Circuit Court for Baltimore City
Case No. 121081010

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0631

September Term, 2023

KEITH JONES

V.

STATE OF MARYLAND

Reed,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: July 5, 2024

*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).

Appellant, Keith Jones, was convicted in the Circuit Court for Baltimore City of possession of a firearm with a felony conviction and carrying a firearm in a vehicle on a public road. Appellant presents the following questions for our review:

> 1. "Did the lower court err in denying Mr. Jones' motion to suppress?
>
> 2. After learning of discovery violations by the State, did the lower court err in failing to preclude the testimony of State's expert Officer Matthew Ensor at the suppression hearing?"

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Baltimore City of possession of a firearm with a felony conviction, possession of a firearm with a drug offense, possession of a regulated firearm, carrying a firearm in a vehicle on a public road, and illegal possession of ammunition. Appellant moved to suppress evidence the police seized during a traffic stop and the search of his vehicle and the trial court held a suppression hearing, denying appellant's motion. Appellant entered a conditional guilty plea to possession of a firearm with a felony conviction and carrying a firearm in a vehicle on a public road. The trial court sentenced appellant to a ten-year term of incarceration on each charge, to be served concurrently.

On March 1, 2021, in conjunction with the F.B.I., Officer Paredes and Officer Provo of the Baltimore City Police Department began following appellant as part of an investigation into drug activity in Baltimore City. After following appellant for 5 to 7

minutes, Officer Paredes observed appellant turn without using his turn signal. The officers pulled appellant over. Officer Paredes acknowledged that this was a pretext stop.

Once Officer Paredes approached appellant's car, he noticed that the car windows were so tinted that Officer Paredes could not see inside the car using a flashlight. As a result, Officer Paredes decided to write appellant two tickets: one for turning without using his turn signal and one for the tinted windows. Officer Paredes acknowledged that he decided to issue two tickets, in part because writing two tickets would take longer, giving the F.B.I. and other investigators longer to arrive and investigate within the permissible bounds of a traffic stop.

The police officers' conduct after deciding to write the tickets gives rise to the first issue on appeal: whether the officers unduly delayed the traffic stop. After Officer Paredes obtained appellant's license and registration, he called the F.B.I. agent with whom he was collaborating and gave him directions to the scene. He called for a K-9 unit. Officer Provo contacted the police department to determine whether appellant's license and registration were proper and whether there were any outstanding warrants for appellant. Officer Paredes and Officer Provo then collaborated to begin writing the two tickets. The officers worked faster than they otherwise might have because they both began working on the citations where, ordinarily, one officer would begin writing the tickets while the other remained with the motorist. Writing the tickets required copying information from appellant's registration documents into the citation book and looking up the correct transportation articles for each citation. The officers were engaged in these tasks when, less than fifteen minutes after the stop, the K-9 unit arrived.

Once the K-9 unit arrived, Officer Provo continued writing the traffic citations while Officer Paredes spoke to the K-9 unit about conducting a dog sniff of the car. Officer Meehan of the K-9 unit conducted a dog sniff of appellant's car using his dog, Mackie. Mackie was trained to sit when he detected the presence of drugs. When Mackie was shown appellant's car, he sat. Based on Mackie's conduct, the officers searched appellant's car. They did not find any drugs, but they did find the firearm that was the subject of appellant's convictions in this case.

The use of the K-9 unit produced the remaining two issues in this appeal: the appropriateness of the officers' reliance on Mackie, and the appropriateness of the trial court's decision to allow the State to call its expert witness. Both parties presented experts on Mackie's reliability. Appellant moved for discovery sanctions relating to the State's failure to disclose information about the State's expert. The State had intended, initially, to call Officer Meehan, Mackie's handler, to testify about Mackie's training and the use of the dog at the scene. However, Officer Meehan had been injured in the line of duty and was unavailable to testify at the hearing. By the time of the suppression hearing, the State had postponed the hearing multiple times to enable Officer Meehan to recover and to appear. The night before the hearing, when it became clear that Officer Meehan was unable to testify, the State called Officer Ensor, who had trained Mackie, and asked him to testify instead. The State texted defense counsel and informed defense counsel of this change. By the time of that text, defense counsel had received records of Mackie's training with Officer Ensor but did not have information regarding Officer Ensor's background and was not aware that Officer Ensor was a potential witness.

