UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1144

September Term, 2015

QIANA L. JOHNSON

v.

STATE OF MARYLAND

Nazarian,
Reed,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: May 13, 2016

Qiana Johnson was accused, as part of a larger scheme, of working in tandem to target a vacant property, generate a fraudulent deed, use the fraudulent deed to effectuate the sale of the property, and pocket the proceeds. At trial, one of Ms. Johnson's accomplices testified against her as a condition of her plea bargain; the other accomplice had already begun her jail sentence by the time of Ms. Johnson's indictment. A jury in the Circuit Court for Prince George's County found Ms. Johnson guilty of theft over $100,000 and conspiracy to commit theft over $100,000, with the purchaser as the victim of both counts, and acquitted Ms. Johnson of her other eight charges. On appeal, Ms. Johnson challenges the circuit court's handling of an alleged discovery violation, the scope of the State's cross-examination and rebuttal arguments, and an omitted jury instruction. We find no error and affirm.

I. BACKGROUND

In the summer of 2013**,** Lieutenant Charles Duelley of the Prince George's County (the "County") Police Department began investigating allegations that vacant townhomes were being rented illegally. The investigation focused initially on Shannon Lee (also known as Shannon Blake and Shannon Bondoc), and police executed three search and seizure warrants for Ms. Lee's home, car, and post office box. The results of those searches led police to a residence in Upper Marlboro (the "Property").

According to the deed registered with County's land recordation department (the "Deed"), Shamika Staggs owned the Property. The Deed, dated April 17, 2013, showed

that the Property had been conveyed to Ms. Staggs by Angela McCallister,[1] and bore the signatures of David Clark, the Personal Representative of Ms. McCallister's estate, his daughter, Jane Owens, a notary public, and Laura Miles, an attorney. Lt. Duelley telephoned Mr. Clark, an Alabama resident, who told him that after Ms. McCallister's death, he transferred the keys and actual deed to Bank of America to cover the outstanding mortgage on the Property, and that the signature on the Deed purporting to be his was forged. Ms. Owens told him that her notary stamp appeared without her authorization and that her signature was forged. And Ms. Miles confirmed that her signature had been forged as well; according to Lt. Duelley, it appeared to have been scanned from another document and transferred onto the Deed.

On September 12, 2013, an entity called Metro DC II, LLC ("Metro") purchased the Property for $238,000. The proceeds were deposited into a bank account jointly owned by Ms. Johnson and Ms. Staggs at PNC Bank in Upper Marlboro, and later transferred into Ms. Johnson's personal account. Although the police suspected, based on information discovered during the executions of search warrants for Ms. Lee's properties, that Ms. Johnson was involved, the police did not establish probable cause to arrest Ms. Johnson until February 2014, when they obtained the PNC bank records detailing the activity on the joint account.

[1] The Deed purported to convey the Property to Ms. Staggs as an inheritance gift, so Ms. Staggs appeared to take ownership of the Property at no cost.

On October 7, 2014, Ms. Johnson was indicted on ten counts[2] and on April 23, 2015, a jury convicted Ms. Johnson of theft over $100,000 from Metro and conspiracy to commit theft over $100,000 from Metro. She filed a timely notice of appeal.

II. DISCUSSION

Ms. Johnson states four Questions Presented[3] that really boil down to three arguments: *first*, the circuit court abused its discretion in failing to remedy an alleged discovery violation; *second*, the court erred in allowing the State to cross-examine Ms.

[2] The counts were theft over $100,000 from the estate of Ms. McCallister; conspiracy to commit theft over $100,000 from the same estate; forgery of private documents; conspiracy to forge private documents; forgery to issue false documents; conspiracy to issue false documents; false entry in a public record; conspiracy to place false entries in a public record; theft over $100,000 from Metro; and conspiracy to commit theft over $100,000 from Metro.

