Circuit Court for Washington County
Case No. 21-K-16-052132

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1883

September Term, 2017

KENNETH MAJEED SMITH

v.

STATE OF MARYLAND

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

JJ.

Opinion by Harrell, J.

Filed: August 15, 2019

Appellant, Kenneth Majeed Smith ("Smith"), was charged in the Circuit Court for Washington County with two counts of third-degree sexual offense and one count of unnatural or perverted sex practice. A jury found Smith guilty on all counts. The trial judge sentenced him to ten years for one count of third-degree sexual offense, to be served consecutively with a six-year sentence for the second count of third-degree sexual offense. The conviction for unnatural or perverted sex practice was merged for sentencing purposes. Smith appealed timely.

On appeal, Smith presents two questions for our consideration:

1. Did the trial court err in failing to merge the convictions for the third-degree sexual offense?
2. Did the trial court err in admitting other crimes evidence that was irrelevant and prejudicial?

For reasons to be explained, we answer Smith's questions in the negative and affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

Smith met Crystal Vanorsdale ("Vanorsdale") through a dating website. After dating for a while, the couple decided to move-in together in Vanorsdale's home in Hagerstown. Vanorsdale's children, including her twelve-year-old daughter, Ms. C, lived with her.[1] Vanorsdale claimed that she never left Smith alone with any of the children, although Vanorsdale walked her nephew to school on many mornings during the school year.

Evidence was adduced that, during Smith's time living at Vanorsdale's house, there

[1] We refer to the minor victim in this opinion as "Ms. C" or "the victim."

were instances where he and Ms. C engaged in sexual activities. Specifically: (1) every morning for the duration of Smith's stay Ms. C, in her underwear, would come into the couple's bed where Smith and Vanorsdale were sleeping, and Smith would "rub his penis between Ms. C's legs and on her buttocks" because he believed Ms. C thought it was "fun" to do so; (2) Ms. C, sans underwear, "straddled" Smith's face, while Smith "licked" or "blew a raspberry" that he believed caused Ms. C to orgasm; and, (3) Smith "used his hands to touch Ms. C's vagina." Vanorsdale claimed she was not aware of these encounters.

Smith explained these activities by opining that Ms. C had "teleiophilia."[2] Smith relied on his background in psychology to reach this conclusion. He stated he was able to relate to Ms. C because he had always been "hypersexual." Because of this, he did not want to "shut her off now [because] females need a male role model."

Smith lived with Vanorsdale for a couple of weeks before returning to his mother's home in Baltimore. On 12 October 2015, Detective Joshua Rees ("Rees") came to Smith's residence to talk with him about an independent matter, not related to Ms. C. During the interview, however, Smith alluded to his sexual contact with Ms. C. Rees took Smith to the police station where Corporal Fred Dolinger ("Dolinger") continued the interview. Smith recounted to Dolinger what he had discussed with Rees. Smith also informed Dolinger that he was in pain during the interview because his finger was cut severely, his ankle was aching, and he was under the influence of marijuana and a muscle relaxant.

The police referred the matter to the Department of Social Services ("DSS"). The

[2] Smith defined (without stating the origin of authority) "teleiophilia" as a condition where a minor or adult is sexually attracted to more mature persons.

DSS assigned the case to Alison Lillis ("Lillis") of the Child Advocacy Center. Lillis interviewed Ms. C and her mother regarding Smith's revelations. Ms. C confirmed that Smith touched her inappropriately on multiple occasions. Smith was arrested as a result.

In early September 2017, the circuit court held a pre-trial hearing to address requested redactions to the content of a transcription of Smith's interviews with Rees and Dolinger. Specifically, Defense Counsel did not want the jury to hear Smith's volunteered statements regarding his studies in psychology, including the statement that his favorite subject was "paraphilia," a part of abnormal human psychology. The judge ruled that this statement would not be redacted, but the State was not permitted to supplement the "definition" of that term other than as Smith volunteered. Further, the Court held that the transcript could not contain any reference to other crimes.

Smith's trial commenced on 27 September 2017. During the prosecutor's opening statement, she hinted at various times that when Smith was first contacted by the police, the detectives were unaware of Smith's encounters involving Ms. C. Defense Counsel objected after the opening statement and asked the judge to strike the statements or grant a mistrial, the latter being the defense's preferred relief. The judge denied the request for a mistrial, but granted the request to strike the offending statement. The same complaint (and outcome) occurred during the State's direct-examination of Rees. When the prosecutor renewed even later the same line of questioning regarding that the detectives did not know of Smith's encounters with Ms. C until Smith volunteered that information during the interview, Defense Counsel objected, but was overruled.

