Circuit Court for Baltimore City
Case No. 118131005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1605

September Term, 2019

BAYE PARKER

v.

STATE OF MARYLAND

Berger,
Friedman,
Wells,

JJ.

Opinion by Wells, J.

Filed: April 13, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The State alleged that appellant, Baye Parker, raped his stepdaughter, J.B., on the night of her tenth birthday.[1] The State charged Parker 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. After a five-day trial, a jury sitting in the Circuit Court for Baltimore City convicted Parker of sexual abuse of a minor and sexual offense in the third-degree. The jury acquitted Parker of second-degree rape. The circuit court sentenced him to a term of imprisonment of 25 years. Parker filed a timely appeal and poses four questions for our review, which we have slightly reorganized and rephrased for clarity:[2]

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[1] Because the complainant is a minor, we refer to her by her initials only.

[2] Parker's verbatim questions read:

1. Did the court err in admitting hearsay evidence?

2. Did the court err in admitting prior bad acts evidence?

3. Did the court err in refusing to allow defense counsel to argue to the jury that the complainant's allegation of a prior incident of touching lacked corroboration?

4. Did the court err in permitting the State to elicit testimony that Appellant had transmitted a sexually transmitted disease to his wife and had previously been incarcerated?

The State reorganized Parker's questions, essentially combining the first two questions and inserting an appealability issue into it, as well as switching the order of the final two questions. The State's verbatim questions read:

1. To the extent preserved, did the trial court soundly exercise its discretion in admitting evidence of similar sexual contact involving Parker and his minor stepdaughter?

2. Did the trial court soundly exercise its discretion by admitting relevant impeachment evidence during Parker's testimony?

1. Did the circuit court err by admitting hearsay evidence of an alleged previous incident of touching through the Rule of Completeness and CP § 11-304?[3]
2. Did the circuit court err by admitting the alleged previous touching incident as prior bad acts evidence under Rule 5-404(b)?
3. Did the circuit court err in limiting the scope of defense counsel's closing argument regarding a lack of corroboration of the previous incident?
4. Did the circuit court err by allowing the State to elicit testimony that Parker had previously transmitted a sexually transmitted disease to his wife during their marriage and that he had previously been incarcerated?

For the reasons that follow, we hold that the circuit court misapplied the Rule of Completeness in admitting hearsay evidence about a prior touching incident involving Parker and J.B. Further, despite the State's assertion, we conclude that the court did not admit this evidence under CP § 11-304, which would have allowed J.B.'s statement to be admitted as a sexual assault victim's report to a medical provider. Similarly, we hold that the circuit court erred in admitting the same evidence as a hearsay exception outlined in Rule 5-404. We agree with the State, however, that the circuit court was within its discretion to limit the scope of the defense counsel's closing argument. Finally, we conclude that the circuit court erred in allowing the State to elicit testimony from Parker

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3. Did the trial court soundly exercise its discretion in controlling the scope of defense counsel's closing argument, and if not, was any error harmless?

[3] Md. Code Ann., Crim. Proc. ("CP") § 11-304 (2017).

that he had previously been incarcerated and had transmitted a sexually transmitted disease to his wife during their marriage. Accordingly, we reverse the judgments and remand to the circuit court for a new trial.

FACTUAL BACKGROUND

A. The Relation Between Parker and J.B.

At the time of trial, Parker was married to Denise Evans, the mother of J.B. Evans has five children, who were, at that time, aged fifteen, fourteen, ten, seven, and three. Evans' youngest two children are Parker's biological children. Parker is the stepfather to Evans' three other children, including then-ten-year-old J.B.

Parker and Evans began their relationship in 2011. Despite a drug distribution conviction that caused Parker to spend much of 2012 in prison and despite Parker transmitting chlamydia to Evans, the two stayed together until 2017. Even after their separation and Parker's subsequent relationship with another woman, they remained cordial and communicated frequently. From time to time, Parker stayed at Evans' home with her and the children. Therefore, it was not unusual that J.B. and Parker communicated regularly. And, it was not unusual when Evans told Parker that J.B. was upset because he had not given her a gift for her tenth birthday.

B. Events Preceding the Alleged Rape

J.B. testified that on her tenth birthday, April 11, 2018, Parker came to the home and briefly spoke with Evans. J.B. stated that her mother told her to stay up a little later so that Parker could return with a birthday gift. J.B. testified that she was watching television in the living room and fell asleep before Parker arrived. J.B. did not remember when Parker

arrived or that after he arrived, he carried her to her bedroom.

J.B.'s fourteen-year-old brother, K,[4] testified that he and his older brother shared a bedroom next to the bedroom that J.B. shared with another sister. K remembered that Parker arrived at the home late that night. K and Parker briefly spoke before K went to bed. Later, he recalled hearing someone go into his sisters' room and get into one of the bunkbeds. Both Parker and K testified that Parker carried J.B. upstairs to her bedroom. At trial, Parker recalled that J.B. woke up while he was carrying her; they conversed in her room. He also admitted that he climbed into bed with J.B., but quickly fell asleep.

C. Alleged Rape

J.B. described the sexual assault in detail. J.B. recounted that she woke up on top of Parker and his penis was inside her vagina. She said that her panties were pushed down, and that Parker's penis was "sliding and poking [her] in the middle" of her vagina. She stated that Parker was moaning and that his hands were on her buttocks. She said that her legs were apart and her stomach on top of Parker's. According to J.B., Parker was wearing long johns, but he had pulled them down. His penis was erect and exposed through the opening of his boxer underwear. Because of the pain, J.B. said that she got up and went to her mother's bedroom.

D. Events Following the Alleged Rape

Evans recalled she awoke to hear J.B. crying, "Mommie, Daddy put his private parts in my private parts." Evans testified that she rushed to J.B.'s bedroom and confronted

[4] We refer to the brother by a random initial to protect the identity of his sister, J.B., who shares the same last name with him.

Parker, screaming, "What are you doing?" Evans testified that Parker responded by asking "What did I do?" Evans replied that he had touched J.B. Parker denied touching J.B. The argument continued and Parker requested to hug J.B. According to Evans, he wanted to explain to J.B. what happens when men become aroused. Parker theorized aloud to Evans that he may have had to urinate or that he could have had a wet dream. Evans left J.B.'s bedroom, entered another room and locked the door. Parker pushed open the locked door and the argument continued. Parker again asked to speak with J.B. Evans refused. He left and Evans called the police.

