

Circuit Court for Wicomico County
Case No. C-22-CR-20-000291

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1770

September Term, 2021

JEHOVA ENRIQUE JOAQUIN FABIAN

v.

STATE OF MARYLAND

Berger,
Friedman,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: August 15, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

A jury in the Circuit Court for Wicomico County found the Appellant—Jehova Enrique Joaquin Fabian—guilty of two counts of sexual abuse of a minor, two counts of second degree rape, and three counts of third degree sexual offense, for crimes committed against Fabian’s stepdaughter. One count of sexual abuse of a minor and the three counts of third degree sexual offense merged. He was sentenced to ten years for the sexual abuse of a minor conviction and twenty years, consecutive, for each count of second degree rape.

During the trial, the State played video of the police interrogating Fabian. Fabian objected to the admission of the beginning of the clip—about one minute in length—where the interrogating officer describes what he supposed Fabian had done to the victim in this case to which Fabian responds, “You’re not wrong.” Ultimately, the trial court allowed the State to play the video to the jury, including the part Fabian sought to exclude.

Fabian now appeals the trial court’s admission of the beginning of the clip and raises one question for our review,¹ which we have rephrased as follows:

Did the circuit court err in admitting the recording of the police interview because it was irrelevant, or, if relevant, outweighed by unfair prejudice?

¹ Fabian stated the questions as

Did the trial court err in admitting the recording of the police interview without redaction of inadmissible evidence?

The State framed the question as

Did the trial court properly admit an exchange between Detective Rockwell and Fabian in which he impliedly confessed to the crime, where it was relevant and its probative value outweighed any risk of unfair prejudice?

We answer “no” to this question and therefore shall affirm the ruling of the circuit court.

Because we do so, we need not address the parties’ arguments on harmless error.

FACTS & PROCEDURAL HISTORY

Fabian married Angel F. in 2016. Angel F. has three kids—M., N., and S. Fabian is the biological father of S. but not M. or N. After their marriage, Fabian and Angel F. moved in together until Fabian moved out in 2019. After Fabian moved out, Fabian’s stepdaughter—M.—alleged that he had inappropriately touched her.² Police and social services became involved.

At the time of trial, M. was 12 years old. She testified that Fabian’s inappropriate behavior began when she was in fourth grade and stopped when Fabian moved out of the house. In addition to M.’s testimony, M.’s grandmother (Angel F.’s mother) testified about M.’s disclosure of the abuse to M.’s cousin and her conversation with Angel F. about it. Angel F. also testified about M.’s disclosure to her. An employee from the Department of Social Services interviewed M., and this interview was admitted into evidence and played for the jury. A detective with the Salisbury Police Department assigned to the Wicomico County Child Advocacy Center who had interviewed Fabian also testified. Fabian testified in his defense that he had never had inappropriate contact with M.

² M. initially made the allegation to Angel F. but, when pressed by Angel F., M. said she was making the allegation up. M. later told her younger cousin about Fabian’s conduct, and the cousin told Angel F.’s mother. M.’s brother—N.—overheard Angel F. and her mother talking about M’s disclosure to M.’s cousin and informed his school.

The State sought to introduce video of a detective's interview with Fabian. Fabian and the State had agreed that approximately eight minutes of the video should be admitted, but they had not agreed on the admissibility of an approximately one-minute part of the video. As provided by the parties, the disputed part of the video contained the following interaction between the detective and Fabian:

[Detective]: You said you were, you were, you were probably mad at Angel, because of the problems you guys were having. And she [M.] was probably a willing participant. I'm not saying you raped her. I'm not saying you held her down and forced her to play with your penis or touch your penis. I'm not saying that. I think she probably touched your penis . . . because it was probably curious to her. And you know, I think that's where it started and I think after that it probably escalated a little bit from touching the penis to possibly trying to do oral sex or possibly trying to take a sex toy or an object of some type and putting it in her vagina because at that point in time, that's where you were at. I don't think you're proud of this happening. I don't, I think if you could go back you would wish it never happened but it doesn't excuse the fact that it did indeed happen. And I don't think I'm wrong in that.

[Fabian]: No, you're not wrong.

[Detective]: What's that?

[Fabian]: You're not wrong.

