Circuit Court for Montgomery County
Case No. C-15-CR-22-000779

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1371

September Term, 2023

---

ARNALDO ROMERO-VEGUILLA

v.

STATE OF MARYLAND

---

Arthur,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Harrell, J.

---

Filed: March 11, 2025

* 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 Maryland Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Montgomery County found Arnaldo Romero-Veguilla, appellant, guilty of sexual abuse of a minor and four counts of sexual offense in the third degree. The court sentenced appellant to terms of active incarceration totaling nineteen years (as well as suspended terms), and it ordered him to register as a Tier III sex offender. This appeal ensued, raising the following questions for our review:

> 1. Did the trial court err by limiting improperly the defense's cross-examination of a key State's witness?
>
> 2. Did the trial court err in allowing the prosecutor to make improper and prejudicial statements at closing argument?

We shall affirm the judgments.

## BACKGROUND

This is a case of delayed disclosure of child sexual abuse. The complainant, Z,[1] lived in a townhouse in Olney, Maryland, with her mother, M; her stepfather, appellant; and her three younger brothers. M stayed at home because one of the brothers was disabled (he has cerebral palsy) and she "took care of" him. Appellant worked long hours as a truck driver, sometimes as many as seven days a week. Generally, he woke up and left "very early" in the morning and returned home around dinner time.

Beginning when Z was in the fourth grade, she said appellant would enter frequently Z's bedroom, "around 2:00 or 3:00 in the morning," and "slip his hand up [her] shirt onto [her] chest." Sometimes when appellant did so, he would "pray" before slipping his hand

[1] We identify the victim and other related witnesses by initials unrelated to their names. *See* Md. Rule 8-125(a) (governing confidentiality of crime victims who were minors at the time of the offense or where the crime "would require the defendant, if convicted, to register as a sex offender").

beneath Z's shirt. Z was "confused" because she did not think that appellant's behavior was "normal," but she "thought it was something that would eventually become normal to [her]." Approximately two weeks after appellant began this behavior, Z had a health lesson in her fourth grade class which discussed sexual "grooming," causing her to doubt whether appellant's behavior was acceptable.[2] She "wanted to go to [her] counselor about what had happened," but she decided not to because she "thought that was normal," and that "it was okay for him to touch [her] that way."

Sometimes, instead of touching Z's breasts, she claimed appellant would French "kiss[]" her or "touch[] [her] vagina." Another time, appellant "touched [Z's] breast with his penis," until he climaxed. Once, when Z was in the seventh grade, appellant accosted her while she was in the shower and used a tape measure to measure the size of her "butt." According to Z, appellant "said there was a competition between the people that worked at his place and that they were going to measure girls' butts and that the one that had won would win money." Other times, when Z was in the kitchen washing dishes, appellant would walk by and "slap [her] butt."

By the time she was in the sixth grade, Z had sufficient misgivings about the propriety of appellant's behavior that she asked him to stop. According to Z, appellant replied that he did not know what she was talking about, and she ceased asking him to stop. Appellant warned Z that if she told anyone about what had happened, he would be imprisoned probably, and her mother would be left destitute.

[2] Z suggested later that this lesson did not occur until she was in the fifth grade.

When Z was in either the eighth or ninth grade, appellant performed cunnilingus on her. Finally, Z discovered that if she got into an argument with appellant, he would stop coming into her bedroom early in the morning; in fact, "he'd stop talking to [her] for days."

In the fall of her junior year in high school, Z met B "at a football game[,]" who became her boyfriend. They became close, and eventually Z confided to B that her stepfather was abusing her. He urged Z to tell her mother. Approximately two months later, in 2022, Z told her mother about the abuse. M "kicked [appellant] out of the house" and took Z "to the hospital" and "to the crisis center." The following day, in May 2022, Z "spoke with the police."

A seven-count indictment was filed, in the Circuit Court for Montgomery County, charging appellant with: sexual abuse of a minor household member (Count One); rape in the second degree (Count Two); and five separate counts of sexual offense in the third degree (Counts Three through Seven). A week-long jury trial was held. The State called six witnesses: Z; Z's boyfriend, B; Z's aunt, V; Z's mother, M; and two of Z's brothers. The defense called two witness: appellant's sister, Argemel; and appellant.

The jury deliberated over parts of three days and deadlocked ultimately as to Counts Two and Seven.[3] The jury found appellant guilty of all other charges. The court sentenced appellant to twenty-five years' imprisonment, with all but fifteen years suspended, for sexual abuse of a minor (Count One); ten years' imprisonment, with all but four years suspended, for third-degree sexual offense (Count Three), consecutive to the sentence on

[3] With the concurrence of the parties, during the second day of deliberations, the trial court delivered a modified *Allen* charge.

Count One; and ten years' imprisonment, all suspended, for third-degree sexual offense (Counts Four, Five, and Six), concurrent with the sentence on Count Three. In addition, the court imposed five years' probation to follow the period of active incarceration and ordered that appellant register as a Tier III sex offender, as required by statute. This timely appeal ensued.