[3] In her brief, Ms. Johnson phrased the issues as follows:

> I. Did the trial and administrative courts abuse their discretion by denying defense counsel's motion for a continuance where the prosecutor failed to disclose the substance of the co-defendant's oral statements?
>
> II. Did the trial court abuse its discretion by failing to curtail the co-defendant's testimony or declare a mistrial when she testified beyond the scope of discovery?
>
> III. Did the trial court err by permitting the State to exceed the scope of defense counsel's direct examination of the co-defendant and then to present a rebuttal case based on information that the State improperly elicited?
>
> IV. Did the trial court commit plain error by failing to read the required definition of deception in the pattern jury instruction for theft by deception?

Staggs beyond the scope of direct examination, and then erred by permitting the State to present a rebuttal witness based on information solicited during that cross-examination; and *third*, the court committed plain error by not instructing the jury as to the definition of "deception." We disagree, and find no error in the circuit court's decision.

A. There Was No Discovery Violation To Remedy.

Maryland Rule 4-263(d)(1) requires the State to produce "[a]ll 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." (Emphasis added.) The Rules define "oral statement" as "the *substance of a statement* of any kind by that person, whether or not reflected in an existing writing or recording." Md. Rule 4-263(b)(3) (emphasis added). Neither the Rules nor any Maryland statute or case define "co-defendant."

The threshold question is whether Ms. Staggs was Ms. Johnson's co-defendant, and the answer to that question defines what discovery the State owed the defense. If Ms. Staggs was not a co-defendant, and merely a witness for the State, the discovery rules only require disclosure of her written statements, as opposed to the written *and* oral statements due from a co-defendant. *See* Md. Rule 4-263(d)(1), (3)(C). On these facts, we think Ms. Staggs probably wasn't Ms. Johnson's co-defendant,[4] but because the State never raised

[4] Ms. Staggs's and Ms. Johnson's involvement in the same scheme doesn't automatically make them co-defendants, as the parties seem to have assumed here. Beyond the facts, we consider the nature of the charging documents and the timing of each party's indictment and trial.

(continued…)

this issue at trial, we will assume for the purposes of the discovery rules that Ms. Staggs and Ms. Johnson were co-defendants, as the parties and court did at trial.

The defense complained at trial that Ms. Johnson was denied discovery, most notably the details of what Ms. Staggs said during her plea negotiation. She initially sought this information in the form of the prosecutor's notes taken during the negotiation, but the trial court correctly denied this request because the prosecutor's notes qualified as attorney work product. *See* Md. Rule 4-263(b)(6), (g)(1) (excluding attorney work product from the list of discoverable written statements and listing work product as generally undiscoverable). The defense then asked for a more comprehensive proffer of Ms. Staggs's anticipated testimony, including details of what Ms. Staggs would say about her and Ms. Johnson's respective roles in the alleged theft scheme. The State insisted that defense counsel had been given every document and a proffer of every oral statement to which the

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Ms. Staggs was indicted on January 2, 2014, and her plea hearing occurred on September 26, 2014, at which time Ms. Staggs accepted a reduced sentence with no incarceration in exchange for her future testimony against Ms. Johnson. Ms. Johnson was indicted on October 7, 2014 and tried in April 2015. They were charged in different documents and given separate trials from the start, and their crimes differed as well: Ms. Staggs was charged with theft and forgery, but not with any of the conspiracy crimes with which Ms. Johnson was charged.

At trial, defense counsel admitted that "they're not charged in co-defendant number" and scrambled to piece together why *the State* deemed Ms. Staggs to be a co-defendant. At the motions hearing, which occurred on the first day of the trial, defense counsel still hadn't entertained Ms. Staggs as a co-defendant, despite arguing she was due all oral statements in discovery: "I really wasn't notified that [Ms. Staggs] was a co-defendant." While this timeline is consistent with other cases in which a conspirator or accomplice was not also a co-defendant, *see, e.g.*, *Whitehead v. State*, 54 Md. App. 428, 439-40 (1983), we will proceed under the same assumptions as the parties and the court did at trial.

defense was entitled, including a proffer as to the substance of Ms. Staggs's anticipated testimony, as set forth in two emails that were shared with the defense not-quite-three weeks before trial.[5] The first email, sent by Ms. Staggs to Ms. Johnson on December 21, 2012 read:

> Hey If u cant do it just let me know cause ill ask [someone else] to help us search for a rental home. I just know how slow [the other person] moves and we have to be out of our apt soon!! I would love a big home like yours!! how much do you pay again?

