Circuit Court for Prince George's County
Case No.: CT190100X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1372

September Term, 2020

DOUGLAS CAISHPAL REIMUNDO

v.

STATE OF MARYLAND

Reed,
Ripken,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 21, 2022

Appellant, Douglas Caishpal Reimundo, was charged by indictment in the Circuit Court for Prince George's County with sexual abuse of a minor, second degree rape, sexual offense in the third degree, sexual offense in the fourth degree, and second degree assault. Appellant was convicted by a jury of two sexual offenses and second degree assault, but acquitted of sexual abuse of a minor and second degree rape. Appellant was sentenced to ten years, with all but five suspended, for sexual offense in the third degree, the remaining sentences having merged, to be followed by five years' supervised probation upon release. In his timely appeal, appellant asks us to address the following question:

> Did the trial court err in allowing a lay witness to give prejudicial expert testimony?

For the following reasons, we shall affirm.

BACKGROUND

Fourteen-year-old C.O. testified that appellant was her mother's boyfriend.[1] Beginning when she was twelve-years-old, appellant would come into C.O.'s bedroom at night, touch her breasts and her vagina, and forced her to hold his penis with her hand. Appellant also penetrated her vagina with his fingers and his penis, on numerous occasions. C.O. testified that the first time appellant penetrated her vagina with his penis occurred on April 24, 2018, when she was twelve-years-old. She further testified that, sometimes appellant would grab her in an aggressive fashion while assaulting her. He also grabbed around her neck and seemed like "he wanted to choke me."

[1] It is unnecessary to name the minor victim in this case. *See Muthukumarana v. Montgomery Cnty.*, 370 Md. 447, 458 n.2 (2002); *Thomas v. State*, 429 Md. 246, 252 n.4 (2012).

C.O. did not tell anyone about these incidents at first because she was "scared." She explained that "I was scared of, like, something happening because he told me multiple times that if I told somebody what was going on, something was going to happen" to her, her sisters, or her parents. C.O. eventually told a friend, a school counselor and her stepmother in December 2018. She reiterated that, because she was scared, she did not tell anyone sooner.

During cross-examination, C.O. was asked whether she first told a friend of hers that appellant touched her and raped her in approximately May 2018. C.O. responded that she did not remember. She also did not remember denying the incident to a school counselor around that same time. In addition, C.O. did not remember someone coming to her house to perform a safety assessment, and she did not remember denying whether these incidents occurred.[2]

Detective Gloria Neeld, assigned to the Child and Vulnerable Adult Abuse Unit with the Prince George's County Police Department, testified on direct examination that she watched an interview between C.O. and an unidentified social worker conducted at the county Child Advocacy Center. Detective Neeld conducted other interviews with

[2] The facts surrounding this safety assessment, and the statutory authority for such an investigation are unclear. We note that such an assessment appears to be authorized under Section 5-706 of the Family Law Article. *See* Md. Code (1999, 2019 Repl. Vol., 2021 Supp.) § 5-706(j)(3); *see generally*, *In re J.R.*, 246 Md. App. 707, 731-38 (generally discussing the history of pertinent safety laws), *cert. denied*, 471 Md. 272 (2020). We also note that C.O.'s stepmother later testified, over defense objection, that she overheard C.O. tell a psychologist that she did not report this earlier because appellant threatened her and said he was going to hurt her mother and her sisters. On cross-examination, C.O.'s stepmother also testified that, around July 2018, C.O. denied that any sexual abuse occurred.

witnesses and was aware that appellant was interviewed by Detective Eduardo Cruz. Following that interview, appellant was taken into custody. The issue that is the subject of this appeal thereafter materialized, following Detective Neeld's cross-examination, during her redirect examination, as we shall discuss in more detail in the discussion that follows.

The last State's witness was Detective Eduardo Cruz, assigned to the Criminal Investigations Division of the Prince George's County Police Department. During an interview of appellant on December 28, 2018, appellant, who was then thirty-five years old, admitted that he would go into C.O.'s bedroom, on some occasions as late as 2:00 a.m., in order to look for "bed bugs." However, according to the detective, appellant denied having sex with C.O.

Appellant testified on his own behalf at trial and denied the allegations, testifying that he never touched C.O. inappropriately, and that he never had sex with her. On cross-examination, appellant agreed that he was not an exterminator, but that he thought it best to check C.O.'s room, every night, for bed bugs. He maintained that he never touched C.O. "sexually[,]" and asserted that she was lying.

