

Circuit Court for Anne Arundel County
Case No. C-02-CR-23-000028

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1633

September Term, 2023

DEMONTE ERIC SMITH

v.

STATE OF MARYLAND

Leahy,
Shaw,
Tang,

JJ.

Opinion by Tang, J.

Filed: October 23, 2025

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

A jury in the Circuit Court for Anne Arundel County convicted Demonte Smith, the appellant, of various offenses arising from an altercation that led to the exchange of gunfire.

On appeal, the appellant presents the following questions for our review:

- I. Did the court err in denying the appellant’s motion to exclude testimony based on the State’s discovery violation?
- II. Did the jury render legally inconsistent verdicts?

For the reasons that follow, we shall affirm the judgments of the circuit court.

BACKGROUND

On December 8, 2022, the appellant was in his apartment building when Fred Cromartie pulled out a gun, hit the appellant, and demanded money. The appellant handed over his money and told Mr. Cromartie that he had nothing else to give him.

At that point, Jalen Hayes and another man, known only as “Sam,” approached and attempted to calm Mr. Cromartie. The appellant then left the apartment building, backpedaling through the parking lot with his hands up while Mr. Cromartie continued to point a gun at him. At some point, Mr. Cromartie struck him again and told the appellant that he was going to kill him.

The appellant and Mr. Cromartie then separated. The appellant obtained a gun from Sam, who had followed the appellant and Mr. Cromartie into the lot. Surveillance footage of the incident showed shots exchanged by Mr. Cromartie on one side of the parking lot and Mr. Hayes, and the appellant on the other side. According to the appellant, Mr. Cromartie was the first to open fire, and the appellant returned fire. The appellant then chased after Mr. Cromartie, shooting in his direction. The appellant testified that Mr.

Cromartie continued to point the gun at him. The appellant explained that he shot at Mr. Cromartie because he was trying to defend himself.

The appellant was arrested and charged with twelve counts: (1) attempted first-degree murder; (2) attempted second-degree murder; (3) first-degree assault; (4) second-degree assault; (5) reckless endangerment, (6) use of a firearm in the commission of a crime of violence; (7) possession of a regulated firearm with a felony conviction; (8) possession of a firearm after having been convicted of a crime of violence; (9) possession of a firearm after being convicted of a disqualifying crime; (10) wearing, carrying, or transporting a handgun; (11) carrying a loaded handgun on or about his person; and (12) conspiracy to commit first-degree murder.¹

Motion to Exclude Mr. Hayes’s Testimony

The *Hicks* date fell on July 16, 2023.² A jury trial was scheduled to commence on Tuesday, July 11, days before that date. In the months leading up to trial, the State attempted to interview Mr. Hayes, who was being held at a detention facility. On June 30, the State recorded an eight-minute interview with Mr. Hayes regarding the incident in question. However, the State did not disclose the recorded interview or Mr. Hayes’s cooperation to the appellant until protective custody for Mr. Hayes was arranged. Once Mr. Hayes was

¹ Mr. Hayes and Mr. Cromartie were also charged with various offenses.

² *Hicks* refers to *Hicks v. State*, 285 Md. 310 (1979), now codified in Md. Rule 4-271 and § 6-103 of the Criminal Procedure Article of the Maryland Code. *Hicks* requires that a criminal defendant be brought to trial within 180 days after the earlier of (1) the appearance of counsel, or (2) the first appearance of the defendant before the circuit court, unless good cause is shown for the delay. 285 Md. at 315–16.

placed in protective custody on July 7, the State provided defense counsel with the recorded statement on the evening of Sunday, July 9.

On Monday, July 10, the appellant filed a motion to exclude Mr. Hayes’s testimony, arguing that the State violated its discovery obligations under the Maryland Rules for its belated disclosure. The State opposed the motion.

The jury trial began as scheduled on Tuesday, July 11. The court heard arguments regarding the motion to exclude Mr. Hayes’s testimony. Defense counsel argued that Mr. Hayes was an important witness since he identified the appellant as being present at the scene. Counsel contended that the State’s prior knowledge of Mr. Hayes’s intention to testify, along with the recorded statement that was withheld for nine days before its disclosure, prejudiced the defense. Counsel argued that the delay left the defense with “extremely limited time” to investigate Mr. Hayes’s credibility and to determine if there was any impeachable evidence that it could use against him. The appellant opted not to postpone the trial due to the impending *Hicks* date.

The State provided an explanation for its delay in disclosing the information, indicating that its primary concern was Mr. Hayes’s safety. After hearing additional arguments, the court recessed for the day.