[Detective]: I'm not wrong. Because it happened, correct?

[Fabian]: Not all those things that other guy told me, no.³

[Detective]: Alright, so tell me what happened, Enrique?

[Fabian]: Uh, I told him, there was one night when I noticed, I noticed...different behav[ior] from her . . .

³ Fabian had been interviewed by a different detective earlier in the day, so this statement may refer to his conversation with the first detective.

Fabian argued to the trial court that this portion of the interview should be excluded:

So essentially there are a number of statements that [the detective] is making about what he believes to have happened and the State wants to play that portion of the interview. I would argue that the [detective's] beliefs are not evidence of anything and that if she wishes to admit the Defendant's statement then that is one thing but to admit what the officer believed or doesn't believe that the victim had to say about what happened would not be admissible.

Initially, the trial court agreed. The State then argued that “the problem is that [the detective's] statement gives context to the Defendant's response[,]” explaining,

The detective goes on saying I think, you know, you touched her vagina, you used the sex toy and all these things that happened and you wish you could go back. And you're not proud of it happening, you wish you could go back and you wish it would have never happened, I'm not wrong, am I, and he says you're not wrong. So obviously that's pretty important from the State's perspective that he's acknowledging that the detective is saying all these sexual things happened with the child, I'm not wrong, and he says you're not wrong.

The court then asked, “Does that not make it admissible as an admission?” Fabian protested that the detective's statement was “a very long run on sentence by the detective, it has a lot of statements within it, and I don't know what [Fabian's statement of “you're not wrong” is] in response to of the many things the detective said.” Finally, the court said, “Well, that will be up to the jury, won't it?” and allowed the disputed part of the video to be admitted into evidence and played for the jury.

At trial, the detective's testimony on direct and cross examination elicited that the interview continued with Fabian saying that, when M. was around six years old, she had touched his leg, that Fabian had “nasty thoughts” about that, and that he should have talked

to Angel F. after the incident and about “video and/or dreams that [M.] described to him,” but that Fabian maintained that “nothing [was] going on, not what ha[d] been described to him,” and that he “didn’t do those things to [M.]”

Fabian testified in his own defense. Defense counsel posed the following question to him:

[C]an you tell us a little bit more about during your interview what you meant by that, when you said - - the detective asked you if he was wrong about some of the things he was saying and you said you’re not wrong. What was it that you meant by that?

Fabian replied, “Well, really I don’t remember what we seen and talked about, but I think that when I mentioned that he was not wrong[,] I was not referring to the accusations.” His testimony then continued about the incident when M. was six years old and his regret about not talking to her mother.

In closing, the State characterized the disputed portion of the interview as follows:

[W]hen we started playing the interview[,] that’s when [the detective] is sort of going on about all the things that [M. said] that [Fabian] did. [The detective] ends with saying you’re not proud, I bet you wish it never happened, but it did happen, am I wrong? The Defendant answered you are not wrong. So that’s after having heard [the detective] listing all these things that [M.] had accused him of doing, that is his response.

Fabian argued that his statement of “you’re not wrong” was only in response to the detective’s statement that he “regret[ted] some things” and “would take it back if [he could],” and that he had said the detective was not wrong because he regretted the incident

when M. was around six and wished he would have talked to Angel F. about that.

Specifically, Fabian argued,

[I]f you take it in full context of how he follows up that conversation[,] he's not agreeing with all those things that the officer said, he's agreeing that there are things that could have been done differently, that he wished he had done differently, and then goes to describe those things to the officer.

The jury convicted Fabian, and this appeal followed.

DISCUSSION

Parties' Contentions

Fabian claims that the circuit court erred in admitting the part of the interview to which he objected. He first argues that the part of the interview at issue was not relevant because it contained the detective's expressions that he did not believe Fabian's claim that he had not committed the acts which M. had alleged. If relevant, he then argues that the probative value of the interaction was substantially outweighed by unfair prejudice because the detective's expressions of disbelief in Fabian's claims negatively impacted Fabian's credibility and prejudiced the jury.