We shall include additional detail as required in our discussion.

DISCUSSION

Appellant contends that the court erred in allowing Detective Neeld to testify, based on her personal knowledge, training and experience, whether it was uncommon for children to at first deny that sexual abuse had occurred before eventually disclosing. Citing Maryland Rules 5-701, 5-702 and the Court of Appeals' decision in *Ragland v. State*, 385 Md. 706 (2005), appellant asserts that, given that Detective Neeld was not disclosed or

qualified as an expert, this amounted to improper lay opinion testimony. Appellant also argues the error was not harmless beyond a reasonable doubt because, absent forensic or scientific evidence, and given the jury's acquittals on the more serious charges (sexual abuse of a minor and second degree rape), this case depended entirely on the credibility of C.O. and the State's other witnesses.

The State responds that this issue is unpreserved because defense counsel objected to Detective Neeld's testimony on the ground of relevancy, not on the basis of inadmissible lay opinion. As for the merits, and relying on *Norwood v. State*, 222 Md. App. 620, *cert. denied*, 444 Md. 640 (2015), the State avers that Detective Neeld's specific testimony was not opinion evidence, either lay or expert, because it was simply based on her personal experience. Alternatively, the State argues that her testimony was proper lay opinion as it was based on her personal knowledge as a police officer and was limited to her first-hand experience interviewing child sexual abuse victims between the ages of 11 and 13.[3]

In his reply brief, appellant counters the State's preservation argument by noting that defense counsel, in objecting, stated that Detective Neeld's "experience as a cop interviewing kids[,]" was not relevant. Moreover, appellant notes, the trial court observed that the "question is whether she can offer a lay opinion on this that is helpful to the jury." Thus, relying on Maryland Rule 8-131(a), appellant argues that this issue was properly preserved because it was "raised in" and "decided by" the trial court. As we will discuss, we shall hold that the State's preservation argument fails.

[3] The State does not respond to appellant's harmless beyond a reasonable doubt arguments.

As for the merits, appellant reminds us that the admission of lay opinion testimony is guided by *Ragland, supra*, and further directs us to our opinion in *Walter v. State*, 239 Md. App. 168 (2018). Accordingly, appellant maintains that Detective Neeld's testimony was expert opinion and that it lacked a sufficient factual basis for admission. We shall consider these arguments in turn.

However, we shall also address the trial court's observation that appellant opened the door to the State's redirect examination of Detective Neeld when he questioned her on cross-examination about C.O.'s denials of having been sexually abused when interviewed by Montgomery County police during the summer of 2018, prior to the initiation of this case. As will be explained, we agree with the trial court that appellant opened the door to Detective Neeld's limited testimony on redirect.

Detective Neeld, the lead detective in this case, offered relatively brief testimony on direct examination. She began by noting her background and experience, including that she had been employed with the Prince George's County Police Department for six years, that she was currently assigned to the Child and Vulnerable Adult Unit of the Criminal Investigations Division, and that she had dealt with approximately 120 cases of child sexual abuse. She was assigned to this case on December 14, 2018, and she witnessed the social worker's interview with C.O. at the Child Advocacy Center on December 26, 2018.[4] She testified that she interviewed other witnesses, and was aware that Detective Cruz had

[4] As indicated earlier, C.O. testified earlier during trial that the first time appellant penetrated her vagina with his penis was on April 24, 2018, when she was twelve-years-old. C.O. eventually made the allegation that would form the basis of the charges in this case sometime in December 2018.

interviewed appellant. Other than indicating that she witnessed the interview with C.O. for the purpose of observing her "disclosure as to any alleged abuse and any further information[,]" Detective Neeld did not offer any evidence about the content of those interviews. She also confirmed that appellant was arrested on December 28, 2018.

On cross-examination, Detective Neeld confirmed that she did not order a sexual assault examination of C.O. She also provided more detail about these interviews, including when and where they were conducted and who was present.

Defense counsel then proceeded to question Detective Neeld about C.O.'s denials, in earlier interviews by other authorities, that appellant touched or raped her. Detective Neeld confirmed those earlier denials by C.O. She further agreed that, following some sort of safety assessment on or around June 5, 2018, C.O. denied that appellant touched her breast, butt and/or vagina.