The next day, before the court gave its ruling on the motion, the State indicated that it had learned that Mr. Hayes had “an impeachable conviction” for possession with intent to distribute, and it disclosed this information to the defense once the State learned of it.

Ultimately, the court denied the motion. It explained:

The [Supreme Court of Maryland] has said that the—that exclusion of evidence for discovery violation is not a—distinction because it is the most drastic measure that can be imposed. And so the [c]ourt should fashion the least severe sanction. In this case, that would have been a postponement charged to the State. The [d]efendant was given the option of a postponement charged to the State. He elected not to avail himself of that option and the [c]ourt certainly understands that the Hicks deadline was quickly approaching and that is why he made that choice.

But given the choice that the [d]efendant made, the [c]ourt is not going to exclude this statement, particularly where as here is the [c]ourt’s understanding from the proffers yesterday, that the statement is 8 [sic] minutes in length, that the [d]efense did have all day on Monday to review that statement.

The court directed the State to place on the record the details of the cooperation agreement with Mr. Hayes “because the [d]efense is certainly entitled to know that and they are entitled to cross examine the witness with that information.” The State indicated that the agreement was that Mr. Hayes would testify truthfully in exchange to a plea to a “misdemeanor gun count,” among other terms.

The State expressed its intention to call Mr. Hayes as its first witness. The court stated that “if after hearing the testimony[,] the [d]efense needs additional time to prepare a cross-examination, I’m going to give them that.”

Trial

Mr. Hayes and the investigating detective testified in the State’s case. The State played the video of the altercation, which was admitted into evidence. Mr. Hayes identified himself, the appellant, Mr. Cromartie, and Sam in the video. Mr. Hayes testified that he saw Mr. Cromartie point the gun at the appellant and believed that Mr. Cromartie was robbing the appellant.

The detective testified that he interviewed the appellant about the incident. During the interview, which was also admitted into evidence, the appellant explained his encounter with Mr. Cromartie, that he obtained a gun from Sam, and that he fired it at Mr. Cromartie. The State entered other evidence, including a letter the appellant sent to the court in which he wrote that he was a victim of a robbery and had the right to defend himself and his property.

At the close of the State’s case, the court granted the appellant’s motion for judgment of acquittal as to the conspiracy to commit first-degree murder. The appellant testified in his defense. He acknowledged shooting at Mr. Cromartie, but he said that he was acting in self-defense. After the defense rested, the court gave jury instructions, including those on self-defense and the defense of duress.³

The jury was unable to reach a unanimous verdict as to first-degree assault, second-degree assault, or possession of a firearm in the commission of a crime of violence. The court declared a mistrial on these counts.⁴ The defense agreed to receive a partial verdict on the remaining counts.

³ The law recognizes certain defenses, such as self-defense and duress, as legal justification for criminal acts. *Johnson v. State*, 223 Md. App. 128, 146 (2015). Duress is a defense as to all crimes except taking the life of an innocent person. *Howell v. State*, 237 Md. App. 540, 559 (2018). Unlike self-defense, which can serve as either a perfect or imperfect defense, duress cannot serve to excuse intentional murder, attempted murder, or assault with intent to murder. *Madrid v. State*, 474 Md. 273, 333 (2021) (citation omitted). However, as with self-defense, “duress can serve as an imperfect defense, which although not a complete defense, can negate the malice and thus mitigate murder to voluntary manslaughter.” *Id.* (citation omitted).

⁴ The State elected not to retry the appellant on the counts and entered a *nolle prosequi* to these counts at sentencing.

The jury acquitted the appellant of attempted first-degree murder, attempted second-degree murder, and attempted voluntary manslaughter. The jury found the appellant guilty of reckless endangerment; possession of a firearm after being convicted of a disqualifying crime;⁵ wearing, carrying, or transporting a handgun on his person; and carrying a loaded handgun on his person.

We supply additional facts below as necessary below.

DISCUSSION

I.

Motion to Exclude Mr. Hayes’s Testimony

The appellant argues that the circuit court erred in denying his motion to exclude Mr. Hayes’s testimony. He maintains that the State violated the discovery rules by failing to promptly disclose Mr. Hayes’s statement and its intention to call him as a witness at trial. He argues that the court abused its discretion by not excluding Mr. Hayes’s testimony as a sanction for the discovery violation. He further asserts that reversal is necessary because the error was not harmless.

