Circuit Court for Caroline County
Case No. C-05-CR-16-000062

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1690

September Term, 2017

RUSSELL LINWOOD HALL, JR.,

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Reed,

JJ.

Opinion by Fader, C.J.

Filed: January 4, 2019

* 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.

A Caroline County jury convicted the appellant, Russell Linwood Hall, Jr., of two counts of rape in the second degree, one count of a sexual offense in the third degree, two counts of abuse of a vulnerable adult by a household member, and two counts of assault in the second degree. Mr. Hall presents one issue on appeal: whether the circuit court erred in admitting the expert opinion of a psychologist that the victim was a "vulnerable adult unable to consent to sexual intimacy." We conclude that the circuit court did not err and so affirm.

BACKGROUND

The charges against Mr. Hall arise from two acts of sexual intercourse he engaged in with A.M.[1] At the time of the incidents, both of which occurred in 2015, Mr. Hall had been involved in a romantic relationship with A.M's mother, Belinda M., for ten years. During a large part of that time, Mr. Hall and Ms. M. resided together in Caroline County along with A.M. and A.M.'s brother. A.M. is partially deaf and, like her mother, has a learning disability. Notwithstanding that disability, A.M. , who was 19 at the time of the incidents, was able to graduate from high school.

A.M. became pregnant and gave birth to a daughter in July 2016. Following a referral from the hospital with concerns regarding A.M.'s ability to care for her new daughter, the Caroline County Department of Social Services (the "Department") and the Maryland State Police began an investigation into whether A.M. "was taken advantage of

[1] Given the sensitive nature of the case, we refer to the victim using her initials. *See State v. Mayers*, 417 Md. 449 (2010) (referring to an adult victim of sexual crimes by her initials).

because she was disabled." A paternity test revealed that the father was Mr. Hall, who was then charged with crimes of rape, sexual assault, abuse of a vulnerable adult, and assault.

At trial, A.M. testified that she was living with her mother, brother, and Mr. Hall in Mr. Hall's father's home the first time that she and Mr. Hall had sex. A.M. recounted that Mr. Hall approached her with the idea of having sex by stating that he would show her how to do it so that she would know how when she "found somebody . . . [she] would like to live [her] life with." When A.M. expressed concerns, Mr. Hall told her that "he couldn't get [her] pregnant." He then directed her to undress, "got on top of [her]," and inserted "his genitals" "in [her] vagina." A week later, Mr. Hall again directed her to get undressed and had sex with her. Unlike the first time however, Mr. Hall did not use a condom. Both times A.M. told Mr. Hall no, but "he kept doing it." Mr. Hall later directed her "to say it was a one time thing."

Trooper First Class Brian Dadds testified about Mr. Hall's statements during an interview following his arrest. According to Trooper Dadds, Mr. Hall stated that he had been in A.M.'s life "since she was about eight or nine years old" and that "he had been dating and living with her mother" for the past ten years. Mr. Hall's explanation for his physical contact with A.M. was that "one night, . . . [h]e woke up and [A.M.] was on top of him." He told Trooper Dadds that "he was wearing loose boxers and he felt that he was damp in the area around his penis below his waste [sic] and when he woke up, he said he did not have an erection[,] that he never ejaculated, and at that point told her this wasn't right and she ended up leaving the room." When Trooper Dadds asked him how he felt

about being the child's biological father, Mr. Hall said he "was excited"; after a "short pause" he added, "but not under these circumstances."

Trooper Dadds also testified about A.M.'s reactions when he informed her that Mr. Hall was the father. A.M., he testified, was "crying" and "upset" and recalled Mr. Hall "telling [her] to tell them that it was a one time thing, you were asleep and woke up and it was done." The State also introduced a note signed by Ms. M. recording that same comment from Mr. Hall to A.M.

Much of the testimony at trial centered around A.M.'s disability and the extent to which it limited her. A.M. testified that she takes care of her daughter, but "sometimes" needs help when the baby cries. She also expressed that she enjoys cooking and reading books and in the future would like to work caring for children or animals.