Additional facts are included in the discussion of the issues.

## DISCUSSION

### I.

### Parties' Contentions

Appellant contends that the trial court erred in limiting improperly the defense's cross-examination of a key State's witness (the complainant's mother, M). According to appellant, M opened the door to cross-examination about a one-party consent sting call that the police and M made to appellant. In preventing trial counsel from cross-examining M about that call, the trial court, appellant claims, violated his right to confront witnesses, which is guaranteed by the Sixth Amendment and Article 21 of the Declaration of Rights. Moreover, appellant asserts the trial court's error was not harmless beyond a reasonable doubt because the evidence against him "was entirely dependent on the credibility of the testifying witnesses" and, thus, "[f]ar from overwhelming[.]" The jury's behavior, appellant insists, confirms the harmful effect of the error, as "the jury deliberated to the point that it could not deliver a verdict on two of the counts and the trial court decided to accept a partial verdict."

The State counters that the prerequisites for invocation of the "opening-the-door" doctrine were not satisfied. According to the State, M's "fleeting" and ambiguous reference to the fact of the one-party call "did not open the door, that is to say, make relevant, the content of the call[,]" and furthermore, although "the opening-the-door doctrine is a rule of expanded relevancy[,]" that doctrine "does not authorize the admission of incompetent evidence, such as [appellant's] self-serving, hearsay denials," which do not fall within any hearsay exception.

**Additional Facts Pertaining to this Claim**

On the first day of trial, prior to jury selection, the State made a motion in limine to preclude the defense from mentioning to the jury a one-party consent sting call that the police and M (the victim's mother) made to appellant and to exclude from evidence any statements appellant made during that call "as inadmissible hearsay," not falling within "any exception." The defense replied that it "might use" or refer to that call if "the door is open[ed]," "depending on the evidence that comes out during trial." The court deferred ruling on the motion at that time, but ordered the defense not to mention the sting call during opening statement. The defense complied with the court's order when it made its opening statement.

Two days later, M was called as a witness for the prosecution. During direct examination, she testified to several facts[4] that she had not disclosed during earlier interviews with detectives.

During cross-examination, the defense questioned M about her late disclosure of those facts and her failure to mention them in earlier interviews. The State attempted to rehabilitate M on re-direct examination[5]:

> [PROSECUTOR 1]: You testified that you saw the defendant kissing your daughter on the lips, spanking her on the butt, and her sitting on his lap and him going to her bedroom and closing the door.
>
> [M]: Yes.
>
> [PROSECUTOR 1]: Okay, why didn't you mention those things when you met with detectives?
>
> [M]: Like I mentioned before, I thought that it was something normal. We had been married for 14 years. I did think that it was the love that a father would have towards his own daughter.

Then, during re-cross examination, the following occurred:

> [DEFENSE COUNSEL 1]: And now once you started understanding this about slapping and the kissing, put his lips on her mouth, you don't say anything until a week before the trial.
>
> * * *

[4] M testified that (in the words of one of the prosecutors) she had seen appellant "kissing [Z] on the lips, spanking her on the butt, and her sitting on his lap and him going to her bedroom and closing the door."

[5] There were two prosecutors and two defense attorneys in this case. When quoting the transcripts, we shall refer to them in the order in which their names appear on the cover pages of the transcripts, e.g., "Prosecutor 1" or "Defense Counsel 2." Otherwise, where it is not pertinent to the facts or legal issues raised, we may refer occasionally to "the prosecutor" or "defense counsel" without making the distinction as to which one we refer to.

[DEFENSE COUNSEL 1]: So you waited a week, you said this a week ago, correct? When you spoke to [an interpreter who worked for the State's Attorney's Office]?

[M]: When I spoke with the detective,[6] I did tell her what I saw earlier.

[DEFENSE COUNSEL 1]: Well, you were asked this question multiple times and you just finished telling the State that you didn't say anything to the detective because it didn't register.

[M]: **I did mention that to the detective. Actually, we even had a call that we made to him.**

[DEFENSE COUNSEL 1]: **Oh, so you called him?**

[PROSECUTOR 1[7]]:**Objection.**

THE COURT: Hold on, there's an objection. Basis?

[PROSECUTOR 1]: May we approach?

THE COURT: Yes.

(Bench conference follows)

[PROSECUTOR 1]: **This was the subject of a motion in limine, which is discussion of defendant's phone sting.**

[DEFENSE COUNSEL 1]: **I did mention it. She opened the door. When she opened that door, all bets are off.**

THE COURT: **I don't think she opened the door.** She said she made a call with the detective.

[6] It is unclear whether M was referring to a detective or to an interpreter. Because she did not speak English, M was interviewed through an interpreter, and she testified likewise at trial through an interpreter.

[7] The transcript indicates that the defense objected, but it is clear from the context that this was an error.

[PROSECUTOR 1]: But it's irrelevant.

THE COURT: Yeah.

[DEFENSE COUNSEL 1]: Well, it's not because he denies.