On redirect examination, Detective Neeld explained that she did not order a sexual assault examination in this case because the allegations occurred outside of the normal five-day window of time when such examinations are requested. She also agreed that there was information within her notes as information received pertaining to the complaint. Pertinent to the issue before us, the following ensued on further redirect:

> Q. And, Detective Neeld, you said the majority of the 120 cases that you've handled were child sexual abuse?
>
> A. That's correct, ma'am.
>
> Q. Through your personal knowledge, training and experience, is it uncommon for children to at first deny and then disclose?
>
> [DEFENSE COUNSEL]: Objection.

THE COURT: Come on up, folks.

(Counsel approached the bench, and the following ensued:)

[DEFENSE COUNSEL]: It has no relevance as to how uncommon as to whether kids and her other investigations are common. I mean, she interviews kids that are four, five, unfortunately, six. She interviews kids that are 16, 17, so it's not going – it's not relevant.

This is specifically about [C.O.], because they're stating now is it uncommon for kids to lie and I don't know what her answer is. She's going to say it's probably uncommon for kids not to lie about this incident and it's not relevant to this, her experience, common sense, whatever, like, experience on this. It's not relevant, Your Honor.

[PROSECUTOR]: Your Honor--

THE COURT: Madam State.

[PROSECUTOR]: -- I'm going to argue that it's very relevant, Your Honor. *In this situation, defense has brought up May, 2018, so a month prior to this incident, same allegations in a different county.* They do interviews of children of all ages. If [Defense Counsel] would like me to narrow it --

THE COURT: Here's the thing: I think the question as phrased is incredibly broad. I think you have to figure out what her experience is with individuals in the age range. *And I do agree that, [Defense Counsel], you've kind of cracked this door open by asking about prior incidents*.

[DEFENSE COUNSEL]: Well, I specifically stated one documented incident. Wasn't like I went in and out. *It's going into her experience as a cop interviewing kids. It's not relevant to this case* as to whether or not --

THE COURT: Then I'm going to say this: I think it's going to be -- *the question is whether she can offer a lay opinion on this that is helpful to the jury. I think it is a lay opinion that she can offer*, but I think you really need to narrow that question. Look, if she only has experience with two other people that are 12, 13 years old --

[PROSECUTOR]: Understood.

THE COURT: Objection noted, [Defense Counsel].

(Counsel returned to the trial tables, and the proceedings resumed in open court.)

(Emphasis added.)

Thereafter, redirect examination continued as follows:

BY [PROSECUTOR]:

Q. Have you been part of forensic interviews for children who are of the age range of 11 to 13?

A. Yes, ma'am.

Q. And if you had to approximate, how many children would you say you've been part of the investigations in that age range?

A. It's difficult to say.

Q. Would you say more than five?

A. Yes, definitely more than five. Way more than five.

Q. More than 20?

A. Yes.

Q. And in the specific age range of 11 to 13, in your personal knowledge, training and experience, is it common or have you seen children between that age range not disclose and then disclose incidents that have happened to them?

A. Yes, ma'am, I have.

Q. And would you say that happens a frequent amount of time?

A. It does occur. And victims have their different reasons for why they would initially not disclose and then later disclose.

[PROSECUTOR]: Nothing further, Your Honor.[5]

[5] As appellant points out, the prosecutor referenced Detective Neeld's testimony on this point during rebuttal closing argument, noting that the detective agreed that it was common for children in C.O.'s age group not to disclose the sexual abuse.

PRESERVATION

We first address the State's preservation arguments. Maryland Rule 8-131(a) provides, in pertinent part:

> Ordinarily, the 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, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Additionally, Maryland Rule 4-323(a) provides, also in relevant part:

> An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs.

Maryland's appellate courts ordinarily will not consider "any issue 'unless it plainly appears by the record to have been raised in or decided by the trial court[.]'" *King v. State*, 434 Md. 472, 479 (2013) (quoting Md. Rule 8-131(a)). "[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered." *Klauenberg v. State*, 355 Md. 528, 545 (1999); *see also* Md. Rule 4-323(a). "This also requires the party opposing the admission of evidence to object each time the evidence is offered by its proponent." *Klauenberg*, 355 Md. at 545.

Additionally, "where an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal." *Perry v. State*, 229 Md. App. 687, 709 (2016) (citing *Klauenberg*, 355 Md. at 541), *cert. dismissed*, 453 Md. 25 (2017). "Exactly what must be done to 'preserve' an erroneous ruling depends upon a number of circumstances. It is trial counsel's responsibility to let

the court know what you want and, when necessary, to explain why your request should be granted." J. Murphy, *Maryland Evidence Handbook*, § 100, p.3 (4th ed. 2010).