Maryland Rule 4-263 states, in pertinent part, that the State must disclose to the defense the name and telephone number of each witness the State intends to call at trial under subsection (d)(3); information that tends to impeach a State’s witness under

⁵ The parties agreed to include the firearm offense under Count 9 in the verdict sheet, but not the other firearm offenses under Counts 7 and 8. The appellant agreed that if the jury found him guilty of the firearm offense under Count 9, he would also be considered guilty of the other two firearm offenses under Counts 7 and 8.

subsection (d)(6); and information regarding the pretrial identification of the defendant by a State’s witness under subsection (d)(7)(B). Ordinarily, such information must be provided “within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c).” Md. Rule 4-263(h)(1). In addition, the State has a continuing obligation to supplement discoverable information “promptly.” Md. Rule 4-263(j). The primary purpose of the discovery rule is to protect the defendant from surprise and to assist the defendant in preparing his defense. *Alarcon-Ozoria v. State*, 477 Md. 75, 101 (2021).

If the State fails to meet its discovery obligations, the court may order the State “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 [State] from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances.” Md. Rule 4-263(n). “The decision as to which remedy or sanction to impose generally rests within the broad discretion of the trial court.” *Williams v. State*, 416 Md. 670, 698 (2010). “This discretion extends to deciding whether to grant or deny a motion to disqualify a witness from testifying based upon a party’s failure to comply with discovery obligations.” *Correll v. State*, 215 Md. App. 483, 512 (2013) (citing Md. Rule 4-263(n)).

When exercising its discretion, a court should consider “(1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other

relevant circumstances.” *State v. Graham*, 233 Md. App. 439, 457 (2017) (citation omitted). “[T]he court should impose the least severe sanction that is consistent with the purpose of the discovery rules, . . . which is to give a defendant the necessary time to prepare a full and adequate defense.” *Id.* at 459 (internal quotations and citations omitted). “The rule does not require the court to take any particular action *or any action at all.*” *Alarcon-Ozoria*, 477 Md. at 108 (citation omitted). A judge abuses his discretion in fashioning a remedy when his sanction is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *King v. State*, 407 Md. 682, 697 (2009) (citation omitted).

In this case, the court did not expressly determine that the State had committed a discovery violation. However, a remark made on the record implied that the court believed a violation had occurred: “What happened here is [the State] had information on June the 30th that was then disclosed over a week later.”

Assuming the State’s disclosure did constitute a discovery violation, we are not convinced that the court abused its discretion by allowing Mr. Hayes to testify. The court heard the State’s reason for the delayed disclosure (to ensure Mr. Hayes’s safety before disclosing his cooperation) and noted the length of Mr. Hayes’s recorded statement, which was eight minutes long. Additionally, the court considered the feasibility of addressing any prejudice to the appellant with a continuance. *See Graham*, 233 Md. App. at 457.

The court recognized that the exclusion of evidence due to a discovery violation is the most severe measure it could impose, and it aimed to implement the least harsh

sanction. The appellant chose not to postpone the trial date due to the impending *Hicks* date. Although the court understood this choice, it decided against excluding Mr. Hayes’s testimony, noting that his recorded statement was only eight minutes long and that the defense had all day on Monday, July 11, to review it before trial.

Recognizing that Mr. Hayes would be the State’s first witness, the court indicated that if defense counsel required more time to prepare for cross-examination after hearing Mr. Hayes’s testimony, the court would permit that. On this record, we cannot conclude that the court abused its discretion in denying the appellant’s request to exclude Mr. Hayes’s testimony, even if the State violated its discovery obligations.

The appellant cites *Breakfield v. State*, 195 Md. App. 377 (2010), to support his argument that the court should have excluded Mr. Hayes’s testimony. There, defense counsel disclosed the names of three witnesses for the first time during *voir dire* on the first day of trial. *Id.* at 390. The trial had previously been rescheduled at least twice and defense counsel had ample opportunity to provide names of the witnesses before trial. *Id.* The trial court excluded all three of the witnesses’ testimony as a discovery sanction. *Id.* This Court affirmed, explaining that “[a]lthough preventing all witnesses from testifying was a harsh sanction for violation of the discovery rules, Rule 4-263 makes plain that defendants may not wait until trial to disclose their evidence, and if they do, the trial court has authority to exclude such evidence from the case.” *Id.* at 391.