Ms. Johnson replied on December 24, 2012:

> I can help you Shamika however Im very busy at work today. I told you before that I think you guys should try to own vs renting!!Girl I pay $1100 for my home and [Ms. Lee] only pays $1300 for that big ass home!!!! Girl we will NEVER rent again!!!! [Ms. Lee] and I can help you guys get started but its going to cost. Remember my Aunt that passed away a few years ago ? you may not because we wasn't on speaking terms but I'm thinking of renting that home out soon. I just have to get everything in order. or I may just sell it because it reminds me so much of her and my granny, I hate even going in there!!! I may need you help by putting it in your name because we have so many homes in our name that if we do decide to sell them Uncle Sam will eat me alive at the end of the year. I will look out for you and give you a few dollars but out of whatever I give you , you will have to pay taxes on it at the end of the year when you file your taxes… but ill keep you posted.. We aren't sure yet. Just in the beginning process.

During discovery, the State produced the email chain between Ms. Staggs and Ms. Johnson, the charging documents for Ms. Staggs and Ms. Johnson (and Ms. Lee), Ms.

[5] The State sent the email chain to defense counsel on April 2, but defense counsel didn't open the document until April 18, three days before trial.

Staggs's plea agreement, the fraudulent deeds, and the bank records for the joint PNC account. The defense took the position, however, that the State had not disclosed the substance of Ms. Staggs's testimony, and at the start of the trial, moved for a continuance on the ground that counsel had "no idea what [Ms. Staggs is] going to say." The State responded:

> Ultimately, there's a property that was vacant. The owner passed away unexpectedly. The personal representative of the estate didn't have insurance money or anything to cover the cost of the mortgage. He lived in Alabama. He was the father of the decedent.
>
> The property was sitting vacant. There was a deed filed in Land Records with the personal representative's signature and notary and attorney, all of which were forged signatures. The witnesses would testify all of the signatures are forged. There were four documents. The signatures were forged. They placed it in the name of Shamika Staggs, which is the witness we're talking about. Ms. Staggs and Ms. Johnson went down town and did a closing on the property selling it to a third party and the proceeds of that sale went into Ms. Johnson's account. Actually, the witnesses from the closing company will say that the proceeds were set only to go into Ms. Johnson's account and then they said no, we can't do that. You have to have Ms. Staggs on there as well because she was party to the sale.
>
> Ms. Staggs's testimony is purely that she contacted Ms. Johnson with the intent of trying to rent the property, which is in the email. There is some email correspondence that I have provided to [defense counsel]. The email correspondence is from Ms. Staggs to Ms. Johnson saying we're going to try and rent the place. And Ms. Johnson says I want you to help me out with this property that belongs to my aunt. That's the substance of her testimony and then she went through the rest of it. It is all consistent.

The trial judge denied the request for a continuance. The defense pressed the issue further, though, so the trial judge referred the issue to the administrative judge. After

hearing argument, the administrative judge sided with the State, noting that "[t]he State is only required to give you the substance of the statements. They're not required to give you word-for-word. Just the substance of the statements."