Detective Dennis Baily of the Baltimore City Police Special Investigations Section, Child Sexual Abuse responded to the call. He testified that he instructed police officers to take J.B. and Evans to a hospital where J.B. underwent a SAFE[5] examination. Although test swabs were collected from J.B. during the physical examination and bedsheets were recovered from J.B.'s bed, both of which were submitted for analysis, Bailey never received the results of the tests. Bailey further testified that a physical examination of J.B. showed no indication of injury. While at the hospital, J.B. spoke with a social worker as part of the forensic examination.

E. The Prior Incident

In addition to the alleged rape, J.B. recounted another touching incident with Parker during the interview with social worker, Shannon Wood (hereafter, "the prior incident").

[5] Sexual Assault Forensic Examination (SAFE) is a method of documenting injuries and collecting evidence of an alleged sexual assault. https://www.gbmc.org/safe https://bit.ly/3vCxaKe.

During the interview, the following discussion took place between the two regarding the prior incident:

> [WOOD]: Has anything else like that ever happened another time?
>
> [J.B.]: It was one time when I had – when I had woke up on top of [Parker] and his hand was on my butt.
>
> [WOOD]: Okay.
>
> [J.B.]: That's when I had run in my mother's room and told her.
>
> [WOOD]: Okay.
>
> [J.B.]: But that time she didn't call the police.
>
> [WOOD]: Tell me everything about when his hand was on your butt?
>
> [J.B.]: What I remember, I was sleeping. That's when I had to go use the bathroom. That's when I got back in my bed. That's when the next thing, I woke up. I was on top of him and his hand was – and his hand was in my panties. It was touching my butt.
>
> [WOOD]: Tell me everything you remember about what happened when his hand touched your butt?
>
> [J.B.]: It was just touching. It wasn't like moving around or anything. His hand wasn't like moving around my butt or anything.
>
> [WOOD]: Then what happened?
>
> [J.B.]: That's when I had woke – I had jumped – I got off the bed, off my bunk bed. That's when I went in mother [*sic*] room. So when [*sic*] in my mother room. That's when my mother woke up and didn't say, "[Parker], what is you doing?" like she did this time. That's when she had went in the room. That's when my mother was just right there. I was just right there, sitting on [sic] bed. That's when my mother said, "Why was you touching my child [sic] butt?" That's when he was like this (indicating). "It problem was an accident *(sic)*. It probably was an accident."
>
> [WOOD]: Okay.

[J.B.]: Because [Parker] said when he's sleeping he put his hands right there (indicating).

[WOOD]: Okay.

[J.B.]: So that's when my mother didn't call the police that time. That's when my mother – and that's when my mother had – that's when he had left. *(Inaudible)* scared or anything. That's when he had left. That's when my mother, she was talking to me. She was like "Did he like – was he like – was he like squeezing your butt, moving around on your butt?" I was like, "No, just sitting right there."

[WOOD]: Okay. And was this a different day than the one you were telling me about before?

[J.B.]: Yes. This was . . . a different time.

[WOOD]: Okay. And when you woke up, where were you?

[J.B.]: I was on top of him.

[WOOD]: But where were you? What room were you in?

[J.B.]: In my room.

[WOOD]: And where in your room?

[J.B.]: On top of my bed.

. . . .

[WOOD]: The time that you told me about when you woke up and his hand was in your panties and he was touching your butt, do you remember how old you were when that happened?

[J.B.]: I was nine.

F. Verdict and Sentencing

On February 12, 2019, the jury found Parker guilty of sexual abuse of a minor and third-degree sexual offense. The jury acquitted Parker of second-degree rape. On October

9, 2019 the circuit court sentenced Parker to twenty-five years' in prison. Parker then appealed to this Court.

DISCUSSION

I. THE CIRCUIT COURT ERRED IN ADMITTING HEARSAY EVIDENCE OF ANOTHER TOUCHING INCIDENT UNDER THE RULE OF COMPLETENESS

The focus here is the above-cited part of J.B.'s recorded statement where she described another incident that occurred sometime before the alleged rape. On that occasion, J.B. woke up in her bed on top of Parker and he had his hands on her buttocks. Over Parker's objection, the court admitted this evidence to satisfy the Rule of Completeness.

A. The Parties' Contentions

Parker poses two main arguments. *First*, Parker argues that the circuit court erred in admitting the evidence under the Rule of Completeness because the Rule requires the admitted statement be offered by the party *who did not* introduce the initial partial statement. Here, Parker points out, the State moved for the introduction of the part of J.B.'s recorded statement where she described the rape. And, Parker notes that the State moved for the admission of the portion of the recorded statement that described the prior incident. The court admitted both statements citing the Rule of Completeness.

Parker asserts several sub-issues. Specifically, he asserts that the prior incident statement was admitted as substantive proof of a prior touching, not to clarify or explain J.B.'s testimony, which Parker argues, is contrary to the Rule of Completeness. Citing *Paschall v. State*, 71 Md. App. 234, 240 (1987), Parker argues that J.B.'s statement about

the rape was itself "a complete, stand-alone statement [that was] was not 'misleading,' and did not require further explanation." **[App. Br. 14].** Parker points out that the Rule of Completeness requires that any otherwise inadmissible evidence admitted under the rule must be "particularly helpful in explaining a partial statement[,]" citing *Otto v. State*, 459 Md. 423, 452 (2018). Parker argues that that was not the case here, therefore an "explanation" was not needed. Moreover, Parker contends, any value the statement had was substantially outweighed by its prejudicial effect.

The *second* major argument that Parker advances is that the prior incident was not admissible under CP § 11-304. His main argument is that the evidence was not admitted under the statute but was admitted solely under the Rule of Completeness, therefore, the statute has no application. Again, Parker raises several sub-points. *First*, Parker argues that the statement would be admissible under CP § 11-304 only if it were not admissible under any other hearsay exception. *Second*, Parker notes that CP § 11-304(f) requires the circuit court to make "a finding on the record as to the specific guarantees of trustworthiness that are in the statement." He maintains the court did not make the requisite findings prior to admitting the statement. *Finally*, Parker claims that J.B.'s statement about the prior incident was not spontaneous but, instead, (1) was made in response to the social worker's questions, (2) was not reported close enough in time to the alleged incident, and (3) that there was a no extrinsic evidence to show that Parker had an opportunity to commit the act described, all of which are contrary to CP § 11-304(e).

