

Circuit Court for Washington County
Case No: C-21-CR-22-000388

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 2464

September Term, 2023

TIMOTHY BROWN

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 11, 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 Rule 1-104(a)(2)(B).

Following a jury trial in the Circuit Court for Washington County, appellant, Timothy Brown, who was detained at the Maryland Correctional Training Center, was convicted of possession of a weapon while in a place of confinement and possession of contraband while in a place of confinement. The court sentenced him to a total of four years of incarceration, consecutive to any other sentence he was serving.

On appeal, appellant presents the following question for this Court’s review:

Did the circuit court err in denying appellant’s motion for a continuance to obtain the employment record of the State’s sole witness?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND BACKGROUND

On June 29, 2022, the State charged appellant by criminal information with possession of a weapon while in a place of confinement and possession of contraband while in a place of confinement. The charges were based on his possession of a “club-style weapon consisting of an electric motor with rope attached to it.”

On September 27, 2022, appellant appeared before the circuit court and was advised of his right to counsel. On January 19, 2023, appellant appeared before the circuit court without counsel. He requested a postponement so that he could contact the Office of the Public Defender, and the court granted his request.

At a status hearing on June 20, 2023, defense counsel entered his appearance. At the next hearing on August 17, 2023, defense counsel requested a continuance of trial, explaining that, due to staffing issues, he had met with appellant for the first time that day. The court asked defense counsel if discovery was complete, and counsel responded that he

believed that it was, but “there may be some additional requests” to be made either to the Division or to the State. The circuit court granted the motion to continue the trial.

On November 9, 2023, defense counsel submitted a consent motion to continue the case for “at least 90 days” for two reasons: (1) so he could conduct an investigation and obtain additional relevant material for trial, and (2) because the assigned prosecutor was unavailable due to a scheduled out-of-state training that day. The court granted the consent motion and set the trial date for February 22, 2024.

On February 16, 2024, defense counsel filed a motion to continue the trial date of February 22, 2024, by at least 90 days. Counsel stated that “trial was previously continued at the request of [appellant] for the purpose of conducting an investigation regarding potential witnesses for the Defense and obtaining additional relevant evidentiary material in preparation for trial.” Counsel further advised that he “require[d] additional time to complete this investigation,” and “this continuance is made in the interest of justice.” The State opposed the motion to continue, and the court denied the motion.

On the day of trial, February 22, 2024, defense counsel renewed his motion to continue. In support of his motion, he explained that he was seeking “any material in terms of employment records or internal investigations regarding” the State’s sole fact witness. He argued that, pursuant to Md. Rule 4-263, the State was obligated to provide impeachment evidence about witnesses it intended to call, even absent a request from the defense, where that evidence was within the control of the State’s Attorney’s Office, or an office that reported to that Office in this case, which, he argued, included the Division of Corrections.

Defense counsel asserted that the Division of Corrections, specifically, the Division of Internal Investigations, reported to the State in this case because they conducted the investigation, filed the charges, and provided the discovery that the State provided to defense counsel. Defense counsel relied on the authority of *State v. Williams*, 392 Md. 194, 210 (2006), to argue that “[w]hen the core of the State’s argument rise[s] on the testimony of an essential witness, the State has a duty to discover anything, and everything, that concerns the witness’s credibility and, thus, the potential for impeachment.”

Defense counsel acknowledged that another option for obtaining impeachment evidence would be to seek it directly by subpoena to the Internal Investigation Division or the Division of Corrections. He indicated that, on the previous day, he had directed a subpoena to the Internal Investigations Division, and he had not yet received a response.

The State opposed the motion. It argued that the witness’s confidential personnel file that appellant was seeking was not within the scope of mandatory disclosures required by Md. Rule 4-263.

The court denied defense counsel’s motion, stating that both had the same opportunity to get the records through a subpoena, and the defendant had ample time to seek them. The court found “no good cause for a continuance at this late date.”

The State presented its case through the testimony of E. David Mola of the Maryland Correctional Training Center. Mr. Mola testified that, on May 13, 2022, he was working in his capacity as a sergeant overseeing housing units one and two and operating the metal detector. Mr. Mola observed appellant leave housing unit two and pass through the metal detector on his way to the dining hall. When appellant passed through the metal detector,

it alerted to the presence of a metal object. Mr. Mola instructed appellant to pass through the metal detector a second time, and again the metal detector alerted to a metal object on appellant’s person. Mr. Mola could not recall if he instructed appellant to pass through the metal detector a third time.

Mr. Mola escorted appellant to the nearest room, the dog training room, where he frisked appellant and “felt a hard object near his leg.” Mr. Mola could not recall which leg or where on appellant’s leg he felt the object. Mr. Mola instructed appellant to “pull his pants down,” and within appellant’s shorts, Mr. Mola found what he “believed to be a fan motor” that was hanging on a shoestring. In Mr. Mola’s experience, the type of object found on appellant could be used as a “flail type weapon” or a “swinging weapon.” The fan motor item was admitted into evidence as State’s Exhibit 1.