Defense counsel objected to the prosecutor's question on redirect on the grounds of relevance but did not articulate with specificity that the objection was that Detective Needl's testimony amounted to undisclosed expert opinion in violation of the Maryland Rules and *Ragland* and its progeny. Recognizing this potential defect in preservation, appellant argues, and the State disputes, that the issue is properly before this Court because it was clear that the trial court understood that to be the objection and, in fact, that this issue was "decided" by the court as provided by our Rule 8-131(a).

In *Ray v. State*, 435 Md. 1 (2013), the Court of Appeals explained that the term, "issue," as referenced in Md. Rule 8-131(a), "is a point in dispute between two or more parties . . . [a]lternatively, an 'issue' may be a 'concern' or 'problem' or 'the point at which an unsettled matter is ready for a decision.'" *Ray*, 435 Md. at 20 (citation omitted). Further, the term, "'decide,' means 'to make a final choice or judgment about'; 'to select as a course of action'; or 'to infer on the basis of evidence.' The term 'implies previous consideration of a matter causing doubt, wavering, debate, or controversy.'" *Id.* at 21-22 (citations omitted).[6]

We are persuaded that the trial court considered and decided the issue of whether the specific question "[t]hrough your personal knowledge, training and experience, is it

[6] The *Ray* Court elaborated on "decided" in the context of Maryland Rule 4-252, governing motions in circuit court. *Ray*, 435 Md. at 20-21. We shall apply that explanation here.

uncommon for children to at first deny and then disclose" sought proper lay opinion. The court overruled the objection. Therefore, when a version of that same question was subsequently asked, the appellate issue was preserved.[7]

LAY OPINION

We now take up appellant's contention that the trial court erred in admitting Detective Neeld's testimony.

Maryland Rule 5-701 provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Maryland Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
> (2) the appropriateness of the expert testimony on the particular subject, and
> (3) whether a sufficient factual basis exists to support the expert testimony.

[7] We note that, after Detective Neeld then replied in the affirmative when asked whether she had seen "children between that age range not disclose and then disclose incidents that have happened to them?" the prosecutor also asked "would you say that happens a frequent amount of time?" Although there was no timely objection or continuing objection to this question, nor any motion to strike the response, we conclude this second question is a variation of the primary question, and that, under Rule 8-131(a), the objection to this question is also preserved. *See King*, 434 Md. at 480 ("[I]t is well-settled that Md. Rule 8-131(a) vests this Court with the discretionary power 'to decide such an [unpreserved] issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.'") (citation omitted).

Read together, these rules "prohibit the admission as 'lay opinion' of testimony based upon specialized knowledge, skill, experience, training or education." *Ragland*, 385 Md. at 725. That is so since "lay opinion testimony requires no specialized knowledge or experience but instead is 'derived from first-hand knowledge' and is 'rationally based.'" *Norwood*, 222 Md. App. at 646 (quoting *Bruce v. State*, 328 Md. 594, 629 (1992)). *See In re Ondrel M.*, 173 Md. App. 223, 243 (2007) ("No specialized knowledge or experience is required in order to be familiar with the smell of marijuana. A witness need only to have encountered the smoking of marijuana in daily life to be able to recognize the odor.").

But, when opinion testimony is based on the witness's specialized knowledge and training and not upon that witness's general knowledge as a layperson, the witness must first be qualified as an expert in order to offer opinion testimony. *See, e.g., State v. Blackwell*, 408 Md. 677, 691 (2009) (concluding that testimony about defendant's performance on the horizontal gaze nystagmus test, a roadside sobriety test, by a state trooper who had not been qualified as an expert, constituted expert testimony subject to Md. Rule 5-702); *see also Coleman-Fuller v. State*, 192 Md. App. 577, 619 (2010) (holding it was error to permit police detective to testify to lay opinion that cell phone records placed defendant in the vicinity of crime).