THE COURT: I'm going to --

[DEFENSE COUNSEL 2]: She did.

[DEFENSE COUNSEL 1]: I'll ask the interpreter who recorded.

[PROSECUTOR 1]: That doesn't make it a proper subject for questioning.

[DEFENSE COUNSEL 1]: I did not question her on that issue. She opened the door and now is saying that she said all of this about the butt and everything to the detective, and that they even made a phone call.

THE COURT: Hold on. Okay, but why is it proper for questioning, though? Why is it proper for questioning?

* * *

[DEFENSE COUNSEL 1]: Because I asked her, she said questioning because I said, you said earlier that you never said anything when you were talking to the detective, and you even said it to the State that you waited because and now, and then that's when she said, well, because I did say it to the detective. As a matter of fact, we even made a phone call to him. That's what I heard.

[PROSECUTOR 1]: It's my perception that the witness was confused about what's being asked of her. And I do think the questions have been a bit confusing.

THE COURT: But you got to object. You got to object to the form of the questions.

[PROSECUTOR 1]: Yes, Your Honor.

THE COURT: I agree that they've been confusing, some of them, but you got to object to the form of the questions.

[PROSECUTOR 1]: But in any case, I don't think a mere mention of the call, which is -- first of all, it's unresponsive to the questions, not relevant to what's being asked or this subject of examination. I don't think that opens the door to putting the defendant's self-serving hearsay, in any way.

THE COURT: And what are you intending to get out through the discussion about a call with the detective?

[DEFENSE COUNSEL 1]: Your Honor, because now she's leading it.

THE COURT: What do you want? What's your intent?

[DEFENSE COUNSEL 1]: Maybe my client said something so it needs to be --

THE COURT: No, no, hold on. She didn't say anything about your client.

[DEFENSE COUNSEL 1]: No, she said we made -- when I asked her, I said, you didn't say anything to the detective. And she said, [“]no, I did. And I even called him."

THE COURT: Right. I mean she didn't mention the defendant.

[DEFENSE COUNSEL 1]: She said I called him, the detective.

THE COURT: She didn't mention the defendant. She didn't mention the defendant.

* * *

THE COURT: So my question was what are you intending to elicit from her?

[DEFENSE COUNSEL 1]: Well, I feel that my client's now been prejudiced because she said that she did say everything. And as a matter of fact, she called my client with the detective. So I feel like now it's like --

THE COURT: No, she didn't say anything specific. It's very general.

[DEFENSE COUNSEL 1]: She said I called him with the detective.

THE COURT: No, she didn't say that. She didn't say anything to specify that the defendant was involved in any phone call. There's nothing that she said that -- she said, I told the detective what I saw. She said, I told the detective what I saw.

[DEFENSE COUNSEL 1]: Your Honor, she also -- you could ask the interpreter, she also then went and said I called the defendant with the detective.

THE COURT: She did not say that.

[DEFENSE COUNSEL 1]: Could you ask the --

THE COURT: Did she call the defendant with the detective? May I have the interpreter?

THE INTERPRETER: Yes, Your Honor.

THE COURT: Do you recall that the witness testified that she called the defendant with the detective? That she said she called defendant with the detective?

THE INTERPRETER: No.

THE COURT: Okay. All right.

[PROSECUTOR 1]: Excuse me. Excuse me, Mr. Interpreter, if the defense wishes to move to strike that, I think that's fine. But the defense has been hoping this door would be opened from the beginning of the trial, and that doesn't open the door to defendant's self-serving hearsay.

THE COURT: Is that what you're -- I keep asking. What are you trying to elicit?

[DEFENSE COUNSEL 1]: It does open the door because if it's self-serving is when --

THE COURT: Why do the defendant's --

[PROSECUTOR 1]: Because he denies it --

THE COURT: Oh, okay. All right. I understand. Objection sustained.

(Emphasis added.)

**Analysis**

The Sixth Amendment to the Constitution of the United States, made enforceable against the states through the Fourteenth Amendment,[8] provides in relevant part that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. "The confrontation right (with an exception not applicable here, *see Leidig v. State*, 475 Md. 181, 234-41 (2021)[9]) afforded by Article 21 of the Maryland Declaration of Rights has been interpreted to be coextensive with the federal right." *Calloway v. State*, 258 Md. App. 198, 214 n.9 (2023) (citing *Smallwood v. State*, 320 Md. 300, 306 (1990)). The "main and essential purpose" of the right of confrontation is "*to secure for the opponent the opportunity of cross-examination*." *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974) (quotation marks and citation omitted) (emphasis in original). A trial court retains, however, "wide latitude insofar as the

[8] *See*, for example, *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (citing *Pointer v. Texas*, 380 U.S. 400, 406 (1965)).