Ms. Amy Gilliland, A.M.'s high school teacher, testified to the Individualized Education Plan the school created for A.M. The plan addressed A.M.'s "hearing impairment which affected her in [sic], academically across reading comprehension, math calculations, and math problem solving." Ms. Gilliland noted that with help (such as extended time, a breakdown of problems step by step, or a calculator), A.M. was able to graduate. Ms. Gilliland also testified about her personal observations of A.M. Specifically, she observed that A.M was a "pretty quiet student, very friendly, very eager to please and a very hard worker." A.M. was a member of the book club and could always be "found with a book." Ms. Gilliland "never really saw [A.M.] interacting with males much" but "she seemed to keep a few close female friends."

Ms. M. also testified about the nature of A.M.'s disability: "[S]he's pretty much, partially deaf in both ears. And she has a learning disability as well as I have. She's just a little slow that's all, she's not different. She looks different. That's what everybody's scared of." Ms. M. also noted that although A.M. did not work outside the home, she did "housework" such as cleaning, cooking, and laundry.

The State called several Department witnesses to testify about their observations of A.M. and the investigation. According to one caseworker who visited A.M. following the birth of her daughter, A.M. was "wearing clothing that was dirty" and that "looked like she may have been wearing them for a couple of days." A.M did not look at her child the entire time she conversed with the caseworker and it was generally the nursing staff who responded to the newborn. The Department ultimately determined that A.M. would require assistance in caring for the baby. The various representatives from the Department also testified about A.M.'s behavior during a meeting shortly after the birth. When asked who the father of her child was, A.M. "clammed up and just cried . . . ." A.M. was also "very nervous," "cried a lot," was "very timid," "kind of scared," and when asked a question "she would always look for the mother for direction, like what to say."[2]

Central to this appeal is the testimony of expert witness Dr. Michael Gombatz, a psychologist retained by the State. Dr. Gombatz testified over objection that he evaluated

[2] A.M. did not initially identify her child's father, which led to the Department's concern that there was a "risk of her being sexually abused again." As a result, the Department created a safety plan that called for A.M. to avoid any contact with Mr. Hall and A.M.'s brother, the two men with whom she had been residing.

A.M. for several purposes, including (1) "to address whether [she] was a vulnerable adult in the sense that, whether or not she was able to engage in sexual activity freely," (2) to "describe the level of functioning as it pertains to parenting," and (3) to "[o]ffer diagnostic impression or diagnosis and to make treatment recommendations in order to assist with her parenting." Dr. Gombatz then testified about the observations he made with respect to A.M's limitations. He testified that A.M. spoke "in two or three word sentences" and was "very quiet, and passive and timid." He noted that people with this type of personality "seldom question authority" and they look to an "authority figure to provide direction for them." They also "would respond positively" to a person who shows interest in them because "they will feel affirmed and valued." A.M. had never been employed and, in Dr. Gombatz's opinion, could not "work in a competitive employment setting." He believed that she could only work in a structured environment with close supervision and instructions. Dr. Gombatz also testified that A.M. had an IQ of 75, which is "considered in the borderline range." In his opinion, A.M. "function[s] at a twelve or thirteen year old adolescent" level, cannot "live independently," and will "need supervision."

After laying this groundwork, the State then asked Dr. Gombatz whether he had "an opinion as to whether or not [A.M.] is a vulnerable adult to a reasonable degree of psychological certainty[.]" Over Mr. Hall's objection, Dr. Gombatz testified: "Yes, sir it was my opinion that she was a vulnerable adult unable to consent to sexual intimacy."

The jury returned a guilty verdict on two counts of rape in the second degree, one count of a sexual offense in the third degree, two counts of abuse of a vulnerable adult by

a household member, and two counts of assault in the second degree. The jury acquitted Mr. Hall of one count of sexual offense in the third degree. The court sentenced Mr. Hall to serve 20 years in prison for each count of rape in the second degree, to be served consecutively, with the remaining counts merged for sentencing purposes.

This appeal followed.