In response, the State does not comment on the Rule of Completeness. Instead, the State argues that Parker's objection is unpreserved. The State claims that although Parker

made a pretrial motion to exclude, Parker never argued that the statement about the prior incident should be excluded as *hearsay*. Further, the State claims, Parker's specific objections during the trial to the statement's admission were not based on hearsay. Finally, the State contends that Parker abandoned his "timing of the statement" argument at trial.

Even if Parker's argument was preserved, the State contends that the court correctly admitted the prior incident statement under CP § 11-304. In support, the State points to our decision in *In re J.J.*, 231 Md. App. 304, 329 (2016) and urges us look at the totality of the circumstances. In so doing, the State argues that not all thirteen factors found in the statute need to be addressed. Finally, the State asserts that J.B.'s statements about the prior incident clearly were not fabricated, were in response to leading questions and thus were correctly admitted.

In his reply brief, Parker makes three points to rebut the State's preservation argument. *First*, Parker argues that regardless of whether he raised a hearsay objection, the court admitted the evidence under the Rule of Completeness. Therefore, because the court decided the issue on that ground, we should decide the issue under Rule 8-131(a). *Second*, Parker claims that a more specific objection would have been pointless given that the circuit court decided to admit the statement under the Rule of Completeness. *Finally*, Parker argues that during the trial, the parties recognized that the statement was hearsay, which explains why the parties were arguing over how the statement could be admitted. Parker reasons that because the statement was indisputably hearsay the issue was preserved despite a specific objection based on that ground.

B. Standard of Review

This Court reviews questions of law under a *de novo* standard of review to determine whether a trial court was legally correct in its rulings. *State v. Graves*, 447 Md. 230, 240 (2016). "However, when a trial court implements its interpretation of the Maryland Rules to determine whether evidence is admissible, it is exercising discretion conferred by those rules." *Otto*, 459 Md. at 446. Accordingly, "[d]etermining whether separate statements are admissible under the doctrine of verbal completeness is such a discretionary act, to be reviewed for an abuse of discretion." *Id.* (citing *Conyers v. State*, 345 Md. 525, 543 (1997)).

C. Preservation Analysis

We first examine whether Parker's objection to the admission of the prior incident was preserved. We look to Rule 8-131(a), which dictates the scope of our review:

> **(a) Generally.** The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. 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.

Md. R.8-131(a).

The State asserts that this matter is outside the scope of our review for three reasons. *First*, although "defense counsel made an oral motion to exclude the prior incident portion of [J.B.]'s recorded interview on the specific basis that it was inadmissible evidence of 'prior bad acts' under Rule 5-404(b)[,]" "[d]efense counsel never argued that the prior

incident portion of the recorded interview should be excluded as hearsay." *Second*, Parker's objection at trial was that the evidence was cumulative, not hearsay. *Third*, Parker abandoned his "timing of the statement" argument with respect to CP § 11-304.

While the State may be factually correct on each these points, we note that the express language of Rule 8-131(a) puts an issue squarely within the scope of appellate review if the matter "plainly appears by the record to have been raised in **or decided by the trial court**" (emphasis added). Although the State focuses on the fact that Parker did not raise the matter below, it overlooks whether the matter was decided by the circuit court.

Our review of the transcript reveals that the circuit court did, in fact, find that the statement was hearsay and admitted it under the Rule of Completeness. With respect to hearsay, we note that the court explicitly said that in making its decision that it "would also say the [c]ourt is mindful of hearsay requirements[.]"

Additionally, this Court gives considerable weight to the undisputed fact that the parties and the court recognized that the statement was hearsay. Indeed at the start of the discussion about whether to admit the statement, the court cited CP § 11-304, which plainly states that "[u]nder this section, an out of court statement by a child victim may come into evidence in a criminal proceeding . . . to prove the truth of the matter asserted in the statement . . . if the statement is not admissible under any other hearsay exception[.]" CP § 11-304(d)(i). Here, the State argued for admission of the recording via CP § 11-304 because the State recognized the statement to be hearsay. If the statement was not hearsay, there would been no reason for the State to argue admission through CP § 11-304. For this

reason, we do not accept the State's contention that we should disregard Parker's argument that the statement is hearsay.

Further, we find ample evidence in the record that the court admitted the statement under the Rule of Completeness. The interview between J.B. and a social worker was done as part of the social worker's evidence gathering to support or dispel J.B.'s allegation that Parker had raped her. During the first part of the interview, J.B. described the alleged rape. During a later part of the interview, J.B. described the prior incident. Significantly, before the court ruled on whether the entire recorded interview could be admitted, the court heard argument on whether just the details of the rape were admissible under CP § 11-304. The court ruled that those statements were admissible under the statute.

The State is correct in that at trial, neither its argument for admission of the prior incident statement nor Parker's argument against admissibility directly related to the Rule of Completeness. Nonetheless, the record shows that the circuit court's decision to admit the statement was based on the Rule of Completeness. For example, after hearing counsels' arguments, the circuit court ruled, in relevant part: "As long as the testifying witness is available to answer questions, and as long as the information that is provided is not the cornerstone of the charges against the defendant, but rather it's *(sic)* **a way to assist in the victim's testimony being complete**." Afterward, the circuit court noted that this ruling was "[j]ust on [counsel for Parker's] request to redact that portion of the tape" and that the circuit court had "not yet heard the motion on the whole [recording.]"

The next day, the circuit court reemphasized that its ruling to admit the statement about the prior incident was based on the Rule of Completeness:

> **I think in order to have a completeness,** if I were to excise that, it takes away your ability to argue accident, which I believe part of your argument yesterday was that there were statements made that this happened by accident, that this was not an intentional act, a sexual act with an intent to abuse a child. So, in an abundance of caution, and **to ensure the rule of completeness, I think that that portion of the tape is necessary** for you to be able to, if you choose to, say, well, is it similar to what happened before, if you choose to.
>
> . . . .
>
> **And so to assist in the result of completeness,** I believe it is this Judge's opinion and I will stand by my ruling yesterday that that probative value outweighs any prejudicial effect, and it does not violate your client's right to confront, nor does it put before the Court or the jury anything that should be kept out or inadmissible, and the Court is going to allow it as the entire recording from beginning to end. And so, again, I incorporate by reference your argument from yesterday.

(Emphasis added). And the next day, the circuit court once again noted that "**this Court entered that evidence [of the prior incident] because it allowed for a complete statement by the victim**" (Emphasis added).

Given that the circuit court initially ruled to admit the prior incident statement to satisfy the Rule of Completeness, and then over the next two days of trial emphasized that the ruling was based on the Rule of Completeness, we have no difficulty concluding that resolving whether the circuit court erroneously applied the Rule of Completeness or not is squarely within the scope of our review. *See* R. 8-131(a). We, therefore, reject the State's preservation argument and consider the merits of Parker's argument.