The leading case in this area is *Ragland, supra*. There, two police officers were permitted to testify as lay witnesses, over defense objection, that they believed they observed a drug transaction involving Ragland and another individual. *Ragland*, 385 Md. at 711-14. Specifically, when the prosecutor asked one of the officers to explain the basis of his opinion that the exchange he observed was a drug deal, he replied, '"[b]ased on two temporary assignments in a narcotics unit; two and a half years with this unit; involved in

well over 200 drug arrests."' *Id.* at 726. The other officer similarly related extensive training and experience in the investigation of drug cases. *Id.*

The Court of Appeals concluded that the officers' testimony could not be considered lay opinion, as they had devoted considerable time to the study of the drug trade, and they offered their opinions that, among the numerous possible explanations for the events, the correct one was a drug transaction. *Id.* The Court therefore accepted Ragland's argument that this amounted to expert testimony and, given that the State had not notified the defense that the witnesses would be testifying or qualified as experts, the trial court erred in admitting the evidence as lay opinion and that any error was not harmless beyond a reasonable doubt. *Id.* at 711, 716, 725-26.

Here, there is no dispute that Detective Neeld was neither disclosed nor qualified as an expert. We revisit that portion of her redirect examination at issue:

> Q. And in the specific age range of 11 to 13, in your personal knowledge, training and experience, is it common or have you seen children between that age range not disclose and then disclose incidents that have happened to them?
>
> A. Yes, ma'am, I have.
>
> Q. And would you say that happens a frequent amount of time?
>
> A. It does occur. And victims have their different reasons for why they would initially not disclose and then later disclose.
>
> [PROSECUTOR]: Nothing further, Your Honor.

If we were to apply only *Ragland*, it is arguable that Detective Neeld's testimony was based on her professional training, knowledge and experience as a child sexual abuse investigator in the Prince George's County Police Department. Indeed, it is not

unreasonable to conclude that most laypersons are unlikely to be familiar with the habits of 11 to 13 year-olds in reporting child sexual abuse.

In support of its argument that the questioned testimony was not opinion, but a factual observation, and that, alternatively, even if it was lay opinion, it was properly admitted as such, the State directs our attention to *Norwood, supra.* Norwood was initially believed to be a surviving victim of a knife attack, resulting in the death of her co-worker, at the Lululemon Athletica retail store in Bethesda. *Norwood*, 222 Md. App. at 624. As Norwood was transported to Suburban Hospital, a police officer noticed a one to two-inch cut on her right hand, running parallel to her thumb. *Id*. at 627. At trial, the officer testified that "his attention was drawn to that cut because it was typical of a common injury caused when a blade slips from one's grip and slides down the hand." *Id.* at 643. On objection, this testimony was stricken by the trial court and the jury was told to disregard it. *Id*. at 643-44. At a subsequent bench conference explaining its ruling, the court indicated the officer was not '"qualified to say how that injury occurs[.]"' But, the court permitted the State to lay a foundation about the officer's knowledge about knife injuries. *Id*. at 644.

After testifying that he previously served as an Army medic, the officer was permitted to testify that '"[a] lot of times you can see knife injuries, particularly when you cause them to yourself, that are lacerations that are straight to the hand that was holding the blade. They tend to be clean and typically will run parallel to the thumb."' *Id.* And, that these types of injuries would occur when '"[t]he blade would slip through a grip and slide down the hand."' *Id*. The officer also testified that, when he saw the injury on Norwood's hand, '"[t]here was an approximately one to two inch laceration on her, on her

hand that ran parallel to her thumb."' *Id*. The court did not permit the officer to testify to the cause of the injury itself, but did allow testimony that he had seen this type of injury on prior occasions. *Id*. at 645.

When Norwood raised this issue on appeal, we concluded that the trial court properly exercised its discretion on the grounds that the officer's testimony was not opinion evidence. We stated:

> [W]e observe that [the officer] never offered any opinion, lay or expert, regarding the cause of Norwood's hand injury. His testimony regarding the cause of Norwood's injury was stricken by the trial court and the jury was instructed not to consider "how [the officer] thinks [the injury] happened." Rather, [the officer] testified about injuries he had observed in the past from slipped knives and described the injury he observed on Norwood's hand.

Id. at 646.[8]

Detective Neeld did not testify as to the specific reason why C.O. may have delayed reporting or denied that any abuse occurred during prior investigations. Rather, her testimony was limited to her personal knowledge and observation from other cases. Thus, *Norwood* is instructive, if not necessarily controlling. It could be argued that, as we found in *Norwood*, that this was simply factual evidence and not a lay opinion, especially under these circumstances of the testimony having been given by the lead detective with years of experience in the difficult field of investigating child sexual abuse cases. *See United States v. Colon Osorio*, 360 F.3d 48, 52-53 (1st Cir. 2004) (observing that the line between expert testimony and lay opinion testimony under the federal rules "is not easy to draw").