DISCUSSION

Mr. Hall challenges the admission of Dr. Gombatz's expert opinion that A.M. was a "vulnerable adult unable to consent to sexual intimacy." "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a ground for reversal." *Roy v. Dackman*, 445 Md. 23, 38-39 (2015) (quoting *Bryant v. State*, 393 Md. 196, 203 (2006)). The trial court's decision "may be reversed if founded on an error of law or some serious mistake, or if the trial court has clearly abused its discretion." *Gutierrez v. State*, 423 Md. 476, 486 (2011) (quoting *Raithel v. State*, 280 Md. 291, 301 (1977)). A trial court abuses its discretion when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Levitas v. Christian*, 454 Md. 233, 243 (2017) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)) (emphasis removed).

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING DR. GOMBATZ TO TESTIFY THAT A.M. WAS A VULNERABLE ADULT INCAPABLE OF CONSENT.

Mr. Hall argues that Dr. Gombatz's expert testimony improperly invaded the province of the jury by offering "conclusory legal opinions." He contends that Dr. Gombatz's testimony that A.M. was a "vulnerable adult unable to consent to sexual intimacy" was impermissible because the State was required to prove beyond a reasonable doubt (1) that A.M. is a "substantially cognitively impaired individual," with respect to the rape in the second degree and sexual offense in the third degree counts, and (2) that A.M. is a "vulnerable adult," with respect to the abuse of a vulnerable adult counts.[3] We disagree. The trial court did not abuse its discretion because Dr. Gombatz's testimony as an expert psychologist was helpful to the jury and did not impermissibly encroach on the jury's role as a fact finder.

A. Dr. Gombatz's Expert Opinion Was Admissible Under Rule 5-702.

Under Rule 5-702, a trial court may admit expert testimony if it "determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in

[3] In a one-line argument at the end of his brief, Mr. Hall further argues the testimony should have also been kept out because the prejudice he suffered "far outweighed any probative value to be derived from its introduction." This argument was neither preserved below nor adequately briefed here, and so we decline to consider it. *See* Rule 8-131(a) ("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 . . . ."); *see also Boston Scientific Corp. v. Mirowski Family Ventures*, 227 Md. App. 177, 209 (2016) ("An appellate court is not required to address an argument on appeal when the appellant has failed to adequately brief his argument.").

issue." To determine if testimony meets that standard, the trial court must determine "whether certain requirements have been satisfied: (1) the proposed witness must be qualified to testify as an expert; (2) the subject matter about which the witness will testify must be appropriate for expert testimony; and (3) there must be a legally sufficient factual basis to support the expert's testimony." *Sippio v. State*, 350 Md. 633, 649 (1998) (citing Rule 5-702).

Here, all three requirements were met. Mr. Hall does not challenge Dr. Gombatz's qualification as an expert nor does he challenge the existence of a factual basis to support Dr. Gombatz's testimony. Mr. Hall also does not claim that the testimony was not helpful to the jury and, as the State points out, he could not reasonably do so. Dr. Gombatz explained in some detail his findings with respect to A.M., including as to her deference to authority, likelihood to respond affirmatively to those who show an interest in her, low IQ, functioning at the level of a 12 to 13-year-old, and inability to live independently. He then opined, based on that testimony, that A.M. was a vulnerable adult and was unable to consent to sexual activity.

To find Mr. Hall guilty of rape in the second degree or sexual offense in the third degree under the theory pursued by the State, the jury had to find that A.M. was "a substantially cognitively impaired individual," or "a mentally incapacitated individual." Md. Code Ann., Crim. Law §§ 3-304(a)(1), 3-307(a)(2) (Repl. 2012; Supp. 2018). And to find Mr. Hall guilty of abuse of a "vulnerable adult," the jury had to find that A.M. was "an adult who lacks the physical or mental capacity to provide for the adult's daily needs."

Crim. Law § 3-604(a)(10) & (b)(2). In light of the complex and specialized nature of assessing an individual's mental condition, it is beyond reasonable dispute that Dr. Gombatz's testimony would be of some assistance to a jury in determining whether A.M. was substantially cognitively impaired, mentally incapacitated, or lacking the physical or mental capacity to provide for her daily needs. As a result, Dr. Gombatz's testimony satisfied the requirements of Rule 5-702. *See Hricko v. State*, 134 Md. App. 218, 274 (2000) ("[I]t is enough to note that the jury could have been helped by the expert opinion . . . ."); *see also Sippio*, 350 Md. at 649 ("The trial court need not consider whether the trier of fact could possibly decide the issue without the expert testimony. Nor must the subject of the expert testimony be so far beyond the level of skill and comprehension of the average layperson that the trier of fact would have no understanding of the subject matter without the expert's testimony.") (internal citations omitted).