[9] In *Leidig*, the Supreme Court of Maryland declared that Maryland no longer would follow the Supreme Court of the United States's murky jurisprudence in determining whether a scientific report is "testimonial." *See Leidig*, 475 Md. at 237 (describing the U.S. Supreme Court as being "in a state of judicial gridlock when it comes to" the issue). Previously, Maryland had attempted to follow the 4-1-4 decision in *Williams v. Illinois*, 567 U.S. 50 (2012), *see State v. Norton*, 443 Md. 517 (2015), but that proved to be a fruitless endeavor. *Leidig*, 475 Md. at 236-37 (declaring that "this case demonstrates the limitations of *Norton*'s framework"); *id.* at 238 (declaring that "there never have been five votes on the Supreme Court to decide the minimum requirements for a scientific report to qualify as testimonial").

Confrontation Clause is concerned to impose reasonable limits" on cross-examination and may exclude cross-examination into matters that are irrelevant. *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

"The opening the door doctrine 'authorizes admitting evidence which otherwise would have been irrelevant in order to respond to (1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection.'" *State v. Heath*, 464 Md. 445, 459 (2019) (quoting *Clark v. State*, 332 Md. 77, 84-85 (1993)). "Generally, 'opening the door' is simply a contention that competent evidence which was previously irrelevant is now relevant through the opponent's admission of other evidence on the same issue." *Clark*, 332 Md. at 85.[10]

For two reasons, we conclude that M's isolated, unresponsive statement, "I did mention that to the detective. Actually, we even had a call that we made to him[,]" did not open the door to admitting the contents of the one-party consent/sting telephone call. First, as the trial court observed, it was unclear to whom M was referring in her remark. She never said expressly that she called appellant; as the trial court stated aptly, "No, she didn't say anything specific. It's very general. . . . She didn't say anything to specify that the defendant was involved in any phone call." Nor, for that matter, did M say anything whatsoever about the *contents* of that call; if she had, this may have been a different case.

[10] We do not think the "red flag" WestLaw attaches to *Clark* is warranted. The only reason it is attached appears to be the observation, in *Heath*, 464 Md. at 460 n.7, that *Clark* was decided before the adoption of Title 5 of the Rules. But *Clark* otherwise is consistent with the Maryland Rules and, in fact, "adopted the language of Federal Rule of Evidence 403 as a limitation to the 'opening the door' doctrine." *Heath*, 464 Md. at 460 n.7 (citing *Clark*, 332 Md. at 87).

Second, as the State points out, the statements by appellant that the defense sought to introduce through the purportedly open door were hearsay that did not fit within any exception (or at least any exception mentioned at trial).[11] And certainly, at least under the circumstances of this case, where M did not refer in any way to the contents of the sting call, the defense bore the burden to show that a hearsay exception applied. It did not. The trial court did not err in sustaining the prosecution's objection to the defense attempt to admit the contents of the sting call under the "opening-the-door doctrine."

## II.

## Parties' Contentions

Appellant contends that the trial court erred in allowing the prosecution to make improper and prejudicial statements during closing argument. He asserts that the prosecution argued "repeatedly" facts not in evidence and undermined "baselessly" the presumption of innocence. According to appellant, those purportedly improper remarks were so unfairly prejudicial that they violated his right to a fair trial.

The purportedly improper remarks fall into two categories. First, appellant challenges the prosecution's remarks about Z's delayed disclosure and "grooming," subjects which, appellant maintains, "could only have been established by an expert witness." Second, appellant asserts that the prosecution was permitted improperly to argue that "not one single witness in this entire trial has more motive than he [i.e., appellant] has

[11] The burden falls on the proponent of the evidence to demonstrate that a hearsay exception applies. *State v. Smith*, 487 Md. 635, 660 (2024); *Curtis v. State*, 259 Md. App. 283, 314 (2023).

to lie." The latter comment, according to appellant, "effectively undermined the presumption of innocence" and violated his right to a fair trial. And finally, appellant contends, relying upon *Lawson v. State*, 389 Md. 570 (2005), that even if none of the challenged improper comments, considered in isolation, warranted reversal, their cumulative effect was so prejudicial that we should reverse.[12]

The State counters that defense counsel did not object to the first of three prosecutorial comments about delayed disclosure, thereby forfeiting the right to appellate review as of right, but that, in any event, the challenged remark, viewed in context, was not improper.

The State acknowledges that the second challenged reference to delayed disclosure did elicit an objection, but it maintains that the remark was so inconsequential that "defense counsel [did not] think it was important enough even to ask the court to strike the remark or give a curative instruction." In any event, according to the State, that remark reflected nothing more than common knowledge, and the prosecution's "passing reference" to delayed disclosure "did not scuttle the integrity of the verdict."

The third group of prosecutorial statements, which also did not elicit a defense objection, were, according to the State, a justified response to the defense's closing argument implying that Z's "handling of the allegations betrayed a lack of truth." And furthermore, asserts the State, those remarks were "based on inference derived from record facts[.]"

[12] Appellant further contends that, under *Lawson*, we may excuse defense counsel's failure to object to some of the challenged comments.