[8] We also concluded that any error in admitting the officer's testimony was harmless beyond a reasonable doubt given the overwhelming evidence of Norwood's guilt in the murder of her co-worker. *Norwood*, 222 Md. App. at 646-48.

Anticipating a potential conclusion that Detective Neeld's testimony was opinion evidence and not fact, the State further directs our attention to several cases where this Court held that the admission of lay opinion from law enforcement witnesses, even when based on their personal knowledge and experience, was proper. *See Perry*, 229 Md. App. at 710 n.5 (noting that expert testimony was not required to describe a "muzzle flash" in a case where defendant allegedly fired upon police officers at night); *Prince v. State*, 216 Md. App. 178, 200-02 (concluding that a police officer who placed trajectory rods in bullet holes to show the path of a bullet was not testifying as an expert), *cert. denied*, 438 Md. 741 (2014); *Ondrel M.*, 173 Md. App. at 243-44 (holding that testimony of a police officer, who is capable of identifying marijuana by smell through past experience, that he/she smelled marijuana, is lay opinion testimony under Maryland Rule 5-701); *Warren v. State*, 164 Md. App. 153, 167-69 (2005) (concluding that lay opinion testimony given by two police officers regarding whether a defendant was impaired by alcohol was admissible because the testimony did not require any specialized knowledge and was based on the officers' perception of the defendant). As this Court has stated, "[i]n determining whether an opinion offered by a witness is lay opinion or expert testimony, it is not the status of the witness that is determinative. Rather, it is the nature of the testimony." *Ondrel M.*, 173 Md. App. at 244; *accord Prince*, 216 Md. App. at 202. And, "'training and experience' do not automatically render an opinion an expert opinion[.]" *Prince*, 216 Md. App. at 202.

As is often the case, those cases, although instructive, are not "on all fours" with the issue before use. We have also considered *Walter v. State*, 239 Md. App. 168 (2018). Walter's conviction by a jury of sexual abuse of a minor, was reversed and he was afforded a new trial because the court erroneously allowed the jury to view a recorded interview in which a police detective repeatedly expressed her disbelief in Walter's credibility. *Id.* at

175, 184, 190-93. We also addressed other issues to provide guidance should the case proceed to another trial on remand. *Id*. at 175, 184.

One of those issues in Walter's trial involved the testimony of Erin Lemon, a social worker who was accepted as an expert in the field of child abuse, delayed disclosure of sexual abuse and child development. *Id.* at 181. Ms. Lemon testified there were a number of factors that could cause a child to delay reporting sexual abuse, including the child's age and development, their relationship with the alleged perpetrator, any '"grooming process,"' in which the perpetrator attempts to persuade the child not to report the abuse, and the child's own understanding of the nature of the sexual abuse. *Id*. Ms. Lemon then testified that, based on her experience, it was '"very common for children who have been sexually abused to delay reporting that abuse, especially when that abuse ... was caused by a family member or someone who's in a trusted position, known to the family."' *Id*. However, she admitted she did not speak to the child in this case, and did not have any data to back up her experience and could not identify any methodology supporting her conclusions, which also had neither been subjected to peer review nor published. *Id*. at 181-82.

We held that the subject matter was admissible under Maryland Rule 5-702, but that that Ms. Lemon's specific testimony was not supported by a sufficient factual basis under the requirements of the rule. *Id.* at 194. We relied on *Yount v. State*, 99 Md. App. 207, *cert. denied*, 335 Md. 82 (1994), which we summarized as follows:

> In response to an appellate challenge to the appropriateness of the expert testimony, this Court in *Yount* held that the psychological phenomenon of wavering on an accusation is "not part of the common currency of lay experience[,]" and thus that knowledge of such a phenomenon would be of appreciable help to the fact finder. *Id*. at 211-12.

> Without expert guidance, the factfinder might "easily have fallen into the untutored lay[person]'s error of dismissing as noncredible testimony that, in the arcane context of sexual child abuse, should not be so readily dismissed." *Id*. at 212.

Walter, 239 Md. App. at 196. And held:

> Similarly, in this case, Ms. Lemon provided general testimony about the phenomenon of delayed reporting and why some children may delay in reporting the abuse. She provided the jury with a balanced explanation of delayed reporting, supporting her testimony with a number of factors that could result in delayed disclosure, including factors other than sexual abuse. In these circumstances, the court could reasonably conclude that Ms. Lemon's testimony provided appreciable help to the factfinder about a phenomenon that was not within a layperson's knowledge; her testimony, therefore, met the requirement of appropriateness in Rule 5-702.

