In the Missouri Court of Appeals
Eastern District

DIVISION THREE

STATE OF MISSOURI, Respondent, v. OSCAR M. WARD III, Appellant.	))))))))))	No. ED112740 Filed: November 25, 2025

APPEAL FROM THE CIRCUIT COURT OF PIKE COUNTY
The Honorable David H. Ash, Judge

Introduction

Appellant Oscar Ward was found guilty of kidnapping in the second degree and domestic assault in the third degree. In a single point on appeal, Ward argues that the circuit court abused its discretion in admitting a computer-enhanced 911 call which had not been disclosed to Ward until one week before the start of trial. Because the state's late disclosure of evidence was not fundamentally unfair and did not prejudice Ward, the circuit court's judgment is affirmed.

Factual and Procedural Background

Viewed in the light most favorable to the verdict, the relevant evidence presented at trial is as follows. *State v. Stewart*, 560 S.W.3d 531, 532-33 (Mo. banc 2018).

Victim and Ward became romantically involved in March or April of 2022, when Ward was a guest at the hotel where Victim worked. Their relationship ended in June 2022, but they

were “still talking” in July 2022. In the two days leading up to the kidnapping and assault, Ward continually called Victim on her cell phone and at her work to ask why Victim was not responding to him.

On July 18, 2022, when Victim exited the hotel between 10:30 and 10:45 p.m., Ward came up behind Victim and put his arm around Victim’s neck, forcibly pulling Victim to Ward’s car. Ward pushed Victim into his car, locked the doors, and refused to let her leave. Victim continued to beg him to “let me out of here” as they drove off in Ward’s car.

Over the next half hour, Ward pulled off the road twice, getting out of the car both times to assault and berate Victim. During these stops, Ward reached into her pants, punched Victim in the chin, repeatedly struck her in the head, and told Victim that she was going to make him kill her. Afterwards, Ward pulled onto the highway and continued to hit Victim in the head while driving.

When Ward drove off onto a rural gravel road, Victim activated the SOS function of her phone which placed a call to 911. The 911 operator recorded the subsequent events. Ward stopped the car and opened Victim’s door, dragging Victim out by her legs and pulling her pants off. Victim hit her head on the door frame and screamed for help. Ward stood over Victim with a stick in his hand and threatened to sodomize her with it. Victim was able to escape, but Ward hit Victim in the back of the head with a rock, knocking Victim down. At this point, the police arrived on scene.

A sheriff’s deputy photographed the bite marks on Victim’s arm and finger, as well as the clumps of hair that Ward had pulled from Victim’s head. Additional photos were taken of her injuries as they developed over several days.

While a recording of the 911 call placed by Victim via the SOS function on her phone was originally disclosed to Ward in December 2023, an enhanced version of the call—which had been ordered at the request of the State through a third party—was not disclosed to Ward until April 24, 2024, one week before trial. The State disclosed the witness who had performed the enhancement the next day. At a pre-trial motion hearing, Ward requested an evidentiary hearing on the admissibility of the enhanced version of the 911 call. The prosecutor acknowledged the late disclosure, but explained that although the enhancement had been done in December, he had only learned about it that prior week whereupon he disclosed it and provided defense counsel with a copy. Ward did not dispute the veracity of the State's timeline.

Ward argued that the late disclosure did not leave him with enough time to depose the witness who had done the enhancement of the 911 call or to have a defense expert examine the enhanced 911 call for any discrepancies between the enhanced version and the original recording.[1] Ward requested an evidentiary hearing to cross-examine the witness who had done the enhancement as well as the responding 911 operator, which the court granted.

During the evidentiary hearing, the responding 911 operator listened to the original and enhanced versions of the 911 call. Other than the enhanced version being clearer, the operator testified that both versions of the 911 call were the same. She testified she was not aware of any material being added or removed from either copy. The person who performed the enhancement also testified, explaining that she did not change the recording other than to make it clearer by adjusting the settings in the computer program she was using.

[1] Among other things, Ward questioned why the original recording he had received was over twelve minutes and forty-two seconds in length while the enhanced recording was only eight minutes and twenty seconds. It was later determined at the evidentiary hearing that the original twelve-minute call included a recording of a separate and unrelated 911 call, which accounted for the time difference.

Without requesting a continuance, Ward objected that the disclosure prejudiced him because he did not have enough time to have an expert "properly vet" the recording to determine whether it was a legitimate enhancement. The court overruled Ward's objection and later admitted the enhanced 911 call during the testimony of the 911 operator who took Victim's SOS call.