As for the prosecution's comments about "grooming," the State counters that defense counsel "seemingly acquiesced" in the trial court's admonition to the prosecution to "move on." Moreover, the State points out, "grooming" was "a label the jury had already heard" from both Z and defense counsel, and "the facts constituting that grooming were actually in evidence[.]"

The prosecution's comments about appellant's motive to lie, according to the State, were not improper, but rather, were fair comment on the high stakes he faced—the loss of his liberty—and "the relentless nature of his many incredible denials[.]" And finally, "the challenged remarks in this case all fell within bounds[,]" but even if they did not, they do not warrant reversal, as demonstrated by the jury's careful evaluation of the evidence, which included acquittals on two of the charges.

**Additional Facts Pertaining to the Claim**

*Facts Allegedly Not in Evidence*

In attempting to explain why Z failed to disclose that she had been abused until several years afterward, the prosecutor declared:

> [PROSECUTOR 1]: Children don't have the words, the understanding, the experience, or the maturity to know what's happening to them and to know how to report it and articulate it. And it's confusing when it's being done by the person who's supposed to love them and protect them, who isn't supposed to do bad things to them. But when those children get older, they do have the words, they do have the experience, they do have the understanding, and many times that is when they disclose.

Defense counsel did not object.

As she compared the elements of the charges to the evidence adduced at trial, the prosecutor stated:

[PROSECUTOR 1]: . . . In child sex abuse cases like these in which there are delayed disclosures, which is the way it is in a huge number of these cases --

[DEFENSE COUNSEL 1]: Your Honor, I'm going to object. This is on -- if we may approach, I mean, several times. Thank you.

A bench conference ensued:

[DEFENSE COUNSEL 1]: If she wants to get into delayed disclosure, she had a social worker that was supposed to be testifying. She's not an expert on delayed disclosure or why kids do not report it. That's going beyond. I understand you can say it's not evidence, but no, if you're going to talk about delayed disclosure, a lot of the other things that she had discussed, you need expert testimony. We don't have that. She had the ability to get a social worker here. They're not here. So for her to open the subject of why kids report, why kids don't report, other things that have been said during opening, and I've been kind not to object because I really don't like throwing people off their closing, but it gets to the point that this has been done several times. And it's really clear when you're going to talk about something that requires expert testimony, you bring that person in to testify. She's not an expert, she's not a social worker, and it's really clear in the law about that's why they bring Shoe Cat in and TreeHouse.[13]

THE COURT: Okay, I got it.

[DEFENSE COUNSEL 1]: Thank you.

THE COURT: All right.

[PROSECUTOR 1]: I'll limit my argument to this particular case, yeah.

THE COURT: Okay. Thank you.

During closing argument, defense counsel launched a wide-ranging attack on Z's credibility:

[DEFENSE COUNSEL 2]: The evidence in this case is inconsistent,

[13] We understand these references to be to Dr. Shukat and the doctor's practice business entity.

contradictory, and at times, confounding. You see, the State called [Z] to testify about the allegations. And as [Z] was testifying, there were numerous instances where [Z] wasn't quite consistent with what she had said earlier, and I'll be more specific than that. For example, [Z] testified that this alleged abuse started about the fourth or fifth grade and she testified that it was constant, constant. [Appellant] was touching her breasts, her butt, her vagina, kissing her with tongue. However, when [Z] spoke to her aunt who's married to her maternal uncle, she told her that it would happen about once a week, once a month. [Z] testified here today and she told the social worker with whom she met in June of 2022, that [appellant] would touch her only between 3:00 and 5:00 a.m. when he came into her bedroom. However, after her first meeting preparing for this trial, she testified, she told the State another allegation that she had never previously disclosed before, which was that [appellant] performed oral sex on her. That was for the first time disclosed in preparation for this trial. And I understand that when there's constant sexual abuse that it can all get blurred, it can kind of become one. But I would proffer to you that an allegation of oral sex, one isolated allegation of oral sex is something especially given that I believe she testified she was [in] seventh, eighth [grade], I'm not sure, but she was older. She wasn't in fourth or fifth grade, and I would proffer that that's something that you remember.

And then in a second meeting, preparing for this trial, we have more specific, never before been able to be pinned down allegations. When [Z] met with the State in preparation for this trial, she also said that the abuse didn't just occur at nighttime or between 3:00 and 5:00 anymore, but in fact, on Sundays. Now, that was never previously disclosed.

The reason I raise these growing stories, these changing stories is because what we have in terms of evidence are the statements of [Z], the statements of the witnesses, and then the statement of [appellant], and not a single time that the allegations have been made or disclosed have they remained the same or even similar. Further, [Z] has alleged that while her mother was home, all of her brothers in the home while she's washing dishes. She alleged every day she washed the dishes while her mother was home taking care of [Z's disabled brother] with [appellant], that he would touch her breasts, touch her buttocks, hug her from behind, and kiss her with his tongue. However, [Z's] mother never once until deep into the investigation into this matter ever said anything to [appellant], ever asked [Z] whether she was okay. She told the social worker she was shocked by these allegations, shocked, and in fact, told the social worker that she saw nothing, not him touching her butt, not him grabbing her breasts, not him kissing her with a mouth and a tongue. Never once. Those observations didn't come until far later into this investigation.