D. Admissibility of the Alleged Prior Incident Via Rule of Completeness and CP § 11-304

1. Rule of Completeness

The Rule of Completeness is a common law rule that has been codified in Maryland

as Rule 5-106, although the Rule modified an issue of timing from the traditional common law rule:

> In Maryland, the doctrine finds its roots from two sources: the common law and Maryland Rule 5–106. The application of the common law doctrine of verbal completeness requires that "[t]he offer in testimony of a part of a statement or conversation, upon a well-established rule of evidence, always gives to the opposite party the right to have the whole." *Smith v. Wood*, 31 Md. 293, 296–97 (1869). At common law, a party seeking to admit evidence pursuant to the common law doctrine of verbal completeness, could admit the remaining conversation or writing during the party's case-in-chief.
>
> . . . .
>
> Maryland Rule 5–106 partially codifies the common law doctrine of verbal completeness but allows writings or recorded statements to be admitted earlier in the proceeding than the common law doctrine.

Otto, 459 Md. at 447–48.

Rule 5-106 states that "[w]hen part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." This Rule "does not allow evidence that is otherwise inadmissible to be admitted, and it does not change the requirements for admissibility under the common law doctrine." *Otto*, 459 Md. at 447. Importantly, the committee note advises that:

> The Rule does not provide for the admission of otherwise inadmissible evidence, except to the extent that it is necessary, in fairness, to explain what the opposing party has elicited. In that event, a limiting instruction that the evidence was admitted not as substantive proof but as explanatory of the other evidence would be appropriate. *See Richardson v. State*, 324 Md. 611 (1991).

Still, "where the evidence sought to be admitted is not otherwise admissible, the evidence

may be admitted, in fairness, 'as an explanation of previously admitted evidence and not as substantive proof.'" *Otto*, 459 Md. at 447 (quoting *Conyers*, 345 Md. at 541).

At the trial below, the State argued for the introduction of the portion of the recording where J.B. described how Parker raped her. And the State also moved to introduce the portion of the recording in which J.B. described the prior touching incident. The circuit court admitted the second statement based on the Rule of Completeness. But we cannot find any authority, and the State points to none, that would allow the same party who introduces one part of a statement to admit the entire statement to ensure completeness.

Indeed, appellate authority holds the opposite. In this Court's recent opinion from December 2020 on this issue, we succinctly concluded that

> when one party offers part of a statement or part of a document, the **opposing party** may have the right to introduce the whole statement or document. *See Otto* [at 423, 427] (citing *Smith*[, 31 Md. at 296-97]); *accord* Md. Rule 5-106 (codifying the common-law rule). [The appellant] apparently contends that because he was able to offer parts of [a state witnesses]' several conversations with the detectives, he, and not the State, should also have been allowed to offer the entirety of these conversations. **This is not how the doctrine of verbal completeness works.** *See Otto*[at 449-50].

Stanley v. State, 248 Md. App. 539, 561 (2020) (emphasis added).

And, federal courts have interpreted Fed. R. Evid. 106 in this same fashion. Although these interpretations are not binding, we give them considerable persuasive weight because Rule 5-106 "is derived without substantive change from Fed. R. Evid. 106. Any language differences [between the state and federal rules] are solely for purposes of style and clarification." R. 5-106. For example, the Eastern District of Louisiana, quoting

the Fourth Circuit, opined:

> As we have explained, a trial court, in applying the rule of completeness, may allow into the record "relevant portions of [otherwise] excluded testimony which clarify or explain the part already received," in order to "prevent a party from misleading the jury" by failing to introduce the entirety of the statement or document. *See United States v. Bollin*, 264 F.3d 391, 414 (4th Cir. 2001). Nevertheless, the rule of completeness does not "render admissible . . . evidence which is otherwise inadmissible under the hearsay rules." *United States v. Lentz*, 524 F.3d 501, 526 (4th Cir. 2008) (internal quotation marks omitted). **Nor does the rule of completeness "require the admission of self-serving, exculpatory statements made by a party which are being sought for admission by that same party."** *Id.*

United States v. Hassan, 742 F.3d 104, 134 (4th Cir. 2014); *see also United States v. Harper*, No. 05-CR-6068L, 2009 WL 140125, at *5 (W.D.N.Y. Jan. 20, 2009) (holding the same). We note these courts' interpretations of Federal Rule106 provide further support for our conclusion that, under Rule 5-106, the same party who introduced one part of a statement may not ask for the admission of another part of a statement to satisfy completeness.

Accordingly, given this Court's previous interpretation of Rule 5-106 as well as the consistent interpretation by federal courts of Fed. R. Evid. 106, we decline to depart from these holdings in favor of an interpretation that would directly conflict with Rule 5-106's express language. The Rule plainly states that "[w]hen part or all of a writing or recorded statement is introduced by a party, **an adverse party may require the introduction** at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it" (emphasis added). As such, we find that the circuit court erred in admitting the prior incident evidence under the Rule of Completeness.

Additionally, we do not see how this statement could be properly admitted for

explanatory purposes. In order for evidence "to be admissible [under the Rule of Completeness], the remainder must not only relate to the subject matter, but must also tend to explain and shed light on the meaning of the part already received or to correct a prejudicially misleading impression left by the introduction of misleading evidence." *See Newman v. State*, 65 Md. App. 85, 96 (1985) (citations and quotations omitted). Put another way, we have "held that in order for a piece of evidence to be admissible under the Rule of Completeness, the portion submitted must explain the part already in evidence or correct a misleading impression left by the evidence previously introduced." *Holmes v. State*, 116 Md. App. 546, 557 (1997). However, the statement concerning the prior incident described just that, a prior occasion in which Parker allegedly touched J.B. That statement did not explain or correct a misleading impression from J.B.'s statement about the rape.

Finally, we cannot conclude that the error in admitting the evidence based on the Rule of Completeness was harmless. Here, the same child victim essentially told the jury about another incident of alleged touching that Parker committed against her. The statement was hearsay and was not offered by Parker to complete or clarify J.B.'s prior statement. Because of the similarity of the two events involving the same parties we cannot say beyond a reasonable doubt that introduction of this evidence had no bearing on the jury's verdict. *Dorsey v. State*, 276 Md. 638, 659 (1976). Accordingly, we reverse both convictions and remand for a new trial.