In the enhanced 911 call, Ward could be heard repeatedly asking Victim for her phone, Victim could be heard telling Ward to "get away" and to stop "putting his hands on" her, and Victim could be heard screaming and pleading for Ward to stop as he yelled expletives.

The jury returned a verdict of guilty on the kidnapping and domestic assault in the third degree counts. The jury found Ward not guilty of domestic assault in the first degree and attempted sodomy. Ward was sentenced to three years for kidnapping and three years for domestic assault, to be served consecutively. This appeal follows.

Standard of Review

This Court reviews the admission of evidence at trial for abuse of discretion. *State v. Davis*, 318 S.W.3d 618, 630 (Mo. banc 2010), *as modified on denial of reh'g* (Aug. 31, 2020). "The trial court has broad discretion to exclude or admit evidence at trial." *State v. Schachtner*, 611 S.W.3d 885, 890 (Mo. App. S.D. 2020) (quoting *State v. Shockley*, 410 S.W.3d 179, 195 (Mo. banc 2013)). "A trial court will be found to have abused its discretion when a ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Elliott v. State*, 215 S.W.3d 88, 92 (Mo. banc 2007). "Even when there is a discovery violation, '[a] trial court's denial of a requested sanction is an abuse of discretion only where the admission of the evidence results in fundamental unfairness to the defendant.'" *Id*. (quoting *State v. Taylor*, 298 S.W.3d 482, 502 (Mo. banc 2009)). "Fundamental unfairness turns on whether there was a

reasonable likelihood that an earlier disclosure of the requested evidence would have affected the result of the trial." *State v. Jamison*, 163 S.W.3d 552, 557 (Mo. App. E.D. 2005). "Bare assertions of prejudice are not sufficient to establish fundamental unfairness and [do] not show how the trial was substantially altered." *State v. Tisius*, 92 S.W.3d 751, 762 (Mo. banc 2002).

Discussion

In his sole point on appeal, Ward argues that the circuit court abused its discretion in denying his motion to exclude the enhanced version of Victim's 911 call. Ward claims that because the State disclosed the enhanced 911 call only one week before trial, he was unable to properly prepare a defense to its use. Ward sought to exclude this evidence first at an evidentiary hearing and later through a continuing objection, both of which were unsuccessful. Ward asserts that the late disclosure of the evidence violated Rules 25.02 and 25.03,[2] that under Rule 25.18 the court should have excluded the evidence at trial, and that failure to do so was an abuse of discretion.

A circuit court, when faced with a discovery violation, may "grant a continuance, exclude such evidence, or enter an order it determines just under the circumstances." Rule 25.18(a). "This rule gives circuit courts significant discretion, and a circuit court's decision will be disturbed 'only upon a very strong showing that the court abused its discretion and prejudice resulted.'" *State v. Zuroweste*, 570 S.W.3d 51, 60 (Mo. banc 2019) (quoting *State v. Edwards*, 116 S.W.3d 511, 534 (Mo. banc 2003)). "[T]he exclusion of evidence is a 'drastic remedy that should be used with the utmost of caution." *Id*. at 60 (citations omitted). "If a criminal defendant claims a late discovery disclosure prevented [him] from adequately investigating and preparing for trial, the

[2] All Rule references are to the Missouri Supreme Court Rules (2024), unless otherwise indicated.

appropriate remedy is a continuance, not exclusion of the evidence, unless the complaining party establishes prejudice from the delay." *Zuroweste*, 570 S.W.3d at 61.

In *Zuroweste*, the State failed to disclose an inculpatory jailhouse call made by the defendant until four days before trial. *Id*. at 55. The State claimed that they had only just discovered the call and had immediately disclosed it upon discovery. *Id*. The defendant sought to exclude the recorded calls at trial, claiming the late disclosure had not left the defense with enough time to adequately investigate the call or offer evidence to contradict the State's evidence. *Id*. Defense counsel did not, however, request a continuance to investigate the evidence. *Id*. The Supreme Court found that although there had been a discovery violation, the appropriate remedy was a continuance, not exclusion of the evidence. *Id*. at 61. The Court further found that the defendant's failure to request a continuance was a significant factor in "assessing the credibility of Zuroweste's claim that she did not have adequate time to prepare and whether fundamental unfairness resulted from admission of the evidence." *Id*.