Defense counsel moved to preclude the State from calling Officer Ensor on the grounds that the State had not disclosed anything about Officer Ensor and, in particular, that the State had not provided defense counsel with information about Officer Ensor's qualifications. The State argued that the discovery rules only required the State to disclose experts for trial rather than experts for a hearing. The trial court held that it was unclear whether the discovery rules required these kinds of disclosures, but, in any case, the trial court decided to err on the side of safety and issue a discovery sanction, namely that the defense counsel would be permitted time to interview Officer Ensor "at your leisure" after he arrived at the courthouse, but before he testified.

Once appellant's counsel had interviewed Officer Ensor, the court permitted the officer to testify. He testified that Mackie was trained and certified to detect heroin, tar heroin, and ecstasy. He testified that Mackie had been trained to detect the odor of those drugs and to indicate when he smelled them by either sitting or lying down. He testified that Mackie was retrained periodically and that Mackie had been certified on February 26, 2021, just days before he was used to sniff appellant's car. He testified that, if Mackie had struggled during that training, he would not have been certified and, instead, would have been brought back for further training. Officer Ensor evaluated Mackie's behavior at the scene. He stated that Mackie was brought up to the car and that Mackie indicated the presence of drugs. He testified that Officer Meehan had followed procedure during the interaction, that Mackie had given a positive indication, and that he had no concerns about Mackie's reliability.

Appellant called his own expert, Mr. Andre Jimenez, a former officer from Anaheim, California who runs a private business training dogs for law enforcement agencies. Mr. Jimenez testified that he reviewed Mackie's training records and body camera footage of the dog sniff at appellant's car. Mr. Jimenez identified several issues in Mackie's training.

In the summer of 2020, training records indicated that Officer Meehan was allowing Mackie too much control and allowing the dog to dictate the search patterns too much. Officer Meehan was advised to be less quick to reward Mackie. During several training exercises in January and February, Officer Meehan allowed Mackie to go too quickly, and Mackie missed a set of drugs. In each case, when Officer Meehan slowed Mackie down, he was able to identify the drugs. Officer Jimenez was concerned that "it could be a philosophy with the trainer that no exercise is complete until his dog finds the find, even if the handler has to take his dog to the find. And that is an unacceptable way of training." Officer Jimenez was concerned that during these trainings, Officer Meehan rewarded Mackie too quickly which might cause Mackie to respond to his expectations of his handler rather than to the presence of drugs.

In late February, Mackie had one false indication in which he "indicated" at a pole where the K-9 unit had been keeping the bags used to clean up dog waste. Nonetheless, Mackie passed his training exercises sufficiently well that he was certified. Mr. Jimenez testified that he did not believe Mackie should have been certified at that point.

Over a month after the incident with appellant's car, in April of 2021, Officer Meehan became concerned that Mackie was giving false indications. Mackie was shown

a series of cars without drugs and gave false indications at each of them. Officer Meehan concluded that Mackie was just giving indications at each vehicle. As a result of this later evidence, Mr. Jimenez testified that Mackie was not reliable.

Mr. Jimenez evaluated Mackie's sniff at appellant's car. He testified that Mackie was not sniffing at the seams of the car where odors would escape and had sat down multiple times in a way that indicated he was trying to get a reward from the handler rather than giving an appropriate indication. Mr. Jimenez concluded that, as a result, the behavior the officers interpreted as an indication was not an appropriate indication (a conclusion bolstered by the fact that there were not any drugs in appellant's car).

At the conclusion of the hearing, the trial court made factual findings. The court found that the officers did not unreasonably delay writing the tickets, that there was nothing dilatory about the officers' behavior, and that there was no "foot-dragging" to make time for the K-9 unit to get there.

As for the reliability of the K-9 sniff, the court emphasized multiple times that "the dog was certified repeatedly and consistently by Officer Ensor's unit." The court was troubled by some aspects of the Baltimore Police Department's training methods, particularly that Officer Ensor was still confident in the dog even after his later false positives:

> "I'm a little bit troubled by his testimony that, again, seems to create a sort of unfalsifiable theory of 'If the dog flags, either there were drugs in the car or there had been drugs in the car, or there were trace amounts that we can't see.' You know, seems very reluctant to acknowledge the possibility of just the dog got it wrong. And he even extended that into the training. The dog — you know, there are instances pointed to in the

> training records where the trainer had to sort of redirect the dog to a specific location. And Officer Ensor's testimony was, 'Well, if he did have a false positive during training, maybe it's because we had drugs stored there the day before,' which, again, if that's the case, it calls into question the reliability of any of the training, since any alert would count — you know, would count as a legitimate — unless you move to a new house every day."