On cross-examination, defense counsel presented Mr. Mola with the report he wrote following his recovery of the weapon from appellant. The report stated that, after the metal detector alerted three times, Mr. Mola conducted a pat down, noticed the object in appellant’s right leg near the knee, and immediately handcuffed him. Only after he patted down appellant and handcuffed him did Mr. Mola take appellant into the nearby room. After viewing his report, Mr. Mola testified that he could not recall whether he discovered the object on appellant’s person when he frisked him or when appellant was in the room. Mr. Mola further testified that there was another person present when he searched appellant, but he did not reference that person in his report.

Appellant testified that he and Mr. Mola had “plenty” of previous interactions, including a previous interaction on the day of this incident, May 13, 2022. Approximately

20 minutes prior to dinner, appellant had been refused his mail during mail call because he did not have his ID card with him. He asked to speak to the sergeant on duty and was referred to Mr. Mola. After some “back and forth” with Mr. Mola, appellant was still unable to receive his mail, and he was upset. According to appellant, Mr. Mola said something disrespectful to him as he was walking back to his cell.

Appellant testified that the key to his cell was the metal item that had set off the metal detector alarm, and it had alerted only once. He said it was unusual that Mr. Mola was the only officer at the metal detector at that time; there usually were three to four officers present in the area for dinner service. After the alert sounded, Mr. Mola directed appellant to the side of the metal detector, handcuffed him, and brought him to the dog training room. Inside the room, Mr. Mola frisked appellant and found a key on his person. Mr. Mola left the room briefly. When Mr. Mola returned, he took appellant to lockup. Appellant was informed that he was taken to lockup because he had a weapon. Appellant denied that he had a weapon in his possession.

DISCUSSION

Appellant contends that the circuit court erred in denying his request to continue trial to allow him to obtain Mr. Mola’s personnel file. He argues that Mr. Mola’s personnel record was subject to mandatory disclosure by the State, and because the Division of Corrections reported to the State’s Attorney’s Office in this case, the State had constructive possession of the personnel file. Appellant argues that the circuit court’s finding that the State was not required under Md. Rule 4-263 to disclose Mr. Mola’s personnel file was error. Alternatively, he asserts that, even if it was solely his burden to seek the personnel

file, he was entitled to a continuance to obtain the file, and the circuit court abused its discretion in denying his motion to continue.

The State contends that the court properly exercised its discretion in denying appellant’s request for a continuance. The State asserts that it was not automatically required to obtain the confidential personnel file of a witness. It argues that discovery of confidential records requires that the defendant proffer that there is a reasonable possibility that a review of the records would reveal usable evidence, which did not occur here. Moreover, there was no evidence that the State had any knowledge of discoverable evidence in these records. Additionally, the State notes that appellant could have sought to secure Mr. Mola’s personnel file by timely subpoena, and the circuit court’s denial of his request for a continuance of trial to obtain that information was not an abuse of discretion, particularly when he already received multiple continuances.

We review a circuit court’s decision to deny a motion for a postponement of trial for abuse of discretion. *Adkins v. State*, 258 Md. App. 18, 35 (2023). An abuse of discretion occurs when “‘no reasonable person would take the view adopted by’ the trial court, ‘or when the court acts without reference to any guiding rules or principles.’” *Id.* (quoting *Kusi v. State*, 438 Md. 362, 386 (2014)). We reverse the circuit court’s decision denying a continuance “only in ‘exceptional circumstances where there was prejudicial error.’” *Id.* (quoting *Prince v. State*, 216 Md. App. 178, 203 (2014)).

Maryland Rule 4-263(c)(2) requires the State’s Attorney to disclose material and information “that are in the possession or control of the attorney, members of the attorney’s staff, or any other person who either reports regularly to the attorney’s office or has

reported to the attorney’s office in regard to the particular case.” The State shall provide to the defense “[a]ll material or information . . . that tends to impeach a State’s witness, including . . . evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608(b).” Md. Rule 4-263(d)(5). The State must also disclose all exculpatory and impeachment information. Rule 4-263(d)(5)-(6).

The State’s mandatory disclosure obligation applies when it is established that exculpatory or impeachment material is “‘in the possession or control’ of the State’s Attorney” or a person who reported to the Office of the State’s Attorney in the particular case. *Alarcon-Ozoria v. State*, 477 Md. 75, 100 (2021) (quoting Md. Rule 4-263(c)(2)) (holding that the State’s mandatory disclosure obligation did not encompass a jail call recording in the possession of a state correctional facility that did not participate in the investigation or prosecution of the case). The Supreme Court of Maryland has noted that “the right to discovery is not unlimited,” and “the underlying purpose of Md. Rule 4-263 does not warrant extending the obligation of due diligence to materials beyond the grasp of the State’s Attorney.” *Id.* at 101-02.

