

Circuit Court for Montgomery County
Case No. C-15-CR-22-001050

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1555

September Term, 2024

ZACHARY CICCANTELLI

v.

STATE OF MARYLAND

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

JJ.

Opinion by Wells, C.J.

Filed: April 28, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

A jury empaneled in the Circuit Court for Montgomery County convicted appellant, 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 court sentenced him to 45 years' incarceration, followed by five years' supervised probation.

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

- I. Did the trial court abuse its discretion in denying Ciccantelli'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;
- II. Did the trial court abuse its discretion by refusing to propound the witness promised benefit pattern jury instruction;
- III. Did the trial court abuse its discretion by precluding Ciccantelli from calling a witness;
- IV. Did the trial court abuse its discretion by refusing to declare a mistrial in response to the State's closing argument?

We hold under the facts presented, the trial court: (1) did not err in denying Ciccantelli's request for a mistrial after the State failed to disclose in a more timely fashion a recorded witness interview; (2) did not err in denying Ciccantelli's request to propound the witness promised benefit pattern jury instruction; (3) did not err in precluding him from calling a witness' defense attorney as another witness; and (4) did not err in denying his request for a mistrial in response to comments the prosecutor made during closing argument. Accordingly, we 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 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, identified the vehicle's license tag number, and observed a subject dressed in all black near the apartment complex's staircase running toward the white vehicle. The vehicle's brake lights were on, indicating a second person was inside. The white car was a rental vehicle 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 Callen Baker (Ciccantelli’s co-defendant at trial), 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 him. 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, then heard 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 going to throw into a lake.

B. Detective McEvoy’s Interviews of Verosto

On July 14, 2022, Detective McEvoy met with 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 or prosecution. 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 another interview and that the interview was also recorded. Defense counsel raised the issue at the bench, and the prosecutor initially said Verosto must be mistaken as no such recording existed.

After further investigation, the State confirmed that a body-worn camera recording of the August 4 interview did exist. The State obtained a copy and gave it to defense counsel. Neither Ciccantelli nor Baker alleged the prosecutors intentionally withheld the recording, 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 consider him as a witness rather than a potential additional defendant.

After reviewing the August 4 recording, Ciccantelli moved for a mistrial, arguing his opening statement, cross-examination of Verosto, and cross-examination of Detective McEvoy all would have been materially different had the recording been disclosed before trial. The trial court recognized a discovery error had occurred but asked whether there was a cure short of a mistrial. Ciccantelli responded that he did not “want to even try,” and pressed for 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 any potential prejudice could be cured. The court offered Ciccantelli 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. Ciccantelli 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. Ciccantelli renewed his motion for mistrial twice more. The court denied both requests.

After the discovery dispute, Ciccantelli sought to call James DeLorenzo, an attorney who represented Verosto, as a defense witness. Ciccantelli’s 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 then followed up with a comment that the fact Verosto had not already been charged “should mean something.” Ciccantelli’s 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.

Ciccantelli 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”; said 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 a 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 Ciccantelli—and his co-defendant Baker—of all charges for assault, conspiracy to commit assault, firearm, and reckless endangerment, and acquitted them of conspiracy to commit first-degree murder. This appeal followed.

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 Abuse its Discretion in Denying Ciccantelli’s Motion for Mistrial.

A. Parties’ Contentions

Ciccantelli 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 opening statement and during his initial cross-

examinations of Verosto and Detective McEvoy. He contends no lesser remedy could cure the prejudice.

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 Ciccantelli declined all 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.¹ The Rule also imposes a continuing duty to disclose. Md. Rule 4-263(j) (“Each

¹ 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;

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

(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;

(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[.]”

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 continuance, prohibiting the introduction of the undisclosed evidence, granting a mistrial, or entering any other appropriate order.²

The remedy for a discovery violation lies 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 only warranted 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).

² Md. Rule 4-263(n) states: “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.”

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 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: (1) it was a recorded statement of a witness relating to the charged offense, (2) it contained impeachment material, and (3) 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, is whether the circuit 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 recorded 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 stating that *Mason* goes on to say that “what the crisis demands is a calming sense of balance,” and the court asks 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 insurmountable prejudice,” asking Ciccantelli’s 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? So, why don’t you outline that for me, [defense counsel]? What’s different?” This exchange confirms the court was actively engaging with the defense’s claim of prejudice rather than summarily rejecting it.

The court then offered Ciccantelli an array of curative measures. It noted both key witnesses, Detective McEvoy and Verosto, were available for recall. The court also offered to send the jury home for the weekend to give counsel additional time to prepare to cross-examine Verosto. Counsel declined and elected to proceed that day. The court further agreed to allow the defense to introduce favorable portions of the August 4 video, to recall Detective McEvoy for additional cross-examination, and to present a curative instruction to the jury explaining the belated disclosure. The court stated: “I think I would agree that the jury needs to kind of understand what happened.”

When Ciccantelli’s co-defendant, Baker, argued the situation constituted “extreme prejudice” and “an iceberg,” the court offered a measured response:

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. *See Silver v. State*, 420 Md. 415, 432–34 (2011) (holding defendant not prejudiced by mid-trial disclosure and denying a motion to strike where defense was afforded time to review the material and the opportunity to examine the late discovered documents).

That Ciccantelli declined the opportunity to take additional preparation time and declined to recall Verosto for further cross-examination speaks to the actual degree of

prejudice suffered. Ciccantelli’s voluntary choices to forgo remedies offered by the court undermine the argument that no cure short of a mistrial could suffice. Moreover, the defense had already effectively cross-examined both Verosto and Detective McEvoy prior to receiving the August 4 recording, drawing out that Verosto met with detectives and prosecutors on multiple occasions and still did not reveal all the details he testified to at trial. Ciccantelli’s counsel thoroughly explored Verosto’s credibility during cross-examination, and 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.