The court, however, that based on the defense expert's testimony the Baltimore Police Department training had not violated any "accepted standards nationwide." Ultimately, the court concluded that while there had been some issues prior to the sniff on March 1, the officers reasonably believed Mackie was generally reliable based on what they had seen so far:

> "At the end of the day, I have to think about what the police— which includes Detective Paredes, Officer Meehan, and Officer Ensor — reasonably knew and relied upon on March 1st of 2021. And I think, under the circumstances, while they -- there may have been some reasons to be suspicious, they were not unreasonable in relying upon the dog alert as a basis for their search in this case."

As for Mackie's actions at appellant's car in particular, the court did not find the defense expert's critique of the sniff at appellant's car credible:

> "And there was an inherent contradiction in his testimony, because initially he said that if the training is done properly, sitting should be automatic upon registering the smell. Like, goes — you know, the dog smells and sits down. But then later, he's saying, 'Well, no, the dog -- the olfactory system needs time to process what they've smelled, and sitting down too soon tells me that he was just trying to get his toy and not responding to — not responding to the smell.'"

Instead, the court reviewed the video and the judge concluded based on his own observations as follows:

> "I see the dog go over to the car and go up to the passenger door and sort of jump around the window and the seam in the — where the door meets the frame and then sit down. But I also agree, when I look at Officer Meehan's footage, that the dog sits down and was looking right at Officer Meehan. He's not looking at the car."

The court concluded that, based on what the officers knew at the time, it was reasonable for the officers to conclude that the dog was signaling that there were drugs in the car.

The trial court denied appellant's motion to suppress. This timely appeal followed.

II.

Appellant argues first that the fruit of the officer's search should be suppressed because the officers unnecessarily prolonged the search to use the K-9 unit. Appellant notes that while an officer may bring a K-9 unit to sniff a car that has been lawfully stopped for a traffic violation, the officer may not unnecessarily prolong the traffic stop to use the K-9 unit. Appellant argues that the officers were prolonging the stop because they admitted that it was a pretext stop and because they decided to write the second ticket to give them more time. Appellant argues that because one of the officers took additional time to call the F.B.I., the stop was unnecessarily prolonged.

The State argues that the officers did not unnecessarily prolong the stop. The traffic stop was under 15 minutes and the officers were writing out the tickets when the K-9 unit arrived. The officers collaborated on writing the tickets to speed up the process and to not prolong the stop unnecessarily. Any delay was the result of the officers' attempts to accurately record the traffic code provisions that appellant had violated and the time it took

for them to call in and check on appellant's registration information. The single phone call to the F.B.I. by one officer when two officers were collaborating to write a ticket did not unnecessarily delay the stop.

Next, appellant argues that even if the use of the K-9 unit was appropriate, the officers lacked probable cause to search the car because Mackie's indications were too unreliable to provide probable cause. Appellant notes that a dog's indication can provide probable cause only if the dog's history and training suggest that the dog in question can be reliable. Here, Mackie had a history of issues in training, had a false positive shortly before his search of appellant's car, was found to have significant issues with a false positive shortly after the search of appellant's car, and was not behaving in the way one would expect at the scene. Thus, appellant argues, it was inappropriate for the officers to rely on Mackie's indication.

The State argues that the court did not clearly err in finding that Mackie's indications were reliable. The State notes that a dog that has been certified is presumptively reliable. The State argues that the trial court credited Officer Ensor's evaluation of Mackie's training prior to the stop of appellant's vehicle as well as Officer Ensor's evaluation of Mackie's behavior at the scene. The State maintains that we should not second guess the trial court's credibility judgment. As for the issues Mackie presented after his search of appellant's car, the State argues that any such issues are irrelevant because the question for the purposes of probable cause is whether the officers had reason to believe Mackie was reliable at the time he indicated. Finally, the State argues that, even if we do not find that there was probable cause, we should find that the officers acted in good faith.