The State responds that the video of the interview was properly admitted. It contends that the interaction was relevant—specifically, that Fabian's comment that the detective was “not wrong” was relevant as an admission. Thus, the detective's preceding statement was necessary to provide context to Fabian's admission. Additionally, the State

asserts that the probative value of the interaction was not outweighed by unfair prejudice⁴ because it was only prejudicial in the sense that it was damaging to his defense.

Standard of Review

We review *de novo* the trial court’s determination of whether particular evidence is relevant. *State v. Simms*, 420 Md. 705, 724–25 (2011). We review a claim that relevant “evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice” for abuse of discretion. *Id.* at 725.

Relevance

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401. Irrelevant evidence is not admissible. Md. Rule 5-402.

This Court has said that “[i]t is . . . well settled that the investigating officers’ opinions on the truthfulness of an accused’s statement are inadmissible under Maryland

⁴ The State also argues that we should not address Fabian’s argument that admission of the evidence was unfairly prejudicial because it was not raised at the trial court. Instead, according to the State, Fabian’s argument to the court that “the officer’s beliefs [in the interview] are not evidence of anything” indicated that he was objecting on the grounds of relevance. Fabian did not submit a reply brief and thus has not responded to this preservation argument. Since the prejudicial effect of evidence is an issue closely connected with relevance, we will consider Fabian’s argument of unfair prejudice. Maryland Rule 4-323(a) requires that the grounds for objection be stated only when “the court, at the request of a party or on its own initiative, so directs.” When a party makes a general objection to the admission of some evidence, he may argue any ground on appeal for its inadmissibility. *DeLeon v. State*, 407 Md. 16, 24–25 (2008). Contrary to the State’s position, we do not think that it is clear that Fabian objected on the specific grounds of relevance. Thus, we will consider his argument on the issue of unfair prejudice as well.

Rule 5-401[,]” *Casey v. State*, 124 Md. App. 331, 339 (1999), and that “[our state Supreme Court⁵] has repeatedly held that in a criminal trial a court may not permit a witness to express an opinion about another person’s credibility[,]” *Walter v. State*, 239 Md. App. 168, 184 (2018).

In *Casey*, we determined that a tape-recorded interview between the appellant and investigators should have been excluded. 124 Md. App. at 337–38. In the recording, the appellant denied having discussed “beating up” the victim whom he was accused of being hired to kill. *Id.* at 337. The police then went on to theorize how the appellant had gotten involved in the crime and to express disbelief that the appellant did not know anything about the crime. *Id.* at 337–38. The appellant responded that it was his “best bet” to end the conversation and speak to a lawyer. *Id.* at 338.

Casey relied on *Crawford v. State* and *Snyder v. State* to support its decision. *Id.* at 339. *Crawford* determined that a recorded interview between police and an accused “tended to seriously prejudice the defense” and “improperly in the circumstances.” 285 Md. 431, 451 (1979). The defendant in *Crawford* was accused of murdering her partner, but she maintained that she acted in self-defense. *Id.* at 432–33. Our Supreme Court summarized the admitted evidence:

The jury heard the police say that they interviewed people who said that the victim was terrified of the accused, scared of her because she was “so insanely jealous,” that they had proof,

⁵ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* Md. Rule 1-101.1(a).

“enough proof” of what actually happened, that “no matter how many times you hit us with that story ‘I was in a struggle,’ we know that’s not what happened, we know.”

Id. at 450. The Court said “that the placing before the jury of the challenged portions of the interrogations did not meet the ‘civilized standards for a fair and impartial trial.’” *Id.* at 453 (quoting *Madison v. State*, 205 Md. 425, 434 (1954)). The Court ultimately determined that admission of the recording deprived the defendant of due process. *Id.*

Snyder involved a police officer testifying about a list of questions he had prepared to ask an accused to “clarify certain inconsistencies[.]” 104 Md. App. 533, 551 (1995). However, the officer “never got an opportunity to ask him the questions” because the appellant told the police “that he couldn’t explain any inconsistencies and that he had told [them] the truth.” *Id.* at 553. This Court reasoned that allowing the officer’s testimony “put into evidence the detective’s disbelief of appellant’s statement regarding his activities, and the events surrounding [the crime], as well as the detective’s opinion as to inconsistencies in appellant’s statements.” *Id.* at 554.

