

Circuit Court for St. Mary's County
Case No.: C-18-CR-21-000271

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1977

September Term, 2022

DAMIEN TERRELL WILSON

v.

STATE OF MARYLAND

Friedman,
Tang,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 14, 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).

Although this case is nominally about dogs and dogfighting, in reality, it is about the State’s obligation to disclose an expert witness and that witness’s reports and what happens when the State makes a partial or incomplete disclosure. As a result, we talk more about people than dogs.

FACTS

St. Mary’s County Animal Control received several calls regarding dogs being tied up on an undeveloped, wooded property in St. Mary’s County that was owned by Damien Terrell Wilson. Officers from Animal Control and deputy sheriffs from the St. Mary’s County Sheriff’s Office investigated. They found eleven dogs: one rottweiler and ten pitbulls.¹ After evaluating the condition of the dogs, all eleven were seized and taken to Animal Control, where they were treated, evaluated, and held. Amy Taylor, an investigator with the Animal Law Unit of the Office of the Virginia Attorney General, conducted behavioral evaluations on each dog.

PROCEDURAL HISTORY

The State’s Attorney for St. Mary’s County charged Wilson in a 47-count criminal information, including eleven counts—one for each dog—of possessing a dog with the intent to use it in a dogfight in violation of Section 10-607(b)(3) of the Criminal Law (“CR”) article of the Maryland Code. Prior to trial, the State’s Attorney’s Office issued a

¹ Although the record describes some of these dogs as “pitbull mixes,” we need not and will not get involved in an analysis of the dogs’ genetic background. *See generally Tracey v. Solesky*, 427 Md. 627, 664-67 (2012) (Wilner, J. on reconsideration) (discussing pitbulls, cross-bred pitbulls, and pitbull mixes).

boilerplate document that it calls a “State’s Disclosure.” That document begins with a two-paragraph discussion of the State’s disclosure obligation and the office’s policy regarding those obligations:

The State of Maryland, by its attorneys, the State’s Attorney for Saint Mary’s County, voluntarily files this Disclosure, along with this notice of our expanded disclosure policy, pursuant to Maryland Rule 4-263.

The Office of State’s Attorney for Saint Mary’s County maintains an expanded disclosure policy that exceeds its constitutional obligations. Counsel for defendants, by appointment with our office, are authorized to examine the materials and evidence upon which the State intends to rely to prove the elements of the charged crimes.

In addition, after this introduction, there are fourteen numbered paragraphs. Each of these numbered paragraphs describes categories of disclosures. We have reproduced the relevant numbered paragraphs, below. As noted, these are boilerplate, apparently used in every case, except for a (very) few case-specific notations which appear in **bold**, both in the original document and in our reproduction:

3. State’s Witnesses. Potential State’s witnesses include but are not limited to, the following persons, whose addresses can be found in the police reports available on ShareFile:

Dep. Benjamin Luffey, 352
Cpl. D. Snyder (89)
Dfc D. Holdsworth (305)
J. Wilson
S. Walker
J. Miedinski
S. Young
F. Young
D. Wilson
C. Runde
A. Taylor
L. Berringer

* * * *

9. Reports of Experts. Any expert reports are available on ShareFile. Expert testimony will be consistent with the results of the report. The experts contact information is also included on the report

* * * *

12. Other Evidence. Counsel for Defendant is authorized to examine the materials and evidence upon which the State intends to rely to prove the elements of the charged crimes, including documents, recordings, photographs, firearms, and other tangible things that the State intends to use at a hearing or trial.
13. Counsel for the Defendant is authorized to examine the materials and evidence upon which the State intends to rely to prove the elements of the charged crimes, including documents, recordings, photographs, and other tangible things that the State intends to use at a hearing or trial.
14. Counsel for the Defendant, by appointment with our office, is authorized to inspect, copy, and photograph all items obtained from or belonging to the Defendant, whether the State intends to use them at a hearing or a trial [or not].

Here's where things get sticky.

The State's proposed expert witness, Amy Taylor from the Office of the Virginia Attorney General, provided the St. Mary's County Sheriff's Office with the following documents: (1) a cover letter; (2) her curriculum vitae; (3) separate evaluations of each of ten dogs; and (4) photographs Taylor took of each of the ten dogs.² The State's Attorney's Office, for reasons that are not plain to this Court, failed to place some of these documents on the ShareFile system, which is used in that county for the exchange of discovery materials. Thus, the defense was only provided (1) the cover letter; (2) Taylor's curriculum

² Taylor did not evaluate the rottweiler because, she said, the dog was overly aggressive and would have been unsafe to evaluate.

vitae; and (3) the evaluations of three of the dogs. The defense was not provided with Taylor's evaluation of the other seven dogs or any of Taylor's photographs of the dogs.³

At trial, the State offered Taylor as an expert in dogfighting. Wilson objected, arguing that Taylor was an expert in dog behavior but that she was not an expert in dogfighting and that the State had failed to make proper disclosure of Taylor, her expertise, and her reports. The trial judge admitted Taylor as an expert in dogfighting and allowed her to testify generally, but only allowed her to testify specifically about the three dogs about which reports had been properly disclosed in the ShareFile system. The trial judge precluded Taylor from testifying specifically about the seven dogs about which she had written reports, but which reports had not been produced to the defense. The circuit court also permitted Taylor to opine that the condition of all of the dogs led her to conclude that they were or had been involved in dogfighting.