The defense claimed, and argues now, that the email was "so limited [that] there's no way I can know that this is the substance of what [Ms. Staggs] is going to testify to." Md. Rule 4-263 requires disclosure of the substance of the testimony, and the email chain provided it: Ms. Johnson had a property that she wished to put into Ms. Staggs's name for tax purposes, after which she would sell the property and give Ms. Staggs a portion of the proceeds. From there, defense counsel had the fraudulent deeds with Ms. Staggs's name on them as the owner of the Property, the bank records of Ms. Johnson's and Ms. Staggs's joint account that showed transactions related to the sale of the Property, and the charging documents for Ms. Staggs. The documents shared in discovery, combined with the State's proffer that Ms. Staggs would testify consistently with those documents, disclosed the substance of Ms. Staggs's anticipated testimony, and so there was no discovery violation for the circuit court to remedy.

Ms. Johnson argues further that Ms. Staggs testified beyond the scope of what was revealed in discovery, and that the trial court abused its discretion both by not limiting Ms. Staggs's testimony and by denying her motion for a mistrial. Ms. Johnson takes issue with Ms. Staggs's testimony that the Property was transferred into Ms. Staggs's name via a forged deed and that she went with Ms. Johnson to transfer the Property to Metro, as well

as Ms. Staggs's testimony about activity on their joint bank account.[6] Ms. Johnson argues that this testimony "went far beyond the email" and that she "had no advance notice of this testimony," resulting in "unfair surprise" and her inability to "properly prepare her case." We disagree. It's true that the State told the defense that Ms. Staggs would testify based on the email chain, but the State also gave the more detailed proffer we described above. Proffers aside, Ms. Staggs's testimony could be inferred from the emails and the other documents disclosed in discovery—the email contemplated placing a house in Ms. Staggs's name and then conveying it by sale, then a few months later there are two fraudulent deeds followed by a sale of the house with the proceeds placed in a joint account. The discovery documents provided all of this information, and the State's proffers confirmed these points. We agree with the State that there was no element of unfair surprise, and no abuse of discretion in the court's decision to deny Ms. Johnson's motion for a mistrial. *See Kosmas v. State*, 316 Md. 587, 595 (1989) (granting a mistrial only where "prejudice to the defendant was so substantial that he was deprived of a fair trial").

[6] Ms. Johnson only objected to the first question in a string of many on these topics. The State argues that Ms. Johnson thus did not preserve this issue for review because the party must object to every question in order to properly preserve the issue, *see Brown v. State*, 90 Md. App. 220, 225 (1992), and Ms. Johnson only objected to Ms. Staggs stating that Ms. Johnson contacted her in May 2013 for further action on the scheme raised in their emails. We opt this time to proceed to the merits rather than parsing preservation that finely.

B. The State's Cross-Examination Of Ms. Staggs And Rebuttal Case Fell Within The Appropriate Scope.

1. The trial court did not err in allowing the State to cross-examine Ms. Staggs as it did.

Second, Ms. Johnson takes issue with the State's cross-examination of Ms. Staggs when the defense re-called her (she had testified previously as the State's chief witness). On direct, the defense impeached Ms. Staggs with questions about her 2006 conviction for uttering a fraudulent check, and then with a $4,800 check that Ms. Staggs had deposited into the joint account. Defense counsel asked about who wrote that check, confirmed that Ms. Staggs deposited the check, asked if she was aware the check had bounced and that the account had a negative balance, and questioned Ms. Staggs about any withdrawals she made from the joint account after depositing the $4,800 check. Defense counsel concluded with questions about the emails between Ms. Staggs and Ms. Johnson.

On cross, the State established, after a short string of questions, that Ms. Staggs met Ms. Lee through Ms. Johnson, and that although Ms. Lee and Ms. Johnson were close friends, Ms. Staggs wasn't close with either of them. At the end of this line of questioning, defense counsel objected to the questions as outside the scope of direct, but was overruled. The State then established that both Ms. Staggs and Ms. Johnson were signatories on the joint bank account, that Ms. Staggs opened that account the day after the closing with Metro, and that she did so at the direction of Ms. Johnson. Defense counsel again objected to the scope of the questioning, and again was overruled.