Now I ask you, when do you remember things the best? And it's soon after you experience them or are talking about them? So from [Z's] mother, to be shocked and to not have witnessed some of this alleged abuse when she first sat down with the social worker, I would say is the time at which she had the best memory of what she had seen and what she believed to be true.

* * *

I also bring up the tape measuring incident. [Z] testified that happened prior to seventh grade. Her mother said that she didn't recall any tape measuring incident or didn't mention it with the social worker. Then she got on the stand here today and testified, my apologies, last week and testified that she recalls seeing this tape measuring, walking down the stairs with [appellant] when [Z] was in high school.

The thing that sticks out about this case is how many different things you're now supposed to believe are weird and indicative of sexual abuse that are not.

The defense continued relentlessly to attack Z's credibility:

[Z] testified that she had a body safety class in fourth grade. She testified that she had another body safety course in sixth grade and she testified that being a very smart young woman, she understood from those lessons that what she alleged was happening at home wasn't okay. Yet it wasn't until May 17th, 2022, where after a series of events and building resentment, frustration, whatever it may be, learned, knowing in her heart of hearts that her father is not her biological father, being lied to by her whole family -- she testified she didn't like [appellant's] family -- that she finally disclosed.

[Z] testified that [appellant] was strict, he was controlling, he was cheap. He was starting to change her brothers. They were no longer willing to help her clean. [Z] testified that she wanted out of that house when she was 18, but in a text message conversation with her friend, she understood that because of her cystic fibrosis, that that would be difficult. And she texted RIP decisions. [Z] did not like [appellant] for a number of reasons and in a way that we will never be able to understand, but that does not make [appellant] guilty.

Despite the large amount of testimony here today and then over the past week about [appellant] coming upstairs to pray with the children before he left, never once prior to coming to trial did [Z] accuse [appellant] of

coming up in her bedroom to pray in the morning. Not once. So although that is the major time it was alleged to have occurred, this is the first we're hearing of it. When I asked [Z] about how she felt about [appellant's] family, she testified that she didn't care for her stepsister because her stepsister mistook her for quite a long time. Now, it was only after I presented her with a message where she said, I don't like my stepsister because she just comes up here to take all of our money, did she finally start to admit how she truly felt about [appellant's] family.

[Z] testified that the only time this abuse ever stopped was when they were arguing. She said, [appellant] would stop moving into her bedroom and they were having an argument and it was only after they had made amends that he would start to come in. But [Z], nor her mother, ever told you about the five months they didn't live in the house because of the water damage. When they left the house, they lived in a hotel room and then they were able to get a two-bedroom apartment, the two rooms. And never once did [Z], did her mother, did anybody tell this jury that there was actually a five-month period of time where they weren't in the family home. It was only when we asked about it, only when we brought that out. Was there any evidence that there's this five-month period of time where [Z] is alleging he is sexually abusing her on a daily basis in their family home, but they don't live in the family home?

Further, the basement. When the family moved into the house in 2014, the basement was not complete. That's not in dispute. It was an unfinished basement. And it wasn't until, as [appellant] testified, 2018 that that basement was finished such that he and his wife, [M] could live down there. That means that from 2015 until 2018, three out of the four years that the sexual offenses are alleged, and three out of the five years that the sexual abuse is alleged, [M], [Z's] mom, her bedroom is right across the way from [Z]. There are three bedrooms upstairs. Now, if [Z's brother] could hear [appellant] up in the morning, [M] apparently was aware that [appellant] got up in the morning, they alleged he went into the bedrooms to pray. Dispute that. But you're telling me that from 2015 until 2018 when he and [M] moved down into the basement, that every morning he would go into [Z's] bedroom and touch her and mom had no idea. Doors are open, things could allegedly be heard. Mom wasn't in the basement in 2015 when this all allegedly started. Mom was across the hallway and her two brothers were right there and nobody, even when [Z's brother] said that he was awake on occasion, saw or heard anything.

Defense counsel continued to attack Z's credibility:

> [Z] testified that she told [B, her boyfriend] in January of 2022 about this alleged abuse. [B] testified that it was April of 2022. Whether January or April of 2022, why did she not disclose the alleged abuse when she told [B]? Why did she not disclose in fourth or sixth or eighth grade when she got her body safety class? And I get it. Kids don't understand necessarily what they're being told, especially when they're young, but she said she did understand those body safety classes.
>
> Now, the State wants you to think -- and [Z] testified that [appellant] allegedly said to her, don't tell anybody because who's going to take care of your family. Well, who's taking care of the family now? As you can see, they're still and only still in the family home. It wasn't until May 17th, 2022, after [Z] who testified she was sick of [appellant], she wanted to live her life, [she] wanted to do what she wanted to do, she wanted to be able to leave the house and she couldn't. [Appellant] testified she came downstairs for an appointment, about her cystic fibrosis and had an attitude. And [appellant] took her phone as he often did when his teenage daughter gave him attitude. But this time it was different. This time there was going to be information on the phone that [Z] did not want [appellant] to see. And [appellant] told her they were going to talk about it. In addition to deeply believing in her soul that he was not her biological father and being lied to the whole time by both her mother and [appellant], in addition to now realizing she might not be able to leave the house at 18 because of her cystic fibrosis, testifying that she despises [appellant's] family, knowing what's going to be on that phone, and knowing the disciplinarian that [appellant] is, [Z] tells her mother that [appellant] is sexually abusing her.