Id.

Nevertheless, we also considered Walter's argument that Ms. Lemon did not have a sufficient factual basis to support her expert opinion. *Id.* at 196-97 (citing, *inter alia*, *Rochkind v. Stevenson*, 454 Md. 277, 286 (2017)). We concluded, apart from the prior conclusion that the subject matter was a proper subject of admissibility under the rule governing expert opinion testimony, *i.e.*, Md. Rule 5-702, that Ms. Lemon's testimony was not supported by an adequate supply of data or reliable methodology. *Id*. We explained:

> From the record before us, it is unclear how Ms. Lemon concluded that victims of child sexual abuse often, frequently, or commonly delay in reporting the abuse. In particular, it is unclear how she determined that a delayed report originated with a bona fide victim as opposed to someone who had fabricated a report or had a false memory of abuse, which, she recognized, sometimes occurs. Ms. Lemon kept no statistics and could point to no peer-reviewed studies to support her conclusion, so she appears to have based her opinion on only an extrapolation from her own experiences. In evaluating those experiences, did she do anything to distinguish true or reliable claims from false or unreliable claims? For example, did she assume that a person was a victim of sexual abuse only if an abuser has been convicted of sexual abuse, or if the abuser has admitted to sexual abuse, or if

> there is some corroborating evidence of sexual abuse? Did she rely on her own, subjective evaluation of the validity of the claim of abuse? Or did she draw the conclusion from a conflation of all of the claims that she had heard, without distinguishing the true from the false or the reliable from the disproven? We simply do not know.

Id. at 197.[9]

Walter is distinguishable from this case on a number of grounds, including the fact that Detective Neeld was present during the interview with C.O. and that her limited testimony on redirect was primarily a rebuttal of inferences presented during the appellant's case. *See State v. Booze*, 334 Md. 64, 70 (1994) (Rebuttal evidence is admissible where it "explains, or is a direct reply to, or a contradiction of, any new matter that has been brought into the case by the accused.") (quotation marks and citation omitted); *Hyman v. State*, 158 Md. App. 618, 631 (admission of rebuttal evidence is subject to the abuse of discretion standard of review) (citing *Booze*, 334 Md. at 68), *cert. denied*, 384 Md. 449 (2004).

That said, a fair reading of *Walter* is that evidence about delayed reporting of sexual abuse by children may be a proper subject of expert opinion testimony. *Walter*, 239 Md. App. at 196. We also decided that such expert opinion must be supported by a sufficient

[9] We also held that the State would be free on remand to seek to establish the reliability of Ms. Lemon's methodology in its quest to establish a sufficient factual basis for her expert opinion testimony. *Walter*, 239 Md. App. at 197. Although this portion of *Walter* is cited by appellant in his reply brief, whether Detective Neeld's testimony was supported by a sufficient factual basis was not raised at trial and is not before us on appeal. *See Robinson v. State*, 404 Md. 208, 216 n.3 (2008) ("An appellate court will not ordinarily consider an issue raised for the first time in a reply brief."); *Davis v. Wicomico Cnty. Bureau of Support Enf't*, 222 Md. App. 230, 240 n.2 (2015) (observing that arguments raised for the first time in a reply brief are not preserved), *aff'd*, 447 Md. 302 (2016).

factual basis. *Id*. at 197. We did *not*, however, decide the question presented here, that is, whether evidence of delayed reporting may also be admitted as lay opinion evidence.

OPENING THE DOOR

Nonetheless, we need not decide that precise question in this case. As the trial court noted, appellant, during his cross-examination of Detective Neeld, opened the door to the State's questions on her redirect.

"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)). As the Court of Appeals explained: "'opening the door' is simply a way of saying: 'My opponent has injected an issue into the case, and I ought to be able to introduce evidence on that issue.'" *Clark*, 332 Md. at 85; *see also Fullbright v. State*, 168 Md. App. 168, 184 (permitting anticipatory rehabilitation evidence based on defense counsel's opening statement attacking deficiencies in State's case), *cert. denied*, 393 Md. 477 (2006). "Whether an opening the door doctrine analysis has been triggered" is reviewed *de novo*. *Heath*, 464 Md. at 457. And, "[w]hether responsive evidence was properly admitted into evidence is reviewed for an abuse of discretion." *Id*. at 458.[10]