Then, the State addressed the same overdraft concern raised on direct:

> [THE STATE]: Now, [defense counsel] indicated at some point the bank account bounced; is that correct?
>
> [MS. STAGGS]: Correct.
>
> [THE STATE]: That was after [$]197,000[7] was put in, right?
>
> [MS. STAGGS]: Right.
>
> [THE STATE]: In fact, the reason it bounced is because $55,000 was wired to [Ms. Lee's boyfriend]; isn't that correct?
>
> [MS. STAGGS]: Correct.
>
> [THE STATE]: That was done on September 17th, 2013, right?
>
> [MS. STAGGS]: Right.
>
> [THE STATE]: That was a few days after that closing, correct?
>
> [MS. STAGGS]: Correct.
>
> [THE STATE]: Then in addition to that [$]55,000 that bounced or that went from the account, another [$]126,000 was also transferred on September 17th; isn't that correct?
>
> [MS. STAGGS]: Correct.
>
> [THE STATE]: That went to a bank account of Qiana Johnson, correct?
>
> [MS. STAGGS]: Correct.

[7] The sale price of the house minus the costs left a profit of $197,000.

[THE STATE]: You weren't on that bank account with her, were you?

[MS. STAGGS]: No.

[THE STATE]: You didn't see any of that $126,000, did you?

[MS. STAGGS]: No.

Without objection,[8] the State transitioned to questions regarding the emails between Ms. Staggs and Ms. Johnson, eventually asking:

[THE STATE]: More specifically, the subject of this email when you spoke with [Ms. Johnson] was how to transfer the property and not pay taxes on it, correct?

[MS. STAGGS]: Correct.

[THE STATE]: The two of you agreed to do that, correct?

[MS. STAGGS]: Correct.

[THE STATE]: For [Ms. Johnson] to not pay taxes, correct?

[MS. STAGGS]: Correct.

[THE STATE]: Then [Ms. Johnson] got [$]126,000 into her account out of the PNC [joint] account after the fact, correct?

[MS. STAGGS]: Correct.

[8] Again, the State argues that Ms. Johnson did not preserve this issue for review, or at least greatly limited the reviewable issues by not objecting to every question of which she now complains. And again, rather than working through whether or to what extent the defense's objections did or didn't preserve different topics in the absence of a continuing objection, we will proceed to the merits.

> [THE STATE]: You two agreed to that beforehand; is that correct?
>
> [MS. STAGGS]: Correct.
>
> [DEFENSE COUNSEL]: Your Honor, all of this is beyond the scope, and it was all covered yesterday. I didn't go into that. So, I'm objecting and move to strike.
>
> [THE STATE]: That's all I have, Judge.

Ms. Johnson contends that the trial court abused its discretion in admitting the above testimony, particularly the court's acquiescence to questions regarding the $126,000 transfer. And she's right that cross-examination generally is limited to matters brought up on direct examination and the credibility of a witness. *Jackson v. State*, 132 Md. App. 467, 480 (2000) (citing Md. Rule 5-611(b)). Nevertheless, the Rules shall "not [be] applied to limit cross examination of the witness to specific details brought out on direct examination 'but permits full inquiry of the subject matter.'" *Id.* at 481 (quoting *Hickey v. Kendall*, 111 Md. App. 577, 615 (1996), *aff'd sub nom. Kendall v. Nationwide Ins. Co.*, 348 Md. 157 (1997)). Further, a cross-examiner is free to

> elucidate, modify, explain, contradict, or rebut testimony given in chief. It is also proper to . . . bring out the relevant remainder or whole of any conversation, transaction, or statement brought out on direct questioning. Finally, . . . one should be allowed to cross-examine in order to determine the reasons for acts or statements referred to on direct examination.