2. CP § 11-304

The State argues that the prior incident statement was properly admitted under CP § 11-304. As discussed, we conclude that evidence of the prior touching was not admitted

under CP § 11-304 but under the Rule of Completeness. Therefore, we cannot accept the State's assertion that introduction of the evidence was proper under CP § 11-304 as it was not a basis for admission.

There appears to have been some confusion about whether the court admitted the prior incident statement under CP § 11-304. At first, the circuit court explicitly stated that the evidence of the previous touching incident was being admitted under the statute. Speaking to defense counsel after hearing arguments about whether the prior incident should be admitted, the circuit court judge said: "You know more about this case than I do, but on this issue, the entire tape recording will be admissible." We think that the judge misspoke when she said that "the entire tape recording will be admissible." This is because counsels' arguments did not go to whether the entire recording ought to be admitted, but rather dealt with whether only the prior incident portion might be admitted if the entire recording would be admitted after the circuit court judge listened to J.B.'s entire taped interview. Significantly, the judge quickly clarified that her ruling was only with respect to the prior incident statement which the court had admitted under the Rule of Completeness.

Immediately after the ruling, the following colloquy took place in which the judge clarified that J.B.'s statement concerning the prior incident was admitted under the Rule of Completeness *before* the court ruled on admitting the statement under CP § 11-304:

> THE COURT: Do you take the exception?
>
> [COUNSEL FOR PARKER]: I do take an exception, but I don't know, is the [c]ourt ruling on the 11-304 motion by the State at this point?

> THE COURT: Well, I'm ruling on whether or not that portion of [the recording] --
>
> [COUNSEL FOR PARKER]: Would be redacted. Okay.
>
> THE COURT: -- would be redacted. I haven't ruled on anything else yet.
>
> [COUNSEL FOR PARKER]: Okay.
>
> THE COURT: Just on your request to redact that portion of the tape. I have not yet heard the motion on the whole thing, because I don't know who the tape was given to, who is the person, all that other stuff that the State has to jump through those hoops, but I'm saying just for the purposes of the content of it.

Accordingly, we do not believe CP § 11-304 was the court's basis for admitting the prior incident statement.

And, even if we did think the court admitted the statement under CP § 11-304, we are not satisfied that the circuit court made a proper preliminary determination that the statement contained a particularized guarantee of trustworthiness. For evidence to be admissible under this statute, the circuit court judge is required to make specific, preliminary findings to determine whether the statement at issue contains "particularized guarantees of trustworthiness." CP § 11-304(e) states:

> (e)(1) A child victim's out of court statement is admissible under this section only if the statement has particularized guarantees of trustworthiness.
>
> (2) To determine whether the statement has particularized guarantees of trustworthiness under this section, the court shall consider, but is not limited to, the following factors:
>
> (i) the child victim's personal knowledge of the event;
>
> (ii) the certainty that the statement was made;

> (iii) any apparent motive to fabricate or exhibit partiality by the child victim, including interest, bias, corruption, or coercion;
>
> (iv) whether the statement was spontaneous or directly responsive to questions;
>
> (v) the timing of the statement;
>
> (vi) whether the child victim's young age makes it unlikely that the child victim fabricated the statement that represents a graphic, detailed account beyond the child victim's expected knowledge and experience;
>
> (vii) the appropriateness of the terminology of the statement to the child victim' age;
>
> (viii) the nature and duration of the abuse or neglect;
>
> (ix) the inner consistency and coherence of the statement;
>
> (x) whether the child victim was suffering pain or distress when making the statement;
>
> (xi) whether extrinsic evidence exists to show the defendant or child respondent had an opportunity to commit the act complained of in the child victim's statement;
>
> (xii) whether the statement was suggested by the use of leading questions; and
>
> (xiii) the credibility of the person testifying about the statement.

The circuit court's ruling about the existence of particular "guarantees of trustworthiness" makes clear that the court made that inquiry only with regard to the portion of the recording that described the rape, not the previous touching incident. Looking at the other statutory factors of trustworthiness, we note that the prior incident statement was not "spontaneous or directly responsive to questions" but was instead in direct response to questioning from the social worker, in contrast with statement

concerning the rape. *See* CP § 11-304(e)(2)(iv). Likewise, the circuit court acknowledged that the alleged prior touching incident might have occurred up to a year before the statement was made, unlike the statements about the rape, an event that allegedly happened that night. *See* CP § 11-304(e)(2)(v). Finally, there was no "extrinsic evidence . . . to show the defendant or child respondent had an opportunity to commit the act complained of in the child victim's statement[,]" despite Evans' availability to corroborate this fact. *See* CP § 11-304(e)(2)(xi). This is further evidence that the court's "trustworthiness" inquiry only concerned the portion of the recording dealing with the rape and not with the prior incident. Even if inquiry was undertaken to address the prior touching incident, given the unaddressed discrepancies between that incident and CP § 11-304(e)(2)(iv), (v) and (xi), we believe that an admission on this basis would be clearly erroneous and would still merit reversal. Although this is our holding, we nonetheless observe that at the retrial, the State is free to present argument about why the statement about the prior incident should be admitted under CP § 11-304.

II. THE CIRCUIT COURT ERRED IN ADMITTING THE PRIOR TOUCHING INCIDENT AS PRIOR BAD ACTS EVIDENCE UNDER RULE 5-404(b)

A. The Parties' Arguments

Although we have decided that J.B.'s statement about the prior incident was improperly admitted via the Rule of Completeness, because the case is remanded for a new trial and the issue may reoccur, we now analyze whether the statement could have been admitted under Rule 5-404(b) as "bad act" evidence. Parker argues that Rule 5-404(b) generally does not allow for prior bad act evidence to be admitted unless it falls under one

of the Rule's enumerated exceptions. According to Parker, none of the exceptions apply here. Parker focuses on the circuit court admitting the evidence as proof that Parker might have accidentally touched J.B., as he claimed on the night of the incident. But, Parker argues, Rule 5-404(b) allows for admissibility based on the *absence* of an accident. The State counters arguing that J.B.'s "recorded statements recounting a prior similar incident with Parker was especially relevant on the central contested issue of mistake or accident."

Parker also asserts that the "evidence was not established by clear and convincing evidence[,]"nor was the evidence corroborated, as required by the Rule. The State replies that J.B.'s "statements, if believed, were *sufficient* to satisfy the trial court, to the level of 'clear and convincing' proof, that the prior incident had occurred." Finally, Parker argues that any probative value from the statement regarding the alleged prior incident does not substantially outweigh its prejudice. The State, not surprisingly, disagrees.