C.O. testified that appellant raped her on April 24, 2018, and would eventually report that sometime in December 2018. Thereafter, during cross-examination, defense

[10] Although the parties have not discussed the open door doctrine, we apply the same reasoning from our discussion of the preservation issue and conclude the issue was decided by the trial court. Further, it is well settled that an appellate court may affirm on any ground adequately shown by the record. *See State v. Phillips*, 210 Md. App. 239, 270 (2013).

counsel questioned Detective Neeld about a Montgomery County police investigation that was based on a report that C.O. made to a friend that appellant raped her. Detective Neeld agreed that, some time in around May 2018, C.O. denied to a counselor that appellant raped her. Detective Neeld also agreed that, on June 5, 2018, C.O. denied that she told a friend that appellant touched her breast, butt and vagina. Further details about C.O.'s reporting history included C.O.'s testimony, during her cross-examination, that she did not remember denying these incidents in May and June of 2018. And, this was in addition to evidence from C.O.'s stepmother that C.O. denied being sexually abused when the two of them spoke about it in approximately July 2018.

From appellant's cross-examination, we discern that the defense strategy was to elicit admissible evidence concerning C.O.'s delayed reporting and denials during the summer of 2018. Determining whether the State's response was proper, *Trimble v. State*, 300 Md. 387 (1984), *cert. denied*, 469 U.S. 1230 (1985), is instructive. Trimble's defense to a charge of first degree murder was the defense then identified as "insanity." *Trimble*, 300 Md. at 394 n.1.[11] A number of experts testified concerning that defense, one of whom, Dr. Neil Blumberg, testified for the State. Dr. Blumberg testified on direct examination that Trimble was not insane and may have been faking his symptoms. *Id.* at 399. On cross-examination, Dr. Blumberg acknowledged that Trimble was prescribed Thorazine, an anti-psychotic drug and tranquilizer, by Dr. Freinek, upon admittance to Clifton T. Perkins Hospital. *Id*. at 400. On redirect examination, Dr. Blumberg testified, over objection, that

[11] *See generally*, *Anderson v. Dep't of Health & Mental Hygiene*, 310 Md. 217 (1987) (discussing change in Maryland laws from defense of insanity to defense of not criminally responsible).

Dr. Freinek was known to prescribe Thorazine as a tranquilizer, not as an anti-psychotic. *Id*. at 400-01.

On appeal, Trimble argued that the court erred in permitting the redirect because it was the equivalent of having Dr. Blumberg testify to Dr. Freinek's expert opinion concerning Trimble's defense. *Id.* at 402. The Court of Appeals disagreed:

> As we see it, Trimble's objection seeks to cloud the issue. *What Trimble conveniently overlooks is that he opened the door to such testimony by eliciting from Dr. Blumberg the inference that Dr. Freinek had prescribed Thorazine for Trimble because Trimble was psychotic*. On direct examination, Dr. Blumberg limited his testimony to his conclusions based on his own examination of Trimble. Then, on cross-examination, defense counsel expanded the scope of Dr. Blumberg's testimony to include Dr. Freinek's action. The State on redirect examination then sought to disprove the inference that Trimble was psychotic. Because the State established that Dr. Blumberg was familiar with Dr. Freinek's prescription policies, it had a sound basis for explaining the inference to be drawn from the fact of Dr. Freinek's prescribing Thorazine for Trimble. *Defense counsel, having created the issue, cannot now be heard to complain that the State sought to rebut its significance. We find no error on this point.*

Id. at 402-03 (emphasis added); *see also Miller v. State*, 421 Md. 609, 629 (2011) (holding that defense counsel opened the door to further inquiry of a handwriting expert on redirect examination where it "expanded the scope" of the witness's testimony) (quotation marks and citation omitted).

A similar result applies in this case. Detective Neeld offered very limited evidence during direct examination, namely, that she was present for C.O.'s interview, that she interviewed other witnesses, and that she was aware of Detective Cruz's interview with appellant, which ultimately led to his arrest. During cross-examination, defense counsel questioned her about C.O.'s May 2018 denials. The inference was that C.O. denied the

incidents, thus delaying reporting, and that the delay adversely affected her credibility. Thus, the door was opened to the State's brief redirect examination, asking her whether, based on her "personal knowledge, training and experience," children between the ages "of 11 to 13" do not disclose at first and then "later disclose" for "different reasons[.]"

We find neither error nor abuse of discretion in the trial court's ruling.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.

COSTS ASSESSED TO APPELLANT.