and again directing the jury to disregard any mention

of giving the defendants "a pass." Juries are presumed to follow the instructions of the court, and the curative instructions here were sufficient to address any prejudice.

Considering the totality of the circumstances, including the responsive nature of the remarks, the prompt curative instructions, and the strength of the evidence against Baker, we cannot say the trial court abused its discretion in denying the mistrial motion.

III. The Trial Court Did Not Abuse Its Discretion in Denying Baker's Motion for Mistrial Arising from the Belated Disclosure of Verosto's Third Interview.

A. Parties' Contentions

Baker contends the State violated its discovery obligations under Maryland Rule 4-263 by failing to disclose the August 4, 2022, body-worn camera recording of Detective McEvoy's interview with Verosto until after the close of the State's case-in-chief. He argues the late disclosure irreparably prejudiced the defense because it deprived him of the ability to use the recording during his opening statement and initial cross-examinations of Verosto and Detective McEvoy. Baker emphasizes that his opening statement "would have been different" and that no remedy short of a mistrial could cure the prejudice. In his reply brief, Baker argues it is incongruous for the law to caution against second-guessing an attorney's mid-trial tactical decisions while simultaneously rejecting trial counsel's assessment that a mistrial was necessary.

The State concedes a discovery violation occurred but contends the trial court properly exercised its discretion in fashioning a remedy short of a mistrial. The State emphasizes that the content of the August 4 recording was "very similar" to Verosto's other

interviews, that the court offered numerous remedies including additional preparation time and the opportunity to recross-examine witnesses, and that Baker voluntarily declined several of those remedies.

B. Analysis

Maryland Rule 4-263(d) imposes an affirmative obligation on the State to disclose—without the necessity of a request—various categories of material including written and recorded witness statements, impeachment information, and exculpatory evidence.[3] The Rule also imposes a continuing duty to disclose. Md. Rule 4-263(j) ("Each

[3] Md. Rule 4-263(d) states: "Without the necessity of a request, the State's Attorney shall provide to the defense:
(1) *Statements.* All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;
(2) *Criminal Record.* Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;
(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;
(4) *Prior Conduct.* All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);
(5) *Exculpatory Information.* All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly."). When a discovery violation occurs, Rule 4-263(n) provides the trial court with several possible remedies, including permitting additional discovery, striking testimony, granting a

(6) *Impeachment Information.* All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:
(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);
(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;
(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;
(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;
(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;
(F) the fact that the witness has taken but did not pass a polygraph examination; and
(G) the failure of the witness to identify the defendant or a co-defendant[.]"

continuance, prohibiting the introduction of the undisclosed evidence, granting a mistrial, or entering any other appropriate order.[4]

The remedy for a discovery violation is within the sound discretion of the court, however, "in fashioning a sanction, the court should impose the least severe sanction that is consistent with the purpose of the discovery rules." *Raynor v. State*, 201 Md. App. 209, 228 (2011). Discovery rules serve the purpose of providing the defendant with the "necessary time to prepare a full and adequate defense." *Id.* A mistrial is "an extraordinary act which should only be granted if necessary to serve the ends of justice." *Id.* (quoting *Barrios v. State*, 118 Md. App. 384, 396–97 (1997)). This Court has described a mistrial as so extreme that it is warranted only where "such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Choate v. State*, 214 Md. App. 118, 133 (2013) (citation omitted).

Further, a defendant who rejects a tailored remedy in pursuit of the more drastic sanction, such as a mistrial, bears the consequence of that strategic choice on appeal. *Raynor*, 201 Md. App. at 228 (quoting *Thomas v. State*, 397 Md. 557, 575 (2007)) ("[I]f a

[4] Md. Rule 4-263(n) states in its entirety: "If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike any or all testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court."

defendant declines a limited remedy that would serve the purpose of the discovery rules and instead seeks the greater windfall of an excessive sanction, the double or nothing gamble almost always yields 'nothing.'") (internal citation and quotations omitted).

We have no difficulty concluding, as both parties acknowledge, that the State's failure to disclose the August 4 recording of Verosto's interview constituted a violation of Md. Rule 4-263. The recording fell within multiple disclosure categories: it was a recorded statement of a witness relating to the charged offense, it contained impeachment material, and it included information about the relationship between the State and Verosto that could constitute an inducement for cooperation. *See* Md. Rule 4-263(d)(3)(C), (d)(5), (d)(6)(A)-(B). The critical question, however, remains whether the trial court abused its discretion in concluding that remedies short of a mistrial could cure any resulting prejudice. We hold it did not.