During rebuttal closing argument, the prosecution, responding to defense counsel's closing argument, revisited the earlier comments about delayed disclosure:

> [PROSECUTOR 2]: . . . So any talk at all about, oh, she should have disclosed in fourth grade or fifth grade or sixth grade, throw that out of the window because children are not full adults and they don't understand what's happening to their bodies when people they trust are taking advantage of them.
>
> In addition, children remember things differently than adults, especially as time goes by, especially with this amount of abuse that [Z] suffered.

The defense did not object.

The prosecutor concluded by arguing that appellant had been "grooming" the victim:

> And ladies and gentlemen, this is grooming. Grooming is slow and small acts to see how far you can go and in progressing and evolving, started with touching of outside the shirt and under the shirt and the vagina, then digital penetration, then oral sex. This is the natural progression of grooming of a child. And you should be angry --
>
> [DEFENSE COUNSEL 1]: Objection. He's not an expert.
>
> THE COURT: Overruled. But you'll move on.
>
> [PROSECUTOR 2]: Yes, Your Honor. You should be angry. You should absolutely be angry. You should be angry that this happened to [Z]. And for those reasons, ladies and gentlemen, I say go back, deliberate, and find the defendant guilty because he did in fact sexually abuse this poor child. Thank you.

*Appellant's Motive to Lie*

During closing argument, the prosecutor commented on appellant's testimony:

> [PROSECUTOR 1]: Next, the defendant. Keep in mind, the defendant did not have to testify. He did not have to take the stand. And the judge told you, you couldn't hold it against it if he didn't. But he did take the stand and now you can hold that against him. What he had to say, how he had to say it, if he appeared to be telling the truth. Consider motive, consider that not one single witness in this entire trial has more motive than he has to lie.
>
> [DEFENSE COUNSEL 1]: Objection.
>
> THE COURT: Overruled.
>
> [PROSECUTOR 1]: Not one single person in this entire trial has more to lose by the truth coming out. The defendant didn't have to testify, but he did. And when he did, he became one of the best witnesses for the State. And let me tell you why. He was evasive and he lied. And you know those two things are true. How do you know? My colleague asked him question after question after question, the same question a lot of times, sometimes rephrasing them, sometimes just asking the same question again, and he was evasive and he wouldn't answer to the point that even the judge had to say,

> sir, sir, please answer the questions. He lied and you know he lied and you know he lied more than once.

**Analysis**

We begin by observing that several of the purportedly improper prosecutorial statements raised on appeal did not elicit objections at trial, thereby resulting in the failure to preserve those claims of error for appeal. Md. Rule 4-323(c). There were three challenged remarks that did elicit contemporaneous objections: one of the remarks about "delayed disclosures," the remark about "grooming," and the comments about appellant's motive to lie.

In an extraordinary case, we might excuse the absence of objections to the other challenged remarks. The exemplar in that regard is *Lawson v. State*. In *Lawson*, a case involving charges of child rape, the Supreme Court of Maryland excused trial counsel's failure to object to improper prosecutorial comments, made during rebuttal closing argument, where the prosecutor implied that Lawson was a "monster" and speculated about his future dangerousness. 389 Md. at 596-97, 599, 604. In that case, trial counsel objected to other improper arguments (e.g., a "golden rule" argument and a burden-shifting argument). *Id.* at 594-95; *see id.* at 609 (Harrell, J., concurring) (observing that the golden rule and burden-shifting arguments were preserved, but that the "monster" and future dangerous arguments were not). A majority of the high Court held that the cumulative effect of all the improper comments, both objected to and unobjected to, had to be considered in determining whether Lawson's right to a fair trial had been violated. *Id.* at 604-05. The Supreme Court held that it had.

The present case is a far cry from *Lawson* simply because the comments at issue here are not even remotely as inflammatory as those at issue in *Lawson*. We shall not consider appellant's unpreserved claims. Md. Rule 4-323(c); *Lawson*, 389 Md. at 609-10 (Harrell, J., concurring) (observing that "[t]here are sound, non-technical reasons for requiring, as a precursor to appellate preservation, defendants to object[,]" including alerting the trial court to the alleged error and providing it an opportunity to take curative action).