B. Analysis

Rule 5-404(b) makes evidence relating to prior bad acts generally inadmissible. However, the Rule provides exceptions to the general prohibition:

> **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

It is undisputed that the alleged prior touching incident amounts to a prior bad act covered by the Rule and is therefore generally inadmissible. *See* Md. R. 5-404(b). The

parties disagree about whether J.B.'s statement about the prior incident fits into one of the listed exceptions.

At trial, the circuit court at first appeared to admit the evidence based on the absence of an accident:

> In this case, it is no doubt that there's going to be an issue about whether or not the child ever disclosed any information, and to whom. Her credibility is bolstered by the fact that there may have been a prior incident close in time to the incident for which the defendant is charged, and there was an expressed un-comfortability by the victim of the touching, for which she did something about it.
>
> On this occurrence that touching gave raise *(sic)* to more activity, which she is going to testify to, **which makes sure that the record is clear to any trier of fact that this was not an accidental tap on the butt, or an accidental action, but rather something that made her uncomfortable and for which she is now recounting for the court**.
>
> Prior bad acts don't always get excluded merely because they are a prior bad act, and in this instance, even though it's uncharged conduct prior to the date, this Court finds that it's not only probative but that probative value outweighs any prejudicial effect to the defense.

(Emphasis supplied). Later, however, the circuit court stated that it had admitted the evidence based on the *existence*—not the absence—of an accident:

> Let the record also reflect that I think there was an issue about the portion of the tape . . . that refers to another act, and on yesterday I asked you guys for a proffer of what it entails, and I standby what I said yesterday, so just to renew your motion on the exce[r]pt of the tape that talks [about whether] this has ever happened before.
>
> **The description that she gave was actually in my mind almost consistent with the explanation given by Mr. Parker that it was an accident**, because she said nothing really happened other than him touching [her] butt. There was no movement. [She] told [her] mother and the police were not called or notified.

(Emphasis supplied).

Our case law sets forth a three-pronged test for determining whether evidence of prior bad acts are admissible:

> When a trial court is faced with the need to decide whether to admit evidence of another crime—that is, evidence that relates to an offense separate from that for which the defendant is presently on trial—it first determines whether the evidence fits within one or more of the [*Cross*] exceptions. That is a legal determination and does not involve any exercise of discretion.
>
> If one or more of the exceptions applies, the next step is to decide whether the accused's involvement in the other crimes is established by clear and convincing evidence. We will review this decision to determine whether the evidence was sufficient to support the trial judge's finding.
>
> If this requirement is met, the trial court proceeds to the final step. The necessity for and probative value of the "other crimes" evidence is to be carefully weighed against any undue prejudice likely to result from its admission. This segment of the analysis implicates the exercise of the trial court's discretion.

State v. Faulkner, 314 Md. 630, 634-35 (1989) (citing *Cross v. State*, 282 Md. 468, 473-74 (1978) other citations omitted)). "As a threshold matter," therefore, "a court must evaluate whether evidence is introduced for some purpose other than to suggest that, because the defendant is a person of criminal character, it is more probable that he committed the crime for which he is on trial" when "determining whether to admit evidence under Maryland Rule 5–404(b)[.]" *Cousar v. State*, 198 Md. App. 486, 497–98 (2011) (citation omitted).

After examining the threshold question, we hold that the circuit court erred when it ruled the prior incident was admitted as proof that an accidental touching may have happened. The plain language of Rule 5-404(b) directly conflicts with such an

interpretation. Only evidence that, among other specified purposes, is used to show the "*absence* of mistake or accident" is admissible.

Further, we reject the State's argument that the evidence met the first *Faulkner* factor. Specifically, in its brief the State argues that the prior incident statement

> tended to demonstrate that Parker's penis coming into contact with [J.B.]'s vagina on the night of April 11, 2018, was **not an accident**; but rather, that Parker was deliberately using the setting of [J.B.]'s bunk bed and her state of unconsciousness as a safe haven for sexually abusing her, assured in the belief that if he were caught he could just claim to have been asleep. The prior-incident was thus specially relevant to prove **absence of mistake**, and Parker's argument to the contrary should be rejected.

(Emphasis added). The State argues that evidence of the prior incident could have been admitted to prove Parker's intent; the rape was no accident. But, in order "for the 'absence of mistake' exception in Maryland Rule 5-404(b) to apply, a defendant generally must make some assertion or put on a defense that he or she committed the act for which he or she is on trial, but did so by mistake." *Cousar*, 198 Md. App. at 500 (citing *Wynn v. State*, 351 Md. 307, 330-31 (1998)). The Court of Appeals has described this requirement as a "prerequisite" that must be satisfied before proceeding with the remainder of the analysis. *Wynn*, 351 Md. at 330-31.

We recognize J.B. claims that after the prior touching incident, Parker told his wife that he accidentally touched J.B. However, this is clearly not a defense for "the act for which [Parker] is on trial." *See Wynn*, 351 Md. at 330-31. Instead, this was a statement made regarding the prior incident and was not made in the course of litigation, as required by the Rule. Therefore, we do not think the "absence of mistake" exception applies.

And, we note that in closing argument, defense counsel argued that "at worst, this

[situation] is just a tragic mistake, misunderstanding" but just before saying this, counsel stated that Parker "doesn't think that anything [illegal] happened[.]" After examining counsel's entire closing argument, we understand that this statement simply refers to Parker's argument that he perhaps got an erection while in the bed while dreaming and that J.B. might have visually become aware of this, not that Parker mistakenly touched or sexually abused J.B.

This scenario parallels the one presented in *McKinney v. State*, 82 Md. App. 111 (1990). There, when asked if he accidentally touched the sexual assault victim, the defendant replied, "It's possible." *McKinney*, 82 Md. App. at 124. Before this Court, the State argued that because McKinney asserted a defense of accident, the circuit court properly admitted prior bad acts evidence. *Id.* We rejected that argument and reversed the trial court's admission of evidence on this basis:

> The State has simply misconstrued appellant's testimony and his counsel's characterization of it. In answering his attorney's question, [the] appellant conceded that he may have accidentally touched the girls, but he did not say that he touched them on any intimate part of the body. Any reason to assume, from the juxtaposition of the questions relating to intentional touching of intimate parts and to accidental touching, that the latter also referred to intimate parts of the body, was almost immediately dispelled during cross-examination . . . Appellant never asserted a defense of accident or mistake; the only disputed issue in each case was whether there had been any touching of any of the girls' anal or genital areas or other intimate parts. The combined testimony of the three alleged victims might very well have tended to disprove any defense based on accident or mistake, but since no such defense was asserted, there was no material fact to be established by the other crimes evidence.
>
> We conclude, therefore, that the other crimes evidence would not have been mutually admissible in separate trials on the three indictments.