The appellant cites *Middleton v. State*, 49 Md. App. 286 (1981), for additional support. In *Middleton*, the defense proffered to the court after the jury was selected and

sworn that defense counsel had discovered a previously unknown alibi witness. *Id.* at 288. It was determined that a juror knew the prospective witness. *Id.* The State asserted that, had it known that the juror knew the witness, it would have moved to strike her. *Id.* The court refused to allow the witness to testify. *Id.* at 289. On appeal, the defendants claimed that this ruling deprived them of a fair and impartial trial. *Id.* After considering various factors, this Court held that the amount of prejudice resulting from the failure to disclose the witness until the first day of trial was significant. *Id.* at 290. Had the witness been allowed to testify, “the State would have been deprived of an opportunity to interview her and to investigate the veracity of her proposed testimony.” *Id.* “More importantly, it would have been denied an opportunity to strike a member of the jury who acknowledged that she was a friend of the prospective witness.” *Id.*

Neither of these cases persuade us that the court abused its discretion by allowing Mr. Hayes to testify. Unlike in the cases of *Breakfield* and *Middleton*, Mr. Hayes was not disclosed as a witness on the day of trial. The State provided Mr. Hayes’s eight-minute recorded statement at a time that allowed the defense a full day to review the recording. In this statement, Mr. Hayes identified the appellant as being present at the scene, a fact the appellant had already acknowledged in a recorded statement given to the investigating detective. Moreover, the alleged prejudice in this case did not reach the level seen in *Middleton*, where the aggrieved party (the State) was completely deprived of the opportunity to learn about the witness’s testimony and assess her credibility. In this case, Mr. Hayes’s statement had been recorded and shared with the defense prior to the trial.

Regarding the ability to investigate the credibility of Mr. Hayes’s statement, the State disclosed that he had a cooperation agreement with the State for his testimony and had a conviction for an impeachable offense. To alleviate any prejudice to the defense, the court allowed the defense time to prepare for cross-examination after Mr. Hayes’s direct examination. We see no abuse of discretion in the way the court fashioned the remedy.⁶

II.

Legal Consistency of the Verdicts

The appellant argues that his convictions are legally inconsistent because when the jury found that he acted with perfect self-defense and thereby acquitted him of the homicide offenses, it must necessarily have also found that he acted under duress, which is a complete defense to the crimes for which he was convicted. He argues that because the elements of perfect self-defense subsume the elements of duress, it was legally inconsistent for the jury to find that he acted in perfect self-defense without also finding that he acted under duress. He explains: “duress is a lesser included defense of perfect self-defense. So, having acquitted [the appellant] of the homicide counts based on perfect self-defense, the jury must also have acquitted him of the remaining charges, based on duress.” Accordingly, the appellant contends that his convictions should be reversed.

The appellant did not preserve this issue for appellate review. To preserve for review an issue of allegedly inconsistent verdicts, “a defendant in a criminal trial by jury must object to the allegedly inconsistent verdicts before the verdicts become final and the trial

⁶ In light of the foregoing, we need not address the harmless error argument.

court discharges the jury.” *Givens v. State*, 449 Md. 433, 438 (2016); accord *Travis v. State*, 218 Md. App. 410, 452 (2014). When the court took the verdicts, defense counsel did not object to any inconsistency before the jury was discharged. It was not until the jury was discharged that the appellant filed a motion for a new trial in the circuit court. By that time, it was too late for the court to send the jury back to resolve the allegedly inconsistent verdicts, and the purpose of the preservation requirement—to allow the court to correct any error in the proceedings—was thwarted. *Givens*, 449 Md. at 487.

In the alternative, the appellant maintains that his failure to preserve does not preclude our review under the plain error doctrine. We undertake plain error review only when the error is “compelling, extraordinary, exceptional or fundamental” to assure the defendant a fair trial. *Conyers v. State*, 345 Md. 525, 563 (1997) (internal quotations and citation omitted). Consequently, review under the plain error doctrine has always been and continues to be a “rare, rare phenomenon.” *Hicks v. State*, 189 Md. App. 112, 130 (2009) (citation omitted).

The appellant claims that the court impermissibly permitted the jury to return legally inconsistent verdicts and that this alleged error was clear and obvious. We disagree that the alleged error was clear and obvious. “[T]he rule against legally inconsistent verdicts is intended to protect the criminal defendant” and, therefore, “[t]he choice of whether to object to inconsistent verdicts belongs to the defendant alone.” *Givens*, 449 Md. at 476 (citation omitted). When a jury returns inconsistent verdicts of conviction and acquittal, “[t]he verdict of acquittal is frequently returned in the interest of lenity and actually is a

windfall for the defendant.” *Travis*, 218 Md. App. at 452. Thus, the court “may not, *sua sponte*, send the jury back to resolve the inconsistency, because it is the defendant who is entitled, should he [or she] so wish, to accept the benefit of the inconsistent acquittal.” *Givens*, 449 Md. at 460 (quoting *Tate v. State*, 182 Md. App. 114, 135 (2008)). Accordingly, we decline to exercise our plenary discretion to review for plain error. *See, e.g., Hicks*, 189 Md. App. at 129–30 (declining to review unpreserved challenge to an allegedly inconsistent verdict under plain error doctrine).

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