Wilson was convicted on some (but not all) of the counts and sentenced to incarceration followed by probation. On appeal, his arguments are focused entirely on whether Taylor, her expertise, and her reports were properly disclosed.

ANALYSIS

In all criminal cases in the circuit courts, the State is required to provide certain disclosures to defendants. MD. RULE 4-263(d). Among these are certain disclosures about expert witnesses:

³ There were other photographs of the dogs, taken by others, that were disclosed to the defense and introduced at trial without these objections.

- d) **Disclosure by the State’s Attorney.** — Without the necessity of a request, the State’s Attorney shall provide to the defense ...
- (8) Reports or statements of experts. As to each expert consulted by the State’s Attorney in connection with the action:
- (A) the expert’s name and address, the subject matter of the consultation, the substance of the expert’s findings and opinions, and a summary of the grounds for each opinion;
- (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
- (C) the substance of any oral report and conclusion by the expert[.]

MD. R. 4-263(d)(8).

We review whether there was or was not a violation of these disclosure obligations without deference to the circuit court’s ruling. *Thomas v. State*, 168 Md. App. 682, 693 (2006). If we agree with the circuit court that there has been a disclosure violation, however, we review the circuit court’s decision to impose or not impose sanctions, and if so, what sanction to impose, deferentially, under the abuse of discretion standard. *Alarcon-Ozoria v. State*, 477 Md. 75, 91, 108 (2021).

First, Wilson argues that the notation on the “State’s Disclosure” document that “A. Taylor” might be a witness for the State was legally insufficient, given that Rule 4-263(d)(8)(A) requires disclosure of a potential expert’s name and address. Wilson did not make this specific argument at trial, so the trial judge did not have the opportunity to

address it. Therefore, it is waived. *Klaunberg v. State*, 355 Md. 528, 541 (1999); Md. R. 8-131 (“... [o]rdinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court ...”).

We also observe that although the “State’s Disclosure” document itself did not provide her full name and address and thus alone did not completely satisfy the requirement of the Rule, the State also disclosed through the ShareFile system Taylor’s cover letter and Taylor’s curriculum vitae,⁴ both of which revealed Taylor’s full name and business address. The Rule does not specify in what format the expert’s information must be disclosed and we see nothing wrong with the manner in which it was disclosed here.

Second, Wilson argues that the State’s Disclosure failed to disclose whether Taylor would be testifying as a lay witness or as an expert. This argument too, was not made at trial and is therefore waived. *Klaunberg*, 355 Md. at 541; MD. RULE 8-131.

Moreover, while it is true that the State did not identify whether Taylor was or was not an expert, that is not the end of the inquiry. The “State’s Disclosure” document, quoted at length above, identifies “A. Taylor” as a potential State’s witness. It also tells the defense that it can obtain any expert reports through the ShareFile system. Given the expert reports the State disclosed through ShareFile, the defense could surely deduce that Taylor was proposed to testify as an expert witness. Moreover, this Court has long held that the State need not disclose whether an individual witness will be testifying in an expert or lay

⁴ For reasons that are not clear, Wilson did not make Taylor’s curriculum vitae part of the record.

capacity. *See Knoedler v. State*, 69 Md. App. 764, 768 (1987) (interpreting prior version of Rule 4-263) (“[n]othing in [this] ... Rule requires the State to categorize its proposed witnesses as expert or non-expert.”). We see no merit to Wilson’s allegation.

Third, Wilson argues that the State failed to identify the topic of Taylor’s expertise as “dogfighting.” We observe that nothing in the Rule requires explicit disclosure of a “topic” but rather requires the State to disclose “the subject matter of the testimony,” “the substance of the expert’s findings and opinions,” and “a summary of the grounds for each opinion.” Moreover, although none of the documents disclosed by the State identify the topic of Taylor’s expert opinion as “dogfighting,” that the subject matter of her testimony and substance of her opinions concerned dogfighting could not have been a surprise. Taylor’s cover letter, which was disclosed to the defense, gave her “professional opinion that the [ten] dogs evaluated have been, are, or, were intended to be used for dog fighting.” Taylor’s curriculum vitae, which was disclosed to the defense, reported that she had over 500 hours of training specific to the topic of “animal fighting,” claimed expertise in “animal fighting,” and showed that she had been qualified as an expert witness on the topic of “dogfighting” or “animal fighting” in eighteen previous cases. We also note that these are not complicated criminal charges. The entire substance of the State’s case was conveyed by the State’s 47-count criminal information: mistreatment of dogs and dogfighting. Based solely on the charges, Wilson was on notice that the condition of the dogs and their use

would be at issue in the trial. The circuit court found that the State had, in all of these ways, adequately disclosed the “topic” of Taylor’s expert opinion. And we agree.⁵