Ashton v. State, 185 Md. App. 607, 621-22 (2009) (quoting *Smallwood v. State*, 320 Md. 300, 307 (1990)). "The scope of cross-examination is within the sound discretion of the trial court and ordinarily will not be disturbed unless there is an abuse of discretion." *Jackson*, 132 Md. App. at 481 (quoting *Simpson v. State*, 121 Md. App. 263, 283 (1998)).

We agree with the State that its entire line of questioning fell within the scope of the issues raised on direct examination, and thus was permissible. On direct, defense counsel asked if Ms. Staggs knew the joint account was overdrawn when she deposited the $4,800 check and if Ms. Staggs made any subsequent withdrawals from that account. On cross, the State sought to explain how the account became overdrawn by asking about the two transactions (on the same day) that caused the account balance to go negative: the $55,000 transfer to Ms. Lee's boyfriend and the $126,000 transfer to Ms. Johnson's personal account.

Whether defense counsel ever brought up the $126,000 wire transfer on direct is not the proper question. Instead, we look to the relationship between the testimony at issue and the testimony elicited on direct examination. The State's questions related to the issue of how the account came to be overdrawn, a subject that had been explored on direct examination. *See Ashton*, 185 Md. App. at 621-22 (permitting cross-examiner "to bring out the relevant remainder or whole of any . . . transaction . . . brought out on direct"). We see no abuse of discretion in the court's decision to overrule the defense's objections.

2. The rebuttal case was appropriate.

After the cross-examination discussed above, the State conducted a re-direct and questioned Ms. Staggs about the $4,800 check that posted on December 19, and about Ms. Staggs's withdrawals of $2,000 and $1,000 within days of the $4,800 deposit. Defense counsel also asked about several charges made on the joint account. Then on re-cross, the State established that Ms. Staggs did not make the $126,000 transfer from the joint account. On re-re-direct examination, defense counsel asked Ms. Staggs if she received any money

from the $126,000 transaction, to which Ms. Staggs said she didn't, and if Ms. Staggs and Ms. Lee "approached Ms. Johnson under the guise of an investment," to which Ms. Staggs said "[a]bsolutely not."

The defense rested, and the State noted that it would re-call Lt. Duelley, who had testified during the State's case-in-chief, on rebuttal. Ms. Johnson argues that the court abused its discretion by allowing the State to present a rebuttal case that was based on the allegedly impermissible testimony—information regarding the $126,000 wire transfer—elicited from Ms. Staggs during the defense's case-in-chief. Rebuttal evidence is appropriate to explain, reply to, or contradict "any new matter that has been brought into the case by the defense." *Huffington v. State*, 295 Md. 1, 14 (1982). The trial court has discretion to decide whether proffered testimony is proper rebuttal evidence, and we will only disturb the court's decision upon a showing that the testimony is "both 'manifestly wrong and substantially injurious.'" *Thomas v. State*, 301 Md. 294, 309 (1984) (quoting *Huffington*, 295 Md. at 14).

The defense objected, and in response, the State proffered that Lt. Duelley would testify about the investigation of the $126,000 transfer. Defense counsel responded that "[t]here were no questions regarding the transfer. I never asked anything about it," to which the State replied, "I think her entire defense was dealing with that particular account."

The State argued that Ms. Johnson made the $126,000 transfer to her personal account, while the defense aimed to show that it was Ms. Staggs who made the transactions and who somehow ended up with some of the $126,000 after it was transferred. The State

justified its rebuttal by explaining that defense counsel "suggest[ed] that Ms. Staggs got a portion of that $126,000," but that the State had bank records to show that the entire $126,000 went directly into Ms. Johnson's personal account. Lieutenant Duelley, during his investigation into the theft scheme, obtained a copy of Ms. Johnson's Navy Federal Credit Union bank records[9] detailing all transactions on her personal account, and testified that the records showed the $126,000 going solely into Ms. Johnson's account. We agree with the State that the defense's case hinged on the $126,000 transfer, which constituted a "new matter" as it was presented as the defense's theory. The defense asked Ms. Staggs about numerous transactions on the joint account, and these questions opened the door for the rebuttal testimony about the one transaction in particular.