More recently, this Court considered a similar issue in *Walter v. State*, 239 Md. App. 168 (2018). In *Walter*, the appellant argued that it was improper for the jury to hear certain questions that police had posed to him in a recorded interview. *Id.* at 186. In the interview, there were multiple times where, after the appellant gave his account, the officer expressed disbelief in his version of events or offered a different narrative on the events, all of which the defendant continued to deny. *Id.* at 189. This Court identified “two occasions[—*Crawford* and *Casey*—where] Maryland courts have reversed criminal convictions when a

jury is exposed to an investigator’s expressions of disbelief in a suspect’s statements or opinions as to the suspect’s untruthfulness.” *Id.* at 187. It then explained that “expressions of disbelief [are] a perfectly legitimate investigative tactic to induce [a suspect] either to confess or to change his account and to introduce inconsistencies that the detective could exploit in further questioning.” *Id.* at 189. Although the expressions of disbelief in *Walter* “were not so pervasive as to deprive [the appellant] of his due process right to a fair trial” under *Crawford*, the comments were still “irrelevant and inadmissible” under *Casey*. *Id.*

This Court further explained why the officer’s commentary in *Walter* was not relevant:

[E]ven if we assumed that the detective’s comments might have some relevance in providing context for [the appellant’s] responses, the fact is that few, if any, of [the appellant’s] responses were more than minimally probative in the State’s case. The questions did not impel [the appellant] to inculcate himself or to alter his account. To the contrary, [the appellant’s] account remained largely the same throughout the interview. Consequently, the detective’s expressions of disbelief had little effect other than to project an aura of official skepticism over [the appellant’s] declaration of his innocence.

Id. at 189–90. It further opined that “provid[ing] . . . context for [the appellant’s] answers [would be] the only ostensible reason for allowing the jury to hear what the detective said.”

Id. at 190.

All four of the cases discussed above involve two critical features. First, they involve an officer commenting on the credibility or truthfulness of the accused. *Casey*, 124 Md. App. at 337–38 (Officer 1: “[W]e have too much information for you to sit here and tell us that you don’t know what we’re talking about.”) (Officer 1: “[W]e’ve been

working on this [a] year and a half and it's too long for you to sit here and tell us we don't know what we're talking about, cause we know that's not true.”) (Officer 2: “[Y]ou can set [sic] there all you want and deny you have any knowledge of what's going on, but we know different.”); *Crawford*, 285 Md. at 439 (officer telling the accused he doesn't buy her story); *Snyder*, 104 Md. App. at 554 (“[The detective's testimony] put into evidence the detective's disbelief of appellant's statement regarding his activities[.]”); *Walter*, 239 Md. App. at 183 (officer “expressed her disbelief in [defendant's] denial of culpability” and “accused him of dishonesty”).

Second, none of the police commentary in *Crawford*, *Casey*, *Snyder*, or *Walter* caused the appellant to agree to something the officer had said. The defendants denied wrongdoing and never admitted to the statements expressed by the police. Nothing in the exchange between the accused and the police prompted the accused to agree with any of the officer's statements.

Fabian's case differs in both respects. First, in the disputed portion of the video, the detective never expressed an opinion that he does not believe Fabian. He presents a theory of what happened—based on evidence gathered from M.—but does not express an opinion on Fabian's credibility or truthfulness. Second, the officer's statement caused Fabian to agree to something by stating “you're not wrong.” Unlike the accused in *Casey*, *Crawford*, *Snyder*, and *Walter*, Fabian agreed with *something* the detective said, which raises the question: what was Fabian admitting?

The Fourth Circuit considered a defendant’s claim that recorded telephone conversations between him and his incarcerated brother should not have been admitted in his trial for kidnapping resulting in death and interstate stalking in *United States v. Wills*, 346 F.3d 476, 489 (4th Cir. 2003). The conversations tended to show that the defendant had arranged the disappearance of the victim. *Id.* at 482, 484. The court explained that the defendant’s statements were admissible as admissions by a party-opponent and that the incarcerated brother’s statements, although hearsay, “were reasonably required to place [the defendant’s] responses into context.” *Id.* at 489–90. Such “statements were properly admitted to make [the defendant’s] statements, so far as they constituted incriminating admissions, ‘intelligible to the jury and recognizable as admissions.’” *Id.* at 90 (quoting *United States v. Lemonakis*, 485 F.2d 941, 948 (D.C. Cir. 1973), *as amended on denial of reh’g* (Oct. 15, 1973)).