Here, the State disclosed the enhanced 911 call one week prior to trial; the witness who had performed the enhancement was disclosed one day later. Although the enhancement had been done at some point in December 2023, the prosecutor had only discovered it one week before trial, whereupon he immediately disclosed it to defense counsel. While Ward argues that a continuance would not have cured the fundamental unfairness created by the State's discovery violation, we are unpersuaded. Because "[f]undamental unfairness turns on whether there was a reasonable likelihood that an earlier disclosure of the requested evidence would have affected the result of the trial," *State v. Jamison*, 163 S.W.3d at 557, any such fundamental unfairness caused

by a late disclosure should be curable by additional time to examine the evidence and prepare a new trial strategy as warranted.[3]

Equally unpersuasive is Ward's failure to demonstrate how the disclosure prejudiced him and how timely disclosure would have substantially altered the outcome of the case. Missouri courts have found that fundamental unfairness occurs when late disclosures are made at such a point where a defendant is unable to craft responsive trial strategies or otherwise interrogate the evidence, resulting in prejudice to the defendant. *See State v. Johnson*, 513 S.W.3d 360 (Mo. App. E.D. 2016) (Disclosure of 24 hours of inculpatory recordings on the Friday before the first day of trial prevented defendant from preparing a meaningful defense.); *State v. Henderson* 410 S.W.3d 760 (Mo. App. E.D. 2013) (Disclosure and admission of booking form at trial indicating a different address for defendant resulted in fundamental unfairness.); *State v. Scott*, 647 S.W.2d 601 (Mo. App. W.D. 1983) (The State's introduction of surprise witnesses at trial to corroborate critical physical evidence was fundamentally unfair.);

Here, however, Ward does not explain how the untimely disclosure precluded him from preparing a proper defense or how it prejudiced him. Instead, he argues that he would have liked to have had an expert analyze at the enhanced recording. But "[v]ague and indefinite responses about how a defense strategy would have changed in light of untimely disclosed evidence is insufficient to establish prejudice." *Zuroweste*, 570 S.W.3d at 62 (citing *State v. Royal*, 610

[3] Ward also briefly argues that a continuance would have interfered with his right to a speedy trial, but Ward does not support his argument with caselaw or any reference to the record. In fact, "[t]he record does not include any indication as to whether delaying the proceedings to review late discovery would have resulted in a substantial delay." *State v. Clark*, 486 S.W.3d 479, 488 (Mo. App. W.D. 2016). No questions were asked about the length of a possible continuance, nor was a continuance requested at any point to examine the untimely disclosed evidence. "In effect, [appellant] made no inquiry as to whether [his] Sixth Amendment rights would be affected." *Id.* at 489.

S.W.2d, 952-53 (Mo. banc 1981)). "[B]y merely claiming the late disclosure deprived [appellant] of an opportunity to adequately prepare for trial, [appellant] has not demonstrated a reasonable likelihood the State's discovery violation 'affected the results of the trial.'" *Id*. (quoting *Edwards*, 116 S.W.3d at 534).

Perhaps most critically, the enhanced 911 call was cumulative of other evidence introduced at trial. "A complaining party is not entitled to assert prejudice if the challenged evidence is cumulative to other related admitted evidence." *State v. Brandolese*, 601 S.W.3d 519, 536 (Mo. banc 2020). "Quite simply, evidence that is cumulative of other, properly admitted evidence cannot have contributed to a defendant's conviction and is harmless beyond a reasonable doubt." *State v. Garner*, 670 S.W.3d 262, 266 (Mo. App. E.D. 2023). In the case before us, Victim testified extensively to vital elements of the kidnapping and domestic assault charges, including a detailed account of the time period covered by the 911 call wherein Ward dragged Victim from the car and assaulted her. The police officer who first arrived on scene testified to seeing a bite mark on Victim, blood on her hand, and her hair falling out in clumps. The sheriff's deputy who next arrived on scene corroborated Victim's account and the officer's testimony with photos he had taken on scene. These included photos of clothing strewn in and around Ward's car as well as photos of Victim's injuries, namely scratches and bite marks, which were admitted into evidence. Thus, any probative evidence that could be heard on the 911 call was cumulative of other evidence admitted at trial.

Ward has neither demonstrated how he was prejudiced by the circuit court's admission of evidence, nor has he established how a timely disclosure of discovery would have affected the outcome of the case. As such, no fundamental unfairness resulted from the admission of the enhanced 911 call, and the circuit court did not abuse its discretion. Thus, we deny Point I.

Conclusion

For the foregoing reasons, the judgment of the circuit court is affirmed.



RENÉE D. HARDIN-TAMMONS, PRESIDING JUDGE

Angela T. Quigless, J., and
Thomas C. Clark II, J., concur.