Even assuming that Lieutenant Duelley's testimony was not introduced in response to a new matter raised by the defense, we are not convinced that admission of the rebuttal testimony was "manifestly wrong and substantially injurious." *See id.* at 309 (quoting *Huffington*, 295 Md. at 14). Again, the defense opened the door for the State to contradict its theory. Ms. Johnson seems to argue that she was substantially injured by the fact that the State was able to end the trial on its "strongest piece of evidence," then rely on the rebuttal testimony in its closing arguments. But if, as we have found, there was no error in admitting that testimony, the State was allowed to rely on that testimony in closing.

[9] The bank records provided in the State's case-in-chief detailed activity on the joint account at PNC Bank.

Ms. Johnson also alleges that she was not provided the bank records during discovery, and was prejudiced by having to review them on the fly in order to cross-examine Lieutenant Duelley. But as the State explained, the full 177-page document had been provided to Ms. Johnson's former trial counsel, and had been admitted during Ms. Johnson's prior trial a couple months back. The State offered to reduce its argument to a single page of the records, and the court offered to give counsel a few minutes to review the records, but counsel declined both offers and proceeded.

We see no prejudice. In *Thomas*, the Court of Appeals distinguished rebuttal testimony of cumulative evidence from that of "additional, different, and independent fact or circumstance upon which the jury could premise a finding of guilt," *id.* at 309 (quoting *Huffington*, 295 Md. at 16), and at most, this testimony falls into the former category, since Lt. Duelley had testified during the State's case-in-chief that Ms. Johnson wired $126,000 from the joint account to her personal account. It may not have been necessary to the State's case, but we discern no error in the court's decision to allow the State to present it under these circumstances.

C. Plain Error Review Of The Omitted Jury Instruction Is Not Warranted.

Finally, Ms. Johnson asks us to undertake plain error review of the court's decision not to read the portion of a jury instruction that defined "deception" before submitting to the jury charges that involved "deception" as a requisite element. At the close of arguments, defense counsel stated that she had reviewed the proposed jury instructions and was given the opportunity to propose changes. After amending, the judge read the

instructions to the jury, the defense did not object to the instructions as delivered by the court.

The trial court provided the following jury instruction on theft, both in open court and in writing:

> The defendant is charged with the crime of theft. In order to convict the defendant of theft, the State must prove:
>
> (1) that the defendant willfully or knowingly obtained control over someone else's property;
> (2) that the defendant willfully or knowingly used deception;
> (3) that the defendant had the purpose of depriving the owner of the property; and
> (4) that the value of the property was over $100,000.

See Maryland Criminal Pattern Jury Instruction 4:32.1. The instruction as provided delivered all of the elements of the crime, but omitted six legal definitions that are offered in the full version of the jury instruction. Ms. Johnson argues that although five of the six offered definitions appear in brackets in the full text, and are thus optional, the definition of "deception"[10] is not in brackets, and therefore the judge was required to provide it. We disagree that this omission warrants plain error review, which we reserve for only the most

[10] Maryland Criminal Pattern Jury Instruction 4:32.1 defines "deception" as follows:

> A person uses deception when [he] [she] knows or is practically certain that [he] [she] is creating or confirming a false impression without believing it to be true, or fails to correct such an impression once created or confirmed, or prevents the correct information from being acquired. Deception does not include puffing, immaterial statements, and exaggerations unlikely to deceive ordinary persons.

"compelling, extraordinary, [or] exceptional" cases. *Robinson v. State*, 410 Md. 91, 111 (2009) (quoting *Rubin v. State*, 325 Md. 552, 588 (1992)); *see also Martin v. State*, 165 Md. App. 189, 196, 198 (2005) (reserving plain error review for "blockbuster errors" and noting that "[t]he plain error hurdle, high in all events, nowhere looms larger than in the context of alleged instructional errors" (internal quotations and citations omitted)) and *Morris v. State*, 153 Md. App. 480, 507 (2003) (noting that plain error review is "a rare, rare phenomenon").