Finally, appellant argues that the court should have found a discovery violation in the State's failure to disclose information about Officer Ensor and that as an appropriate sanction, the court should have precluded Officer Ensor from testifying. Appellant argues that Rule 4-263(8) requires the State to disclose the name, address, findings, opinions, and conclusions of any expert consulted by the State. The State did not disclose any of this information prior to the night before the hearing and then only disclosed the name. Appellant argues that this was a discovery violation and that the appropriate remedy for this discovery violation was to preclude the witness from testifying on grounds that the State had acted in bad faith.

At the motions hearing, the State contended that there was no discovery violation. On appeal, the State does not appear to contest that there was a discovery violation. Instead, the State focuses on the remedy the court fashioned. The State argues that exclusion of the witness was not required and that exclusion of a witness is an extreme remedy, not called for in a situation like this. Here, defense counsel was familiar with the information the witness was to testify about and was afforded adequate opportunity to interview the witness before the hearing.

III.

We begin with appellant's argument that the police officers unduly prolonged the stop to conduct the dog sniff. We review the record of the suppression hearing in the light most favorable to the prevailing party, here the State. *State v. Wallace*, 382 Md. 137, 144 (2002). We afford great deference to the factual findings of the lower court and accept the

lower court's findings and credibility judgments unless they are clearly erroneous. *Id.* We independently review those facts to determine whether the conduct of the police violated the Constitution. *Id.*

A stop of a vehicle does not violate the Fourth Amendment to the United States Constitution if law enforcement has probable cause to believe that the driver has committed a traffic violation. *Whren v. United States*, 517 U.S. 806, 810 (1996). Further, an otherwise constitutional stop does not become unconstitutional merely because, in the police officer's mind, the purpose of the stop was to investigate other crimes or because the stop was, in fact, pretextual. *Id.* at 813. However, any stop must be temporary, and last "no longer than necessary to effectuate the purpose of the stop." *Steck v. State*, 239 Md. App. 440, 455 (2018). Thus, an officer conducting a stop, ostensibly based upon a traffic violation, cannot prolong the stop beyond "the period of time reasonably necessary for the officer to (1) investigate the driver's sobriety and license status, (2) establish that the vehicle has not been reported stolen, and (3) issue a traffic citation." *Id.* Provided, however, that it does not extend the length of the stop, police may engage in other investigative steps, including dog sniffs, while they write citations. *Illinois v. Caballes*, 543 U.S. 405 (2005).

We measure the reasonableness of the length of the stop, not merely by the clock, but by the time it should have taken officers under the surrounding circumstances to complete their traffic-related business. *Steck*, 239 Md. App. at 455. A stop may not be prolonged to contact a K-9 unit or wait for that unit to arrive, even if the overall stop is shorter than some legitimate traffic stops. *State v. Ofori*, 170 Md. App. 211, 239 (2006). The critical question is whether the stop is longer than it would have been absent the use

of the K-9 unit. *Rodriguez v. United States*, 575 U.S. 348, 357 (2015). The permissible time frame for a traffic stop ends when the traffic tickets are, or reasonably should have been, completed. *Id.* at 354.

Here, the officers worked diligently to complete the traffic tickets and, indeed, worked faster than they might have done ordinarily. Instead of leaving one officer with the motorist while a single officer wrote tickets and checked the status of appellant's registration, both officers engaged in traffic citation-related tasks. Officer Paredes began recording relevant information in his citation book and Officer Provo began contacting the department about appellant's vehicle registration and warrant status. By the time the K-9 unit arrived, the officers were writing the first ticket, and Officer Provo continued working on that ticket for the duration of the dog sniff. Thus, it does not appear that the officers waited for the K-9 unit to arrive beyond the time it took to write the tickets.

Nor, given how quickly the K-9 unit arrived, does it appear that the officers wrote the tickets particularly slowly to give the K-9 unit more time. The motions court noted that the officer writing the tickets did not engage in any "foot-dragging" in the process of writing the tickets. The time it took to record the information on the tickets was well in line with time frames we have found reasonable in the past. *Carter v. State*, 236 Md. App. 456, 471 (2018) (collecting cases in which time frames of between seventeen and thirty minutes have been deemed reasonable for the purposes of writing tickets and confirming license and registration information).