DISCUSSION

A. The Trial Court Declined Properly to Merge Smith's Convictions for Third-Degree Sexual Offense

Smith contends that the trial court erred by failing to merge for sentencing his two third-degree sexual assault convictions because the jury "was not instructed that it should base the convictions on separate conduct and [] the verdict sheet did not delineate two bases for the convictions." He continues by positing that, because of this ambiguity as to how the jury may have reached its verdict on these counts, the appellate court must assume the jury based both convictions on the same misconduct and thus resolve the ambiguity in Smith's favor.

The State retorts that the trial court declined properly to merge the two convictions for third-degree sexual offense. First, according to the State, the two counts of third-degree sexual offense were based on different conduct, warranting two separate convictions. Second, the State sees no ambiguity in the verdict because the trial judge's instructions to the jury indicated that each offense should be considered separately.

In reviewing what amounts to a double jeopardy claim, we give no deference to the trial court's application of law to the facts. *Khalifa v. State*, 382 Md. 400, 417, 855 A.2d 1175, 1185 (2004). If the jury could have based multiple relevant convictions upon the same conduct, but it is not clear whether it did, then we must assume that the jury based all of the convictions on the same conduct and resolve the ambiguity in the defendant's favor. *Whack v. State*, 288 Md. 137, 143, 416 A.2d 265, 268 (1980).

The doctrine of merger, which is rooted in the Double Jeopardy Clause of the Fifth

Amendment to the United States Constitution,[3] "forbids multiple convictions and sentences for the same offense." *Holbrook v. State*, 364 Md. 354, 369, 772 A.2d 1240, 1248 (2001). "Offenses merge and separate sentences are prohibited when, for instance, a defendant is convicted of two offenses based on the same act or acts and one offense is a lesser-included offense of the other." *State v. Lancaster*, 332 Md. 385, 392, 631 A.2d 453, 457 (1993).

In analyzing Smith's question, we engage in a bifurcated inquiry. We must determine: "(1) whether the offenses merge under the required evidence test and (2) whether a reasonable jury would have concluded that the offenses were based on the same acts or on acts that were separate and distinct." *Nicolas v. State*, 426 Md. 385, 400, 44 A.3d 396, 404 (2012).

The required evidence test, as set forth by the Supreme Court, determines when two offenses constitute the same offense for jeopardy analysis. As stated by the Court, "when the same action constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not . . ." *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 182 (1932). Our Court of Appeals explained further:

> The required evidence is that which is minimally necessary to secure a conviction for each statutory offense. If each offense requires proof of a fact which the other does not, or in other words, if each offense contains an element which the other does not, the offenses are not the same for double jeopardy purposes even though arising from the same conduct or episode. But, where only one offense requires proof of an additional fact, so that all

[3] The Constitution of Maryland does not have a counterpart to the Double Jeopardy Clause. However, "the common law of Maryland provides for a prohibition on double jeopardy." *Scott v. State*, 454 Md. 146, 167, 164 A.3d 177, 189 (2017), cert. denied, 138 S. Ct. 652, 199 L. Ed. 2d 531 (2018).

> elements of one offense are present in the other, the offenses are deemed to be the same for double jeopardy purpose.

Newton v. State, 280 Md. 260, 266, 373 A.2d 262, 265 (1977).

After our review of the record, we conclude that the jury's conviction of Smith on the two third-degree sex offense charges as based on separate acts of criminal conduct, which supports multiple convictions. The two offenses were charged as different counts, based on different sexual contacts. Count 3 alleged that Smith was guilty of "sliding his penis between the legs and buttocks of [the victim]." Count 4 alleged that he was guilty of "touching the vagina of [the victim] with his hand." Smith never contended that the charges were duplicative.

Smith concedes, as he must, that he was "charged with two separate counts of third[-]degree sexual offense, based on different sexual contact." He aims his challenge therefore not at the charging, but rather at the asserted ambiguity in how the trial judge instructed the jurors to consider each count. The judge instructed the jury as follows:

> The defendant is charged with the crime of third[-]degree sex offense. In order to convict the defendant of third[-]degree sex offense the State must prove: (1) that the defendant had sexual conduct with [the victim]. [(2)] that [the victim] was under the age of 14 at the time of the act. And (3) that the defendant was at least four years older than [the victim].
>
> Sexual conduct means the intentional touching of [the victim's] genitalia or anal area or other intimate area for the purpose of sexual arousal or gratification or for abuse of either party. It does not include acts commonly expressive of familial or friendly affection or acts for accepted medical purposes.