Fourth, Wilson argues that the State failed to give the defense the “opportunity to inspect and copy” all of Taylor’s written reports as is required by Rule 4-263(d)(8)(B). As reported above, in addition to her cover letter, which provided a summary of all of her findings with respect to all of the dogs evaluated, Taylor also produced a written report on each of the ten dogs that she evaluated. Despite this, the State only produced her individual reports as to three of the ten dogs. The circuit court determined—without saying so precisely—that the State’s failure to disclose the remaining seven reports was a violation of Rule 4-263(d)(8)(B). Based on the record that we have available to us, we agree.⁶ The State’s expert wrote reports but did not disclose them, which is a plain violation of the

⁵ Wilson acknowledges that he was prepared for Taylor to opine about the dogs’ behavior but argues that opining about dogfighting is different. We are not persuaded. Wilson supports his argument principally by pointing out, correctly, that Taylor did not participate in the seizure of the dogs and was never on the property from which they were seized. But forming opinions based on facts gleaned by others is precisely what expert witnesses do. MD. RULE 5-703(a) (“An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed.”). Here, Taylor took the facts she learned about the manner in which the dogs were kept, the objects found with the dogs on the property, the physical condition of the dogs, and the dogs’ subsequent behavior and, with that information, formed her expert opinion—that the dogs were used for dogfighting.

⁶ We observe that the State’s Attorney for St. Mary’s County, in the boilerplate “State’s Disclosure” document, promises to make available physical copies of the contents of its file. We don’t know whether the seven missing reports were in the physical file and whether the defense inspected them or tried to inspect them.

Rule.⁷ The circuit court sanctioned the State for its failure to disclose the seven reports by prohibiting Taylor from giving her opinion about the seven dogs that were the subject of the seven missing reports.⁸ As noted above, we review the sanction decisions of the circuit courts with deference because they are better situated than are we to determine appropriate sanctions. Nothing about this sanction, however, suggests that the circuit court abused its considerable discretion.

Fifth, Wilson argues that the State probably violated Rule 4-263(d)(8)(C) because it didn't disclose the substance of any oral reports from its expert and there "undoubtedly" must have been "many" such oral reports. There was an easy and obvious way to find out whether Taylor made any undisclosed oral reports to the State: the defense could have

⁷ We observe that the Rule doesn't proscribe the format of an expert's report. Despite Wilson's arguments to the contrary, there can be little doubt that had Taylor written only the cover letter, its disclosure would have satisfied the Rule. Once Taylor wrote individual reports for each of the ten dogs, however, the State was obligated to disclose each of them.

⁸ In a variation of this argument, Wilson points out that Taylor was, despite the sanction, still permitted to give her opinion as to the ultimate question in the case about all of the dogs. Thus, when the State asked, "In your expert opinion, evaluating photos of the camp, the condition of the [dogs], the behavior of the [dogs], items that were at the camp, what was your opinion regarding these dogs?" Taylor responded, "I believe they either had been or were intended to be used in organized dog fighting." We note that the State's question was not objected to and thus Wilson's complaint with it is not preserved. More still, this aspect of Taylor's opinion—her overall summary—was not an undisclosed opinion, it is literally word-for-word what she wrote in her cover letter (which, of course, was disclosed to the defense). But most importantly, the decision to allow or not allow this question was based on the circuit court's interpretation of its own sanction. The circuit court had the discretion to tailor its sanction to preclude Taylor from opining about the seven individual dogs but still allow her to form an overall opinion, subject only to an abuse of that discretion. We see none here.

asked her about them when she was on the witness stand. The defense did not do so. As a result, the defense has no evidence—just its speculation—that such oral reports were made. Because this allegation was not offered or preserved below, we decline to join in Wilson’s speculations.

Finally, because we find that the circuit court did not commit any error, we need not reach Wilson’s argument that the error he postulates was not harmless.

In conclusion, we find that the circuit court was correct in finding that the State violated Rule 4-263(d)(8)(B). Moreover, we find that the circuit court’s sanction for this violation was not an abuse of discretion. Therefore, we affirm the judgment of the circuit court.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ST. MARY’S COUNTY ARE
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**