Appellant argues that, even if the overall time frame was reasonable, the officers nonetheless prolonged the stop because, before they began writing the traffic citation or

contacting the department about appellant's license and registration, they took a few moments to call the F.B.I. and the K-9 unit to request backup. We have rejected such arguments in past cases. In *Carter*, we held as follows:

> "Mr. Carter contends that regardless of the amount of time that elapsed before the canine scan, we should find that Officer Mancuso impermissibly abandoned the traffic stop when he paused from writing citations to brief Officer Buhl and then to ask Mr. Carter to exit his vehicle so that the canine search could proceed. We disagree. The suppression court's finding that Officer Mancuso never abandoned the tasks relevant to the traffic stop is supported by Officer Mancuso's testimony. Mr. Carter's contention that any break from tasks related solely to processing the traffic violations constitutes abandonment of the traffic stop is both unreasonable and inconsistent with our prior decisions. And we cannot say that the tasks Officer Mancuso performed were unreasonable under the circumstances, as he simply briefed arriving officers on the situation and approached Mr. Carter to ask him to exit his vehicle. . . . This was not abandonment of the purpose of the traffic stop, but a momentary pause for permissible multi-tasking that, based on the findings of the suppression court, did not cause the seizure to extend beyond the time that was necessary to effectuate the traffic stop."

Id. at 471-72 (internal citations omitted). It was no more an impermissible delay or abandonment for Officer Paredes to contact his colleagues in this case than it was in *Carter*.

The Officers did not unnecessarily prolong the traffic stop. We see no Fourth Amendment violation in their decision to call in the K-9 unit and to conduct a dog sniff.

IV.

We turn next to appellant's argument that the dog, Mackie, was too unreliable to provide probable cause for a search of appellant's car. As above, we review the trial court's

decision on probable cause *de novo*. *Grimm v. State*, 458 Md. 602, 650 (2018). We review the court's underlying factual findings, particularly as regards the reliability of the dog, for clear error. *Id.* at 652. We reject the trial court's finding of reliability only where there is no competent evidence in the record to support the trial court's factual findings. *Grimm v. State*, 232 Md. App. 383, 397 (2017).

A police officer may search a vehicle without a warrant provided that the officer in question has probable cause to believe that the vehicle contains contraband or evidence of criminal activity. *Carroll v. United States*, 267 U.S. 132, 149 (1925). In evaluating whether the officer had probable cause for a particular search, we look to the events that occurred leading up to the search and determine whether these facts, viewed from the lens of an objectively reasonable person, amount to probable cause. *Ornelas v. United States*, 517 U.S. 690, 696 (1996). We do not evaluate probable cause in hindsight. Nor do we evaluate probable cause based on what the search eventually discovers, even where there is a false positive and the search does not turn up the substances the dog initially indicated were present. *Florida v. Harris*, 568 U.S. 237, 249 (2013).

We consider, instead, the facts known to the officer at the time of the search. *Grimm*, 458 Md. at 650. In evaluating whether the indication given by Mackie at the scene provided the officer with probable cause, we look only to the information about Mackie's reliability available to law enforcement before the search. We decline appellant's invitation to consider that Mackie began to have problems with false positives *after* his use at appellant's car. While troubling, the fact of Mackie's later false positives is not information that was available to the police at the time of the search.

Canine alerts or indications that a vehicle contains contraband can, on their own, provide probable cause for a search of the vehicle. *Harris*, 568 U.S. at 245. A dog must, however, be reliable in detecting contraband in order to meet this standard, just as human informants must be reliable for their word to justify a search. *Id.* (comparing the standards for evaluating a dog to the standards for evaluating a human informant). A court must consider the totality of the circumstances known to the officers at the time of the dog sniff in determining whether a dog was reliable. *Id.* However, as part of that totality of the circumstances test, the United States Supreme Court has held as follows:

> "Evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert. If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search. The same is true, even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs. After all, law enforcement units have their own strong incentive to use effective training and certification programs, because only accurate drug-detection dogs enable officers to locate contraband without incurring unnecessary risks or wasting limited time and resources."

Id. at 246-47.

Of course, the mere fact of certification cannot always override contrary evidence. A defendant may challenge the rigors of the training program, or the methods used to certify the dog. *Id.* at 247. A defendant may present evidence that the dog, while certified, struggles in particular circumstances applicable to the case, and a trial court may credit and consider those facts. *Id.* Here, for instance, appellant presented evidence that Mackie was

not always sufficiently thorough and that he had an instance of false positive identification before the stop of appellant's car. However, on appeal, it is not our task to reweigh any competing evidence in the case. The trial court weighed the evidence on the reliability of the training, and we do not overturn the trial court's factual findings on reliability absent clear error. *Grimm*, 458 Md. at 652.