*Delayed Disclosure*

The preserved claim about the prosecutor's brief remark, "In child sex abuse cases like these in which there are delayed disclosures, which is the way it is in a huge number of these cases[,]" is much ado about nothing. It was obvious from the start that this was a case of delayed disclosure, and the testimony of both Z and M confirmed amply the point. Even if the prosecutor's comment was objectionable, the trial court's response to the defense objection, "Okay, I got it[,]" which elicited a "Thank you" from defense counsel and the prosecutor's promise to refrain from making additional, similar remarks, sufficiently cured any purported error.

The relatively minor nature of the prosecutor's transgression becomes even more apparent given the extensive attack by the defense on Z's credibility in subsequent argument, which we have set out in detail here. That attack, in turn, elicited a brief remark by the prosecutor, without objection, explaining that "children are not full adults and they don't understand what's happening to their bodies when people they trust are taking advantage of them. In addition, children remember things differently than adults, especially

as time goes by, especially with this amount of abuse that [Z] suffered." Given the entire record in this case, we conclude that even if the prosecutor's comment was improper, its effect on the verdict was infinitesimal.

*Grooming*

"Grooming" is a process through which "a perpetrator subtly persuades or manipulates the child not to disclose the abuse[.]" *Walter v. State*, 239 Md. App. 168, 181 (2018). Through "grooming," an "abuser gains a child's trust through special attentiveness." *Coates v. State*, 175 Md. App. 588, 607 (2007), *aff'd*, 405 Md. 131 (2008).

*Walter* addressed whether there was a sufficient factual basis supporting an expert's testimony about delayed disclosure and concluded, under the facts of that case, that there was not because it was impossible to determine the "the reliability of her methodology[.]" 239 Md. App. at 196-97. But *Walter* is of limited value in the context of a prosecutor's closing argument. In closing argument, '"[t]he prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom."' *Lee v. State*, 405 Md. 148, 163 (2008) (quoting *Degren v. State*, 352 Md. 400, 429-30 (1999)).

We begin with the observation that Z testified, without objection, that in her fourth (or fifth) grade health class, she was "given the presentation about grooming and learning that there are people out there that . . . appear as friends and might want to advance sexually." She further testified that, after the lesson about grooming, she initially "wanted to go to [her] counselor about it [i.e., appellant's abuse], but I thought it was okay."

There was additional evidence to support the prosecutor's remark. When Z was in the sixth grade, she asked appellant whether the way he "touch[ed]" her was "normal," and he replied that he did not know what she was talking about. The following year, Z asked him again, and appellant replied that it was "normal," but later told her again that he did not know what she was talking about. Appellant further said, "it's okay, that [he was] just touching [her]. It's just a touch." Z testified that appellant used fear to discourage her from disclosing the abuse. She testified that appellant told her that "[her] mom would be left with nothing" and would be "[un]able to care for" the family because he would be sent probably to prison.

The prosecutor did not argue facts not in evidence in referring briefly to appellant's "grooming." Rather, he was drawing inferences from the evidence presented. Moreover, Z's testimony that she had learned about grooming in elementary school supported a rational inference that many jurors may have been exposed to similar concepts in their own education. "'[J]urors may be reminded of what everyone else knows[.]'" *Smith v. State*, 388 Md. 468, 487 (2005) (quoting *Wilhelm v. State*, 272 Md. 404, 439 (1974)). But even if the prosecutor's remark was improper and the objection should have been sustained, the trial court's action, ordering the prosecutor to "move on[,]" in our judgment, was sufficient to ameliorate any minimal prejudice appellant may have suffered.

*Appellant's Motive to Lie*

By electing to testify, appellant exposed himself not only to cross-examination, but also to the prosecutor's comments about his testimony. As the State points out, "a witness's motive to lie is a valid consideration when assessing the truthfulness of that witness's

testimony." *See* Maryland Criminal Pattern Jury Instruction 3:10(5) ("In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as . . . whether the witness has a motive not to tell the truth[.]").

We are not unaware of appellant's due process concerns. But his reliance upon *Degren* is misplaced. In that case, the Supreme Court of Maryland held that a trial court did not abuse its discretion in denying a motion for mistrial, grounded upon the prosecutor's comments that '"this defendant has every reason to lie. She is a defendant[,]"' "at least," in the Court's words, "to the extent that they did not subvert the presumption of innocence, the only ground for mistrial argued by [Degren's] counsel." *Degren*, 352 Md. at 431-32. The trial court did not err or abuse its discretion in overruling the defense objection to the prosecutor's remark that "not one single witness in this entire trial has more motive than [appellant] has to lie."

*Cumulative Effect of Prosecutorial Comments*

To borrow a quote from an admittedly different context, subject to a higher prejudice standard, we think nonetheless that the Court's remark in *Wallace v. State*, 475 Md. 639 (2021), in rejecting a cumulative effect claim, aptly describes the situation here—that "'twenty times nothing still equals nothing.'" *Id.* at 673 (quoting *State v. Borchardt*, 396 Md. 586, 634 (2007)). Indeed, as *Borchardt* observed, this is "an issue of simple mathematics[.]" *Borchardt*, 396 Md. at 634.

**JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.**