McKinney at 125-26. As in *McKinney*, Parker could have simply been referring to non-

sexual touching. Consequently, defense counsel's reference to a mistake in her closing argument simply meant that different interpretations existed as to what transpired the night of the alleged rape and was in no way a defense or assertion from Parker that he had accidentally sexually abused J.B.

The circuit court erroneously interpreted Rule 5-404(b). Further, the State cannot meet *Wynn*'s threshold requirement that Parker must make a defense or assertion of accident in order for the evidence to be admissible as an absence of a mistake or accident, we find that the circuit court erroneously admitted evidence of the alleged prior touching incident.

Just as with the previous section's discussion of CP §11-304, we point out that at the retrial, if Parker argues that the alleged sexual assault for which he was tried was a mistake, then the State may use the prior incident to show *the absence* of mistake under Rule 5-404(b). The court would then be required to undertake the three-part test outlined in *Faulkner*, as previously described, to determine the prior incident's ultimate admissibility.

III. THE CIRCUIT COURT DID NOT ERR IN LIMITING THE SCOPE OF DEFENSE COUNSEL'S CLOSING ARGUMENT REGARDING THE LACK OF CORROBORATION OF THE PRIOR INCIDENT

Although we are remanding for a new trial, we nonetheless address the third and fourth issues, regarding closing argument and the State's cross-examination of Parker, because we are concerned that these issues could resurface at the retrial. So, to guide the trial court on remand, we address these contentions as Parker raises them in this appeal. *See* Rule 8-131(a).

A. The Parties' Contentions

According to Parker, the circuit court erred by not allowing defense counsel to fully argue in closing argument that the prior touching incident lacked corroboration. Parker contends that defense counsel was attempting to argue that the alleged prior touching incident was uncorroborated, but the circuit court misunderstood and believed that defense counsel was arguing that there was no evidence of a previous sexual assault. In actuality, the circuit court, as well as counsel for Parker and the State, were aware that Parker had previously been diagnosed with chlamydia and that J.B. had subsequently been diagnosed with chlamydia. However, the jury did not hear this evidence because J.B. had denied that any previous genital contact had occurred, and Child Protective Services had ruled out Parker as being the source of J.B.'s chlamydia. based on a pretrial agreement between the parties as Still, Parker believes that the circuit court did not allow defense counsel to continue the argument regarding a lack of corroboration and that doing so was an error. Parker contends that this error was harmful as the circuit court then instructed the jury that the personal opinions of attorneys were not facts, which Parker argues was "tantamount to sustaining the objection and discrediting the argument, [leaving] no doubt that the error was not harmless."

The State, on the other hand, argues that the circuit court appropriately exercised its discretion. The State, citing *Wilhelm v. State*, 272 Md. 404, 412 (1974), contends that judges are afforded significant leeway in ruling on counsels' objections during closing argument. Further, even if the court committed an abuse of discretion, the State contends that any error would be harmless. Specifically, the State points out that (1) Parker's counsel

had previously stated that the lack of corroboration would only be briefly mentioned to the jury, (2) Parker was able to state his argument as to the lack of corroboration, and (3) the circuit court judge never instructed the jury to disregard Parker's counsel's argument.

B. Analysis

The relevant exchange is reprinted:

> [COUNSEL FOR PARKER]: Now, I want to just briefly mention this other incident that's alleged in the – in the videotape of her – of her interview with the social worker. You'll be able to see the medical records where she reports to the doctors that there have been no other incidents, and based on your ability to sort of evaluate the mother and her reaction to this incident, that incident never happened. I mean, if that incident had happened, I can't imagine that the mother would not have called the police, called the – taken her to the social worker. Something would have happened if that had been true. I don't know where that came from, but that – there's no evidence that anything had ever occurred –
>
> [THE STATE]: Objection.
>
> THE COURT: May I see you? . . . . How dare you mislead this jury and argue facts that you clearly know were excluded at your request.
>
> [COUNSEL FOR PARKER]: No.
>
> THE COURT: You said, and -- and I just heard you say, I don't know where that could have come from. Not that's not *(sic)* the evidence in this case. There's a big difference between that because it assumes that there aren't any possible facts, but, in fact, you know that there are two separate incidents. You know for a fact that there was one example of an incident that happened involving chlamydia, which we did not include and we excluded. And you also know there was a -- evidence of the prior bad act. And so for you to say that you have no idea where that came from is totally misleading.
>
> Now, I am not going to correct it because then I would be introducing evidence, and, of course, that evidence was excluded. But I'm just going to warn you that the State's objection is completely appropriate, and I'm going to warn you to limit yourself, not of your personal opinion, but only about what facts are presented in the case.

At this point, defense counsel explained that she was not referring to the chlamydia evidence but that she was simply raising a lack of corroboration with regard to the prior incident that was introduced in J.B.'s recorded statement. The court responded with a warning, which is important to resolving this issue:

> [COUNSEL FOR PARKER]: And I was only addressing the allegation in the video that was not substantiated by any other evidence that existed, not just -- I mean, there's no . . . other evidence of that[.]
>
> . . . .
>
> THE COURT: [I]f you continue that way, then you're going to allow me to let the State make their argument because there are some inferences to be drawn of other facts that would tend to indicate that there was another incident of abuse. If you want me to let the State go there, I will.
>
> It would be totally inappropriate for them to do it, just like it's totally inappropriate for you to do it. If you stick to the facts of the case and not your personal opinion, you'll stay within the parameters of closing argument. My warning to you is to stick to the facts of the case. Stick to the facts of the case and not your personal opinion. And that goes for both of you.

Significantly, the circuit court responded not by instructing the jury to disregard what defense counsel had said, but instead made the following statement to the jury: "Ladies and gentlemen, the personal opinions of the attorneys are not evidence. What is evidence is what you heard in this courtroom, what was presented by testimony, what exhibits came into evidence. You may continue, [Counsel for Parker]."