“A confession is a species of admission”—“an admission that says or necessarily implies that the matter confessed constitutes a crime.” *Stewart v. State*, 232 Md. 318, 323 (1963). On the other hand, an admission other than a confession “is an acknowledgement of some fact or circumstance which, in itself, is insufficient to authorize a conviction but which tends to establish the ultimate fact of guilt.” *Id.* An admission may “in substance” be “a partial confession or,” in other words, “a statement ‘in the nature of [a confession.]’” *Id.* at 323–24 (quoting *Markley v. State*, 173 Md. 309, 314 (1938)).

As demonstrated by the State’s and Fabian’s closing arguments, there were at least two possible interpretations of the exchange between the detective and Fabian. From the

State’s perspective, Fabian’s statement was an admission of guilt. From Fabian’s, it was an expression of regret for something non-criminal.

There is no dispute about the admissibility of Fabian’s own statements during the interview. He and the State agreed on that at the trial court below. Fabian’s statements consisted of him saying “you’re not wrong” twice and clarifying that “not all of those things that other guy told me” (presumably another police officer) had happened before answering the officer’s prompt to “tell [him] what happened.”

To answer the question of what Fabian was admitting, the jury needed the context of the detective’s preceding statement. Without that context, it would be impossible for the jury to understand what Fabian was acknowledging as “not wrong” and what he was clarifying as “not all of those things that other guy told [him].” *Walter* acknowledged that “the only ostensible reasons for allowing the jury to hear what the detective said” would be “provid[ing] . . . context for [the accused’s] answers.” 239 Md. App. at 190. In this case, the detective’s preceding statements were “reasonably required to place [Fabian’s] response[] into context.” *Willis*, 346 F.3d at 490. Their admission was necessary to make Fabian’s response “intelligible to the jury and recognizable as [an] admission[.]” *Id.* (quoting *Lemonakis*, 485 F.2d at 948).

In *Donaldson v. State*, this Court considered whether the trial court erred in admitting videos of a defendant’s interrogations. 200 Md. App. 581, 584 (2011). The defendant primarily objected to their admission because he had not been informed of and did not consent to the recording but also argued the videos were “prejudicial and

incriminatory and likely to have influenced the jury[.]” *Id.* at 587–88. The defendant argued that, in one of the videos, “the [d]etective raised his voice in laying out the detective’s opinion as to what happened” before the detective and defendant got in a shouting match,” *id.* at 589–90, and that his actions were “highly prejudicial[.]” *id.* at 590.

Although the Court did not discuss in particular the admissibility⁶ of the detective’s “laying out [his] opinion as to what happened[.]” *id.* at 589–90, it said that “[t]he recordings of [the defendant’s] statements to police, in which [he] denied involvement in the crime, were clearly relevant evidence[.]” *id.* at 595. Despite the defendant’s argument that the jury could be prejudiced by his “argumentative demeanor and use of expletives[.]” as well as the detective’s “recitation of his belief of the facts of the crime,” the Court noted that the defendant “point[ed] to no evidence of any such effect upon the jury.” *Id.*

It was not apparent which part of the officer’s words caused Fabian to respond with “you’re not wrong.” But the factual question of what Fabian was agreeing to was properly for the jury to determine. *See State v. Stanley*, 351 Md. 733, 750 (1998) (“Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.”); *State v. Smith*, 374 Md. 527, 539–40 (2003) (citation omitted) (“To the extent that conflicting inferences are possible from the evidence, it is for the fact finder to resolve the conflict.”). As we have explained, there were at least two possible interpretations of

⁶ The trial court in *Donaldson* instructed the jury that “any theories or opinions advanced by the police in these interviews [were] not evidence in this case.” *Donaldson v. State*, 200 Md. App. 581, 591 n.8 (2011). No such instruction was given in this case; the record does not reveal that one was requested after the trial court ruled the disputed portion of the video admissible.

the exchange. The jury was equipped to resolve the issue of what Fabian was admitting only if the detective's preceding statements were allowed to be heard.