The record reveals a trial court that engaged thoughtfully with the substance of the undisclosed recording and conducted a careful, on-the-record assessment of whether the prejudice was remediable. After personally reviewing the August 4 video, the court observed the recording was "very similar to the first language that the detective used in the first interview" but acknowledged that it "maybe adds more to arguments that defense counsel can make." The court also noted the video revealed "it's not [Verosto] saying that he's afraid. It's really the detective telling [Verosto] he should be afraid. But [Verosto] says that his biggest concern is not being charged." This careful parsing of the recording's

content demonstrates the court did not simply gloss over the significance of the material but rather independently evaluated it before reaching its conclusion.

The court then turned to the appropriate framework for evaluating whether a mistrial was warranted. Quoting this Court's decision in *Mason v. State*, 258 Md. App. 266 (2023), the court stated: "for a judge to declare a mistrial it's tantamount to the captain ordering all hands to abandon ship. And I'm not prepared to do that right now." The court continued by asking the critical question from *Mason*: "Has the trial been thrown off balance by a patch of rough water or has it actually hit an iceberg? . . . Every mishap is not a catastrophe. Is the ship salvageable?" This framing reflects the court's understanding that a mistrial is an extreme sanction, to be imposed only when no lesser remedy will suffice. *See Choate*, 214 Md. App. at 133.

Importantly, the court did not stop at simply declining the mistrial. It actively probed whether the defense could identify the prejudice it claimed, asking counsel directly: "I didn't really hear—I mean, I heard counsel, defense counsel say that their openings would have been different, the cross would have been different. But what is the insurmountable prejudice?" This exchange confirms the court was actively engaging with the defense's claims rather than summarily rejecting them.

Baker's principal contention on appeal is that the late disclosure deprived him of the ability to use the undisclosed interview during his initial cross-examinations of Verosto and Detective McEvoy and that his opening statement "would have been different" had the video been timely disclosed. The specific difference Baker proffered at trial was that he

would have called Verosto a "liar" in his opening statement. But this contention is substantially undermined by the record. Even without knowledge of the undisclosed interview, Baker told the jury during his opening statement that Verosto's "story" had "contradictions," that Verosto had reason to "make up facts," and that "of course" Verosto had a "motive to lie." The difference between what Baker argued and what he says he would have argued is one of degree, not of kind. It does not establish the sort of irreparable prejudice that warrants the extraordinary remedy of a mistrial.

In his reply, Baker argues it is incongruous for the law to caution against second-guessing an attorney's mid-trial tactical decisions while simultaneously rejecting trial counsel's assessment that a mistrial was the only possible cure, citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984). But *Strickland*'s admonition against second-guessing counsel pertains to post-conviction claims of ineffective assistance of counsel—a distinct legal context. The question before us is not whether counsel's assessment was reasonable as a litigation strategy, but whether the trial court abused its discretion in determining the prejudice was curable. Those are different inquiries, and counsel's desire for a mistrial does not bind the court's independent assessment of whether one is required.

The court offered Baker and Ciccantelli an array of curative measures: additional time to prepare over the weekend, the opportunity to recross-examine both Verosto and Detective McEvoy, admission of favorable portions of the August 4 video through Detective McEvoy, curative instructions, and additional leeway in closing argument. Baker, like Ciccantelli, declined the opportunity to take additional preparation time and

declined to recall Verosto for cross-examination. That Baker chose not to avail himself of these remedies speaks to the actual degree of prejudice suffered and undercuts his claim that no cure short of a mistrial could suffice. *See Raynor*, 201 Md. App. at 228; *Silver v. State*, 420 Md. 415, 432–34 (2011) (holding defendant not prejudiced by mid-trial disclosure where defense was afforded time to review the material and the opportunity to examine witnesses).

Moreover, Baker had effectively cross-examined both Verosto and Detective McEvoy prior to receiving the August 4 recording, drawing out over multiple days that Verosto met with detectives and prosecutors on multiple occasions and still did not reveal all the details he testified to at trial. The court determined nothing in the August 4 recording was so dramatically different from the existing impeachment material as to render the trial fundamentally unfair.

When Baker argued during trial that the situation constituted "extreme prejudice" and "an iceberg," the court responded with a measured ruling:

> I certainly think that considering whether or not to grant a motion for a mistrial is within my discretion, and I've already said that I don't think that it rises to the level. I think that I can give you all an opportunity to address the issues. I mean, it's a horrible thing to come, and I'm really concerned about the jury as well because—but, you know, is it egregious prejudice? I think it can be cured. So I'm going to deny the request.