The trial court concluded that, based on what the officers knew at the time, it was reasonable to believe that the dog was giving a reliable indication. There was competent evidence in the record to support that conclusion. Mackie was certified shortly before the sniff at issue. He had shown an ability to detect drugs, even if his performance was not perfect. The biggest concerns about his accuracy had not been revealed yet. Indeed, most of the issues Mackie presented prior to the search of appellant's car were issues with false negatives (i.e., missing drugs) rather than false positives, which should not, intuitively, give rise to the same concerns in a situation in which Mackie did indicate. While the training used by the Baltimore Police Department was not the most rigorous of possible training methods, appellant's expert agreed that there is no prevailing nationwide standard that the Baltimore Police Department's methods violated. Appellant can point no such glaring problems with the testimony as to make the court's finding clearly erroneous. *Grimms*, 458 Md. at 667 (finding no clear error where the court accepted that a dog with a false alert rate of between 11% and 25% was reliable).

As to appellant's expert testimony that Mackie was not showing the signs of a proper indication at the scene, the trial court found issues with the credibility of that testimony. We do not second guess the trial court's decision to discount that testimony. *Grimms*, 458

Md. at 661. Instead, the trial court evaluated the video of the traffic stop and concluded that the dog had gone over to the car, sniffed at the seem of the car door, and then sat down. The court concluded that it was not unreasonable to treat Mackie's behavior as an indication. The trial court was in the best position to weigh that evidence and judge credibility, and the trial court's findings on this point were not clearly erroneous.

Because we do not find that the trial court's findings were clearly erroneous, either as to the general reliability of the dog or as to the dog's behavior at the crime scene, we are left with a simple set of facts: the police approached the car with a certified, reliable dog, and the dog gave an indication that there was contraband in the car. There was probable cause for a search. *Harris*, 568 U.S. at 246-47.[1]

V.

Because the State does not contest the discovery violation in this case, we need not resolve the issues raised by the lower court regarding the interpretation of the discovery laws. We shall assume *arguendo* that there was a discovery violation but hold that the trial court did not err.

Rule 4-263(n) sets out the remedies for discovery violations, providing as follows:

> "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 the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in

[1] Because we do not disturb the court's probable cause finding, we do not reach the State's arguments regarding good faith.

> 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."

In fashioning an appropriate remedy, a trial 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." *Thomas v. State*, 397 Md. 557, 570-71 (2007). The court should fashion the least severe sanction consistent with the purpose of the discovery rules. *Id.* at 571. Exclusion of evidence is not a favored sanction. *Id.* at 572. We review the trial court's decision regarding which sanction to impose for abuse of discretion. *Id.* at 570.

Here, there is little reason to find that, as appellant argues, there was bad faith on the part of the State. The record indicated that Officer Ensor did not know he would be testifying until the night before the hearing, the same evening when the State notified defense counsel of the change. It is clear from the many postponements based upon Officer Meehan's health that the State desired and intended to call Officer Meehan as the expert witness. The trial court did not find any evidence that the failure to designate Officer Ensor as an expert witness was the result of anything other than a last-minute change to account for the unavailability of a witness based on his medical status.

Further, any prejudice to appellant appears to have been limited. Officer Ensor was not a wholly unknown witness. Indeed, Officer Ensor's testimony concerned matters contained within the reports of Mackie's training that had been given to both appellant's

counsel and appellant's expert witness. The prejudicial effect of calling Officer Ensor to testify to the same facts contained in records appellant previously had access to was limited. *See Morton v. State*, 200 Md. App. 529 (2001) (finding that the trial court did not abuse its discretion in declining to exclude the testimony of a witness who had not been properly designated as an expert but whose existence and findings had been disclosed to defense counsel). Insofar as there was prejudice, the court took reasonable steps to cure that prejudice by providing appellant's counsel with time to interview Officer Ensor before he testified. Moreover, defense counsel never requested a continuance of the hearing.

The trial court did not err in fashioning a remedy that permitted Officer Ensor to testify.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.