B. Dr. Gombatz's Expert Opinion Did Not Impermissibly Encroach on the Role of the Jury.

Even when expert testimony is admissible under Rule 5-702, it may nonetheless be excluded if it improperly invades the province of the jury. Mr. Hall argues that Dr. Gombatz's testimony was impermissible because it was for "the jury, and the jury alone" to decide whether A.M. was a vulnerable adult and whether she was capable of consenting to sexual activity. He specifically maintains that because the term "vulnerable adult" is

defined by statute, Dr. Gombatz's opinion that A.M. was a "vulnerable adult" is a "matter of law" as to which expert testimony is inappropriate.[4]

An expert's testimony, especially that of an expert psychologist, is not impermissible merely because it addresses an ultimate issue in a case. Two provisions of Maryland law are directly on point. First, Rule 5-704 provides that, with an exception not relevant here,[5] "testimony in the form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact." In other words, "the fact that a witness's opinion addresses an ultimate issue as to which the judge or jury must reach a conclusion does not preclude automatically the witness's testifying to it. Rather, the question, as with regard to any opinion testimony, will be whether the witness's opinion is rationally based and would be helpful to the fact-finder." *Barkley v. State*, 219 Md. App. 137, 146-47 (2014) (quoting 6 Lynn McLain, *Maryland Evidence*, § 704:1(b) at 973 (3d ed. 2013)). If these two criteria are met, as they are here, then the expert testimony is admissible. *Id.*

[4] Mr. Hall also argues that because "[t]he ability of one to consent to sexual contact . . . is legally defined by statute," Dr. Gombatz's testimony that A.M. was "unable to consent to sexual intimacy" constitutes testimony on a matter of law that invades the province of the jury. Notably, however, none of the offenses of which Mr. Hall was charged required the jury to determine whether A.M. was capable of consent. And even if the jury had been required to do so, Mr. Hall's argument would still fail for the same reasons that his argument as to the term "vulnerable adult" does.

[5] The exception, contained in Rule 5-704(b), applies to an expert opinion as "to the mental state or condition of a defendant in a criminal case . . . constituting an element of the crime charged." Dr. Gombatz's testimony here went to the mental state of the victim, not the defendant.

Second, § 9-120 of the Courts and Judicial Proceedings Article provides that "[n]otwithstanding any other provision of law," a licensed psychologist who is "qualified as an expert witness may testify on ultimate issues, including . . . matters within the scope of that psychologist's special knowledge, in any case in any court or in any administrative hearing." Here, Dr. Gombatz testified as a licensed psychologist whom the court duly qualified as an expert witness and who testified to matters within the scope of his "special knowledge." Section 9-120 thus provides independent authorization for accepting Dr. Gombatz's testimony without regard to whether it addressed "ultimate issues" in the case.

In arguing to the contrary, Mr. Hall relies on two cases that he claims stand for the proposition that testimony like Dr. Gombatz's impermissibly concerns "matters of law" when it makes use of a statutorily-defined term like "vulnerable adult." Neither case helps him. First, in *Henson v. State*, 212 Md. App. 314, 327 (2013), a jury found the defendant guilty of conspiracy to violate Maryland election laws by distributing robocalls for a campaign without an "authority line" disclosing the name of the responsible campaign finance entity and treasurer. *Id.* at 317-18. On appeal, the defendant challenged the trial court's refusal to allow him to introduce testimony of experts who he proffered would opine that the responsibility for compliance with the applicable statute belonged to the campaign, not to a political consultant such as himself. *Id.* at 325-26. Although we ultimately rejected his claim on other grounds, we also noted that "[t]he proffered testimony [amounted to] nothing more than the legal conclusions of the [ ] experts concerning the scope of the [appellant's] responsibility under the relevant statutes," and

"an expert's opinion on a matter of law is inadmissible." *Id.* at 327 (alterations in original). Therefore, "[e]ven if appellant was entitled to the benefit of expert testimony, his experts could not have testified, as desired, to the ultimate legal issue of responsibility for the robocall." *Id*.