It seems that defense counsel was trying to argue a lack of corroboration on evidence that she believed was erroneously admitted. In that case, counsel was entitled to make such an argument. However, we do not think that counsel was "prohibit[ed] . . . from arguing a lack of corroboration." As we read the closing argument, the circuit court believed that

Parker's counsel was about to make an overly broad argument regarding the evidence that J.B. had previously been diagnosed with chlamydia. Upon the State's objection, the circuit court warned counsel that such an argument would not be permissible. We believe defense counsel's explanation that she was simply arguing corroboration to be entirely reasonable, but, importantly, the circuit court did not prevent her from arguing such a lack of corroboration. The judge simply instructed defense counsel not to bring up the evidence of J.B.'s chlamydia diagnosis.

Additionally, the circuit court did not instruct the jury to disregard anything that defense counsel stated in closing argument. Instead, the court judge reminded the jury that they are only to consider the testimony and exhibits in their deliberations, not the personal opinions of the attorneys. The court's additional comments in this regard were not controversial. Accordingly, the circuit court did not abuse its discretion by limiting the scope of closing argument in this way.

IV. THE CIRCUIT COURT ERRED BY ALLOWING THE STATE TO ELICIT TESTIMONY FROM PARKER ABOUT HIM GIVING HIS WIFE CHLAYMDIA AND HIS PREVIOUS INCARCERATION

A. The Parties' Contentions

Finally, Parker alleges that the circuit court erred in finding that Parker had "opened the door" to allow the State to ask him on cross-examination if he had given his wife chlamydia and if he had spent nearly a year in prison during his marriage. *First*, Parker contends that he never "open[ed] the door" during his direct testimony. Parker contends that in order for that doctrine to apply, the evidence admitted must respond to either admissible evidence that generated a non-collateral issue or inadmissible evidence that was

admitted over objection. Because the State did not object during Parker's direct testimony and because no issue was generated, Parker asserts that admission of the chlamydia testimony and testimony that he had been incarcerated was in error. He claims that his direct testimony simply dealt with his assertion that he was a good father, rebutting his wife's testimony that he did not play an important part in the children's lives. The State counters that Parker opened the door by suggesting that his wife held unjustified animosity towards him after he had lived with her during their marriage.

Second, Parker argues that even if he opened the door, the court erred in allowing the State to inject collateral issues into the case, which the doctrine does not allow. The State does not say how these issues are non-collateral.

Third, Parker argues that the chlamydia and incarceration evidence was highly prejudicial. The State counters that it is unclear as to how Parker was prejudiced, pointing out that neither party mentioned the questioned evidence in closing argument. Parker responds that the prejudice was apparent in that it showed him as someone who committed adultery, gave his wife a sexually transmitted disease, and spent time incarcerated for another crime.

B. Analysis

The opening the door doctrine is a legal doctrine that expands the rule of relevancy. *State v. Heath*, 464 Md. 445, 459 (2019). Two specific circumstances exist in which the "doctrine 'authorizes admitting evidence which otherwise would have been irrelevant.'" *Id.* (quotation omitted). The two conditions consist of situations in which "(1) admissible evidence . . . generates an issue, or (2) inadmissible evidence [is] admitted by the court

over objection." *Id.* "Whether an opening the door doctrine analysis has been triggered is a matter of relevancy, which this Court reviews *de novo*." *Id.* at 466 (citation omitted).

The opening the door doctrine has a significant limitation in that it does not allow parties to "inject[] collateral issues into a case or introduc[e] extrinsic evidence on collateral issues." *Id.* at 459. Moreover, an additional limitation exists that "excludes evidence if its probative value 'is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.'" *Id.* (quoting Md. R. 5-403). "Whether responsive evidence was properly admitted into evidence is reviewed for an abuse of discretion." *Id.* at 466 (citation omitted).

On direct examination, Parker testified (1) that he and his wife separated because he and his wife were not getting along but that they remained cordial after the breakup, (2) that he frequently participated in activities with his children and stepchildren, [and (3) that he was active in participating in the children's schooling. Parker also testified that he lived with his wife since they began dating in 2011. According to the defense, this testimony rebutted Evans' testimony that Parker was "rarely" involved in the lives of his children and stepchildren.

The circuit court, however, interpreted Parker's testimony as evidence of his good character:

> THE COURT: His testimony on this record is about what a great guy he is, how he's very close to the principal, that he was always at the school, that he was actively involved in the school, that the principal was very happy about his behavior. Safe and Sound Campaign. Public Safety Coalition. If that's . . . not character evidence, [Counsel for Parker], I don't know what is.

> Your client basically gave me the testimony that he was the father of the year from that witness stand. He did not talk about just this victim. He talked about his whole family. Talked about the relationship with his younger daughter, about how much he loved his -- his children. **That's character evidence. That's what he did.**

(Emphasis supplied). The judge then permitted the State to question Parker about him giving his wife chlamydia and being incarcerated in 2012.

We are not convinced that the opening the door doctrine was triggered. The State does not specify whether the door was opened based on "(1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection." *See Heath*, 464 Md. at 459. We view it impossible for the door to have been opened via the second method based the facts presented. The State did not object to Parker's testimony when he described his and his wife's separation, his participation in activities with his children and stepchildren, or his participation in their schooling. Without inadmissible evidence being admitted "over objection[,]" the evidence could not then "open the door" to rebuttal evidence. *See id.* We view Parker's testimony as rebuttal to Evans' testimony that painted him as rarely being engaged with the children. In other words, we disagree with the circuit court's view that Parker placed his character at issue. We see his testimony as an attempt at demonstrating his involvement in the children's lives.

More importantly, Parker's testimony generated entirely collateral issues. "A collateral issue is one that is immaterial to the issues in the case." *Heath* at 467. We are hard pressed to discern how Parker's sexual transmission of an infection to his wife or his imprisonment in 2012 relates to the charges of sexual abuse of a minor, second-degree rape, and sexual offense in the third-degree. None of the elements from these crimes relate

to adultery or previous imprisonment. Moreover, the State makes no argument in its brief as to how the issues are non-collateral.

Accordingly, after our review we conclude that the circuit court erred by finding that the opening the door doctrine was triggered through Parker's testimony. And, even if the doctrine was triggered, we believe that the circuit court erred in applying the doctrine because the issues raised were collateral to the issues being tried. Because we cannot say beyond a reasonable doubt that this had no effect on the jury, we cannot hold that this error was harmless. *Dorsey*, 276 Md. at 659.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS REVERSED. APPELLANT'S SENTENCES FOR SEXUAL ABUSE OF A MINOR AND SEXUAL OFFENSE IN THE THIRD-DEGREE ARE VACATED AND THE CASE IS REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.