Accordingly, we determine that the portion of the interview disputed on appeal was relevant to determining Fabian's criminal conduct.

Unfair Prejudice

Even when evidence is relevant, it “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” Md. Rule 5-403. The evidence's “[p]robative value relates to the strength of the connection between the evidence and the issue” and its “tendency . . . “to establish the proposition that it is offered to prove.”” *Smith v. State*, 218 Md. App. 689, 704 (2014) (quoting *Williams v. State*, 342 Md. 724, 737 (1996)). “Evidence is prejudicial when it tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission.” *Id.* at 705 (quoting *Hannah v. State*, 420 Md. 339, 347 (2011)).

“We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the juror's evaluation of the issues in the case.” *Id.* “[T]he fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403.” *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Lynn McLain, *Maryland Evidence State and Federal* § 403:1(b) (2d ed. 2001)). “The more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial.” *Id.* Evidence may be unfairly prejudicial when it

“produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case.” *Id.* (quoting Joseph F. Murphy Jr., Maryland Criminal Evidence Handbook § 506(B) (3d ed. 1993 & Supp. 2007)).

We conclude that the trial court did not abuse its discretion in admitting the disputed portion of the interview. The evidence’s probative value was not substantially outweighed by unfair prejudice. The character of the evidence was not overly incendiary. Although the officer’s description of the abuse was unpleasant—as descriptions of such crimes often are—his characterization was no more objectionable than the crime for which Fabian was accused of committing.

In addition, although the officer put forth a narrative that differed from Fabian’s account, the nature of his statements did not tend to cast a shadow on Fabian’s credibility. Unlike the repeated expressions of disbelief in *Walter* that tended “to project an aura of official skepticism over [the defendant’s] declaration of his innocence[.]” 239 Md. App. at 190, the officer’s statements when interviewing Fabian did not cast him as a liar or otherwise impeach Fabian’s character. The officer recounted only his theory on how the abuse occurred and expressed that he thought “if [Fabian] could go back [he] would wish it never happened[.]”

In *Walter*, we said that, even if the officer’s expressions of disbelief were relevant, “any minimal probative value in the challenged statements was substantially outweighed by the considerable danger of unfair prejudice[.]” *Id.* This was because the officer’s questions and comments were “unnecessary to provide any context for [the defendant’s]

answers[,]” thus providing “commentary not context.” *Id.* That was at least partly because the questions and comments “did not impel [the defendant] to inculcate himself or to alter his account.” *Id.*

It is clear from the interview that Fabian was acknowledging his agreement with something that the interviewing officer said. As we have explained, hearing what the officer had said provided necessary context for Fabian’s response. If Fabian was agreeing with the officer’s account of how the abuse occurred or his motivations for the abuse, this acknowledgement would be highly probative of Fabian having committed the crime for which he was accused. An alternative interpretation of Fabian’s response could be that he agreed that he wished the situation he was in never happened. Regardless, the interpretation of Fabian’s acknowledgement is a factual question for the jury. Its resolution of this question was probative to the issue of Fabian’s guilt.

In sum, because the officer’s statements in this case provided necessary context for Fabian’s acknowledgement and because it caused Fabian to seemingly incriminate himself by agreeing to something the officer had said, the evidence was highly probative of Fabian’s guilt. Its admission was not unfairly prejudicial because it tended to hurt Fabian’s defense. While characterizations of sexual abuse may cause discomfort, the officer’s remarks here were not such that would produce an overly emotional response from the jury any more than the other evidence that would be recounted at trial. Similarly, the officer’s comments were not directed at damaging Fabian’s credibility such that a jury would be incapable of believing Fabian’s defense. As a result, the evidence’s probative value was

not “substantially outweighed by the danger of unfair prejudice.” Md. Rule 5-403. Thus, the trial court did not abuse its discretion by admitting the disputed portion of the interview into evidence.

CONCLUSION

The portion of the recorded interview at issue on appeal was relevant to Fabian’s guilt and its probative value was not substantially outweighed by the danger of unfair prejudice. Thus, we affirm the judgment of the Circuit Court for Wicomico County.

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