Mr. Hall's effort to compare Dr. Gombatz's opinion that A.M. is a vulnerable adult with the opinions of the experts in *Henson* is unavailing. There, the experts were engaged to interpret for the jury the meaning of a statute. *Id.* Here, after setting out in detail the results of his psychological assessment of A.M., Dr. Gombatz gave an opinion that she was a "vulnerable adult." His opinion, in other words, was fundamentally an assessment of A.M.'s mental state and capacity, not a legal opinion as to how the jury should interpret the law. That he conveyed that opinion using a term defined in the statute did not change the fundamental character of his opinion or convert his psychological assessment into a legal opinion.

Second, Mr. Hall relies on *Waltermeyer v. State*, 60 Md. App. 69, 81 (1984), which he contended at oral argument was analogous to this case. In *Waltermeyer*, this Court addressed whether a trial court erred when it (1) permitted a defense expert to opine that the amount of alcohol and drugs the defendant had ingested on the day in question meant that he "would possess no reason or understanding," but (2) precluded the expert from testifying that the defendant lacked "the requisite specific intent to murder" the victim. *Id.* at 80-81. Mr. Hall's reliance on *Waltermeyer* is misplaced. Notably, the testimony that the trial court precluded in *Waltermeyer* is precisely the type of testimony that is now

expressly forbidden by Rule 5-704(b).[6] That testimony is understood to be so inherently within the province of the jury that the Rules have now singled it out as a unique exception to the general rule that expert testimony "is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact." Md. Rule 5-704(a). Second, even with that, our decision did not conclude that the circuit court was correct in excluding the testimony. Instead, we concluded only that any error in declining to admit that testimony was harmless because the other testimony that the court did admit, in conjunction with the court's instructions to the jury, gave the defendant "essentially what the law requires." 60 Md. App. at 83. *Waltermeyer* thus provides no support for Mr. Hall.

A case that is much more analogous to Mr. Hall's is *Braxton v. State*, 123 Md. App. 599 (1998). Mr. Braxton had been convicted of handgun offenses. *Id.* at 609. During his trial, the circuit court had admitted testimony by an expert witness that the gun at issue met the legal definition of a handgun under Maryland law. *Id.* at 610. On appeal, the defendant argued that that testimony amounted to a legal conclusion that improperly invaded the province of the jury. *Id.* at 649. We disagreed, concluding that although the testimony addressed an element of the offense that the State was required to prove, it "did not amount to a conclusion regarding the ultimate issue of appellant's guilt or the credibility of any witness . . . ." *Id.* at 651. We also observed that the expert testimony "would be helpful to the jury" given the complexity of Maryland's definition of a handgun and that the jury was

[6] Rule 5-704 was adopted by the Court of Appeals on December 15, 1993, nearly a decade after we decided *Waltermeyer*.

instructed to "give expert testimony the weight and value [they] believe it should have." *Id*. at 653. As such, the trial court "did not abuse its discretion in permitting the expert to opine that the weapon involved here was a handgun within the meaning of Maryland law." *Id.*

As with the testimony in *Braxton*, Dr. Gombatz's testimony here did not "amount to a conclusion regarding the ultimate issue of appellant's guilt or the credibility of any witness" and did not improperly invade the province of the jury. Whether A.M. was a "vulnerable adult" was an element the State was required to prove with respect to two of the counts of which the jury convicted Mr. Hall, just as was whether the gun in *Braxton* was a handgun. But under Rule 704(a) and § 9-120 of the Courts and Judicial Proceedings Article, the fact that the testimony addressed an ultimate issue in the case is not disqualifying. The jury, which was instructed that it should give Dr. Gombatz's testimony "the weight that you believe it deserves," was still free to disbelieve that testimony. And even if it accepted that testimony, the jury still could have acquitted Mr. Hall if it had believed the version of the facts he had told Trooper Dadds. Dr. Gombatz's testimony thus did not amount to a conclusion regarding the ultimate issue of Mr. Hall's guilt. We find no abuse of discretion in the trial court's decision to allow Dr. Gombatz's testimony.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.