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 Ciccantelli’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.

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

A. Parties’ Contentions

Ciccantelli argues the trial court committed reversible error by refusing to propound MPJI-Cr 3:13, the witness promised benefit pattern jury instruction. He contends some evidence was generated to support the instruction, the instruction was not fairly covered by

the general credibility of witnesses instruction (MPJI-Cr 3:10), and the State improperly benefitted from the exclusion of the instruction.

The State contends the witness promised benefit instruction is not mandatory upon request where the trial court gives the general witness credibility instruction. The State argues the content of the requested instruction was fairly covered by other instructions addressing witness credibility, relying on *Preston v. State*, 218 Md. App. 60, 73–74 (2014), *aff'd*, 444 Md. 67 (2015). The State further contends 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.”).

MPJI-Cr 3:10 instructs the jury, in part, that “[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.”³ MPJI-Cr 3:13, however, serves to caution the jury that 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.⁴

³ 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;
- (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.”

⁴ MPJI-Cr 3:13 WITNESS PROMISED BENEFIT states in its entirety:

We agree with the State that the trial court did not err in declining to instruct the jury on MPJI-Cr 3:13. This Court’s decision in *Preston*, 218 Md. App. at 60, *aff’d*, 444 Md. at 67, 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. *Id.* at 63–64. The defense sought the witness promised benefit instruction in MPJI-Cr 3:13, arguing that the timing of the eyewitness’ cooperation with police—she had provided a taped statement identifying the defendant only after receiving assurances that she would be relocated—permitted the inference that she cooperated in expectation of a benefit. *Id.* at 64, 67. The trial court declined to give the instruction, finding it was “not satisfied that the testimony or evidence was as a result of” a promised benefit. *Id.* at 66. Instead, the court gave the general credibility instruction in MPJI-Cr 3:10, which directed the jury to consider whether any witness had a motive not to tell the truth or an interest in the outcome of the case. *Id.* at 75.

This Court affirmed, holding as a matter of first impression that the decision 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

“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.”

and motive to testify falsely, ordinarily cover the same concerns the witness promised benefit instruction is designed to address. *Id.* We further observed that the defendant had a full opportunity to cross-examine the witness about the timing and nature of the benefit she received and was free to argue in closing that the witness’s cooperation was motivated by the expectation of favorable treatment. *Id.* at 75. Additionally, the witness’ testimony was corroborated by a second independent eyewitness, diminishing any risk that the jury would base its verdict solely on potentially motivated testimony. *Id.* at 76. Under those circumstances, we held, the trial court did not abuse its discretion in declining to propound the particularized instruction. *Id.*

In this case, the trial court acknowledged “there was some inducement” in the evidence but concluded any 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 agreement between Verosto and the State. Further, 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’ possible motives or interests in testifying. Such,

Ciccantelli’s counsel could still argue to the jury that Verosto had a potential motive for cooperating and that such a possibility should affect how the jury viewed his credibility. Here, defense counsel did exactly that, attacking Verosto’s credibility at length during opening statement, cross-examination, and closing argument. The jury was well aware of the defense’s theory that Verosto’s credibility was suspect because, as the defense argued, he testified with an expectation of favorable treatment.

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 two 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.

III. The Trial Court Did Not Err in Excluding DeLorenzo’s Testimony.

A. Parties’ Contentions

Ciccantelli contends the trial court violated his Sixth Amendment and Article 21 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. He relies principally on *Kelly v. State*, 392 Md. 511 (2006), and argues

the court should have at least heard from DeLorenzo outside the jury’s presence before ruling to exclude his testimony.

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 the 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).

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.

Additionally, 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. § 9-108⁶; *Peterson*, 444 Md. at 158, 161 (affirming preclusion of co-defendant’s

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.”

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.”

attorney as a witness where testimony risked intruding into privileged matters and had minimal probative value).

Ciccantelli’s 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 in this case. Here, the State objected to the admission of DeLorenzo’s testimony, the court considered the proffer, and 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.

IV. The Trial Court Did Not Abuse its Discretion in Denying Ciccantelli’s Motion for Mistrial Based on the State’s Rebuttal Closing Argument.

A. Parties’ Contentions

Ciccantelli contends the State’s rebuttal closing argument improperly disparaged defense counsel through comments characterizing the defense as “disingenuous,” accusing counsel of “sling[ing] mud,” claiming the State “stands behind the truth,” accusing counsel of giving the defendants “a pass,” and characterizing a defense argument as a “scare tactic.” He argues the “combined effect” of these remarks warranted a mistrial.

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 Ciccantelli cannot demonstrate irreparable prejudice. The State also contends that certain challenges—

specifically 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.

Id. 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).

Examining the challenged remarks in context, the State’s rebuttal was largely responsive to the arguments defense counsel advanced. Ciccantelli’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 (comments by the prosecution, though “unprofessional and injudicious,” were nonetheless acceptable when made in response to defense counsel’s arguments).

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 Ciccantelli, we cannot say the trial court abused its discretion in denying the mistrial motion.

CONCLUSION

For the foregoing reasons, we hold that the Circuit Court for Montgomery County did not abuse its discretion or otherwise err with respect to any of the four issues raised by

Ciccantelli on appeal. The trial court properly exercised its discretion in denying the motion for mistrial arising from the belated discovery disclosure; declining to propound the witness promised benefit jury instruction; excluding the proffered testimony of Verosto's attorney, DeLorenzo; and denying the motion for mistrial based on the State's rebuttal closing argument.

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