The court provided an accurate statement of the law that included each element of the charge. *See Tetso v. State*, 205 Md. App. 334, 406 (2012) (declining to exercise plain error review when the jury instruction, although a departure from the text of the pattern jury instruction, was nonetheless an accurate statement of the law). Ms. Johnson has not cited any authority to support her contention that the trial court was *required* to provide the definition of "deception." Moreover, the word "deception" is well-understood and its meaning is neither ambiguous nor difficult for people of ordinary intelligence to apply.

Ms. Johnson argues that the jury's confusion manifested itself in two factual inconsistencies in the verdict. *First*, the jury convicted Ms. Johnson of theft, which required a finding that Ms. Johnson used deception to steal from Metro, but the jury found Ms. Johnson not guilty of forging the deed or make the false entry with the Land Records office. We disagree that this outcome necessarily flows from a misunderstanding of the meaning of "deception." The jury could readily have believed that Ms. Johnson did not actually forge the Deed or submit any public records herself: Ms. Lee's computer contained files regarding the Property and the fraudulent Deed, the Deed bore Ms. Staggs's

name, and Ms. Johnson herself suggested at trial that Ms. Staggs was the one who traveled to the Land Records office. We obviously don't know precisely what the jury thought, but the evidence adduced at trial supported the jury's disparate verdicts on different counts.

Second, the jury found Ms. Johnson guilty of theft and conspiracy to commit theft with regard to the sale of the Property from Ms. Staggs to Metro, but found Ms. Johnson not guilty of theft and conspiracy to commit theft as to the transfer from Ms. McAllister to Ms. Staggs. Ms. Johnson attributes this verdict to the jury's misunderstanding of the law, claiming that "[i]f the jury believed Ms. Johnson was not guilty of the earlier transactions—the deceptive acts involving the deed [transfer from Ms. McAllister to Ms. Staggs]—it made little sense for it to find her guilty of the later transaction when the property was sold." But the jury didn't believe Ms. Johnson was not guilty of that first transfer, as gleamed from two handwritten notes to the judge and a corresponding handwritten entry on the verdict sheet.

The jury's actual confusion was first expressed in a handwritten note submitted during deliberations from the foreperson to the judge. The note asked, in relevant part, "Can you be an accomplice to conspiracy?" and the judge wrote back, "Please read my instructions and consider each charge individually." Those instructions included Maryland Criminal Pattern Jury Instruction 6:00: Accomplice Liability, and were delivered as follows:

> The defendant may be guilty of crimes of theft over $100,000, forgery, and uttering a counterfeit document as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of crimes of theft over $100,000, forgery, and uttering a

> counterfeit documents as an accomplice, the State must prove that the crimes occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a primary actor in the crime that she was ready, willing, and able to lend support, if needed.

The jury's foreperson then submitted to the judge a handwritten letter stating, "We have reached an unanimous decision that she is an accomplice as to count one,[11]" and the letter was signed and dated by the foreperson. Consequently, the verdict sheet indicates, in handwriting, the jury's intention to convict her for a crime that wasn't charged: Between the verdict sheet's questions regarding the charges for theft over $100,000 from the estate and conspiracy to commit theft over $100,000 from the estate, it reads, in handwritten pencil, "Accomplice to theft over $100,000 __X__ Guilty." The State, however, had not charged her as an accomplice, and the trial judge entered the verdict of not guilty for the theft and conspiracy charges relating to the first transfer of the Property.

To the extent there was any confusion in the minds of the jury as it rendered the verdict, that confusion was resolved in Ms. Johnson's favor. We see no error that justifies plain error review.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[11] Count One stated: "Do you find the Defendant, Qiana Johnson, Not Guilty or Guilty of theft over $100,000 from the Estate of Angela McAllister?"