Appellant relies on *Williams*, 392 Md. at 199-200, in support of his argument that the State was obligated to disclose all material related to Mr. Mola’s credibility and potential for impeachment, which included his employment records. In that case, a registered police informant who was known to another attorney in the State’s Attorney’s Office and members of the Baltimore City Police Department, but unknown to the prosecutor in the case, testified that he had not been promised any benefit from the State, and had not asked for anything in exchange for his testimony. *Id.* A case file in an earlier

case showed that the police informant had requested leniency in exchange for his cooperation with the police. *Id.* at 201. After learning of the informant’s history with the State’s Attorney’s Office, the defendant filed a postconviction petition, arguing that this newly discovered evidence was material, and the State’s failure to disclose it was prejudicial. *Id.* at 202. The Supreme Court of Maryland held that the State had violated its discovery obligation by failing to provide material to the defendant that was in the possession or knowledge of any prosecutor in the State’s Attorney’s Office, and the State had failed to fulfill its duty to disclose the potential impeachment information. *Id.* at 210.

Here, unlike *Williams*, there was no indication that Mr. Mola’s personnel record was in the possession of the State. The State’s disclosure obligation encompasses those materials in its possession and does not include a duty to locate potentially useful evidence for the defense. *See Alarcon-Ozoria*, 477 Md. at 103 (State’s Attorney does not have an obligation to obtain evidence that may be material to the case unless the State’s Attorney was “*at least made aware*” of the existence of the evidence); *Derr v. State*, 434 Md. 88, 124 (2013) (affirming trial court’s order that the State disclosure obligation did not include requiring the FBI to conduct DNA research beyond the records that the FBI had in its possession), *cert. denied*, 573 U.S. 903 (2014). We conclude that the trial court did not err in finding that Mr. Mola’s personnel record was not subject to the State’s mandatory disclosure obligation.

The documents at issue here were personnel records, which generally are exempt from disclosure by statute. Md. Code Ann., Gen. Pro. (“GP”) § 4-311(a) (Repl. Vol. 2024) (subject to certain exceptions, “a custodian shall deny inspection of a personnel record of

an individual, including an application, a performance rating, or scholastic achievement information”). See *Glass v. Anne Arundel Cnty.*, 453 Md. 201, 240 (2017) (explaining that a “‘personnel record of an individual’ includes any record that relates to a particular employee’s ‘hiring, discipline, promotion, dismissal, or any matter involving his status as an employee’”) (quoting *Kirwan v. The Diamondback*, 352 Md. 74, 82-84 (1998)). “The purpose of treating personnel records as confidential is ‘to preserve the privacy of the personal information about a public employee that is accumulated during his or her employment.’” *Balt. City Police Dep’t v. State*, 158 Md. App. 274, 282 (2004) (quoting 78 Op. Att’y Gen. 291, 293 (1993)).

Confidential personnel records may be disclosed only under certain circumstances, and the determination of “[w]hether a defendant is entitled to discovery of documents otherwise protected from disclosure . . . is ascertained by resort to a test well-established in Maryland.” *Fields v. State*, 432 Md. 650, 666-67 (2013). “That test . . . balances competing interests: those of the party holding the protection of confidentiality and those of the defendant who has the right to confront the witness against him or her.” *Id.* The defendant “bears the burden of showing not only a possibility but a **likelihood** that a review of confidential records will reveal relevant information.” *Fisher v. State*, 128 Md. App. 79, 121 (1999) (“[A] mere assertion that the credibility of a witness is an issue and that ‘some latitude’ is necessary in looking for impeaching material is not enough to cross the threshold.”), *aff’d in part, vacated in part on other grounds*, 367 Md. 218 (2001).

Here, appellant made no assertion that there was any potential impeachment or exculpatory evidence in Mr. Mola’s personnel records. A defendant seeking access to

confidential records, must, at a minimum, proffer “some relationship . . . between the charges, the information sought, and the likelihood that relevant information will be obtained as a result of receiving the records.” *Goldsmith v. State*, 337 Md. 112, 128 (1995) (quoting *Zaal v. State*, 326 Md. 54, 81-82 (1992)). See also *State v. Johnson*, 440 Md. 228, 251 (2014) (“[a] ‘fishing expedition,’ without more” is insufficient to meet the standard for establishing the likelihood that the record sought contains exculpatory information).

Under these circumstances, and where appellant was granted several continuances to investigate and request additional discovery, but he did not issue a subpoena to obtain the personnel record, we cannot conclude that the circuit court abused its discretion in denying appellant’s motion for a continuance to obtain Mr. Mola’s personnel record.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**