This ruling reflects the court's considered judgment that the prejudice, while real, was not irreparable—a determination well within its discretion.

In sum, the trial court's ruling reflects a careful, step-by-step analysis: the court reviewed the video, assessed its content against the existing record, identified the correct

legal standard, probed Baker's claim of prejudice, offered multiple curative measures, and ultimately concluded the trial remained "salvageable." This is precisely the kind of sound judicial discretion our precedents entrust to the trial court. We therefore affirm the denial of the mistrial motion on this ground.

IV. The Trial Court Did Not Err in Excluding DeLorenzo's Testimony.

A. Parties' Contentions

Baker contends the trial court violated his constitutional right to present a defense by precluding him from calling Verosto's attorney, James DeLorenzo, to testify about assurances DeLorenzo sought from the prosecutor on Verosto's behalf. Baker adopted the arguments made by co-defendant Ciccantelli on this issue pursuant to Maryland Rule 8-504(f). Ciccantelli argued the court should have at least heard from DeLorenzo outside the jury's presence before ruling to exclude his testimony, relying principally on *Kelly v. State*, 392 Md. 511 (2006).

The State contends DeLorenzo's proffered testimony was irrelevant because what mattered was Verosto's own understanding of any assurances—not his attorney's independent actions of which Verosto was unaware. The State further argues DeLorenzo's testimony would have included inadmissible hearsay and risked piercing attorney-client privilege.

B. Analysis

The right to present witnesses is a fundamental element of due process. *See Washington v. Texas*, 388 U.S. 14, 19 (1967). The United States Supreme Court has recognized the contours of this right, explaining:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. The right is a fundamental element of due process of law.

Id. Even so, "[t]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Wilson v. State*, 345 Md. 437, 449–50 (1997). The decision on whether to exclude evidence is ultimately left to the sound discretion of the trial court. *Akers v. State*, 490 Md. 1, 24–25 (2025).

Evidence is relevant if it is both material and probative. *Id.* at 25 (citing Md. Rule 5-401).[5] The Supreme Court of Maryland has recognized that trial courts may properly exclude defense evidence where its probative value is minimal, its nature is cumulative, and eliciting it would risk intrusion into privileged communications. *Peterson v. State*, 444 Md. 105, 155, 161 (2015).

[5] Under Md. Rule 5-401, "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

We discern no abuse of discretion here. The critical issue at trial was whether Verosto subjectively expected or understood that he was receiving a benefit for cooperating. What mattered for purposes of assessing Verosto's credibility was what Verosto himself knew, believed, and acted upon. Testimony about what DeLorenzo independently said to the prosecutor—without any evidence this was communicated back to Verosto—would not have made it any more or less probable that Verosto's trial testimony was influenced by an expectation of benefit.

Moreover, as the State argued and the trial court found, calling Verosto's attorney to testify about conversations that may have touched upon his client's legal situation created a substantial risk of piercing attorney-client privilege. *See* Md. Code Ann., Cts. & Jud. Proc. § 9-108;[6] *Peterson*, 444 Md. at 158, 161 (affirming preclusion of co-defendant's attorney as a witness where testimony risked intruding into privileged matters and had minimal probative value).

The reliance on *Kelly v. State*, 392 Md. 511 (2006), is misplaced. In *Kelly*, the trial court conducted a one-sided "pre-screening" of all defense witnesses to proffer the substance of their testimony, and then excluded the witnesses based on its own assessment of admissibility before any testimony was actually elicited and without requiring an objection from the State. *Id.* at 519–30. That is not what occurred here. Here, the State objected to the admission of DeLorenzo's testimony, the court considered the proffer, and

[6] Md. Code Ann., Cts. & Jud. Proc. § 9-108 states: "A person may not be compelled to testify in violation of the attorney-client privilege."

then the court ultimately concluded his testimony was of limited relevance and risked implicating attorney-client privilege. The trial court acted well within the bounds of its discretion.

CONCLUSION

For the foregoing reasons, we hold the Circuit Court for Montgomery County did not abuse its discretion or otherwise err with respect to any of the four issues raised by Baker on appeal. The trial court properly exercised its discretion in declining to propound the Witness Promised Benefit jury instruction, in denying the motion for mistrial based on the State's rebuttal closing argument, in denying the motion for mistrial arising from the belated discovery disclosure, and in excluding the proffered testimony of Verosto's attorney, DeLorenzo.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.