According to Smith, these instructions sowed ambiguity because the jurors were not instructed to base each count of third-degree sex offense on separate actions, the verdict

sheet did not reflect that each count was based on a separate and distinct action, and the prosecutor did not inform the jurors with any greater clarity in closing arguments.

Smith relies on several cases to support his position that his convictions should merge. We find, however, those attempted comparisons inapposite. Smith looks principally to *Snowden v. State*, 321 Md. 612, 583 A.2d 1056 (1991). The flagship issue in *Snowden* was "whether separate convictions for assault and battery and robbery with a dangerous and deadly weapon of one victim arising out of the events of one evening are proper, or whether the lesser offense of assault and battery merges into the greater robbery offense." *Id.* at 614, A.2d at 1057. The record in *Snowden* was ambiguous because the trial judge (in a bench trial) did not disclose whether the robbery charged was based on battery as a lesser included offense or on assault as a lesser included offense, with the battery being considered separately. *Id.* at 619, A.2d at 1059.[4] The Court of Appeals directed merger of the convictions, giving Snowden the benefit of the doubt, because the trial judge did not explain his rationale for the convictions and obviously there were no jury instructions to help uncover the rationale behind the verdicts. *Id.*, A.2d at 1060.

The evidence in Smith's case reveals several distinct criminal transactions. Indeed, even Smith concedes in his brief that the two third-degree sex offense charges were "based on different sexual contact." Based on the record, it is apparent to us that there existed no ambiguity whether the jury considered separately the two third-degree sex offense charges.

[4] The Court noted that had Snowden's trial "been a jury trial we could have looked to the judge's instructions in hope of illuminating the rationale behind the verdicts. Because the case was tried by the court, we must look to the judge's rationale for the convictions." *Snowden v. State*, 321 Md. 612, 619, 583 A.2d 1056, 1059 (1991).

Two third-degree sex offense offenses, based explicitly in the charging documents on different conduct, were iterated multiple times at trial. It strikes us as farfetched that a reasonable juror would be confused, specifically because the verdict sheet asked whether the jury found Smith guilty or not guilty of different charges. *Snowden* provides no succor to Smith.

Smith attempts next to bend to his purposes a gathering of cases that share the common issue of ambiguities relating to a lesser-included offense. *See Nightingale v. State*, 312 Md. 699, 542 A.2d 373 (1988) (overturning guilty jury verdict because it was unclear whether the verdict was based on the use of lesser-included offenses as elements of a separate offense or other reasons); *Biggus v. State*, 323 Md. 339, 593 A.2d 1060 (1991) (holding that Biggus could not be convicted of two third-degree sexual offenses based on single incident of unlawful sexual contact and vacating one sentence for a conviction that should have merged under the required evidence test); *Morris v. State*, 192 Md. App. 1, 993 A.2d 716 (2010) (vacating first-degree assault conviction because neither the charging document nor the jury instructions provided clear guidance that the assault charges were based upon separate and distinct acts under the flagship robbery charges); *Jones v. State*, 175 Md. App. 58, 924 A.2d 336 (2007) (holding that negligent driving was a lesser included offense of reckless driving). A key factor that distinguishes these cases from Smith's case is the fact that his charges were based explicitly in the charging document on separate and distinct acts and the verdict was consistent in calling for verdicts on the same number of charges. Because of this, the charges were considered correctly as separate crimes and the resultant sentences did not merge.

While delivering the jury instructions regarding the charged third-degree sexual offenses, the trial judge instructed the jury to "consider each charge separately and return a separate verdict for each charge." Additionally, the trial judge instructed the jury regarding the verdict sheet. She indicated that there were three questions on the verdict sheet, and told the jury foreman that he will be signing the verdict sheet "[o]nce you come to a decision on all three – all three charges . . ."

The prosecutor's closing argument informed the jury on this score as well. She told the jury initially that there were "two counts of third-degree sex offense." Then, she went into detail describing the multiple instances of sexual contact, which occurred over a two-week period, between Smith and the victim. She ended her closing argument by stating, "[l]adies and gentleman of the jury, Kenneth Majeed Smith is unequivocally guilty of all three counts before you. I ask that you return a verdict in that respect."

B. Smith's Other Crimes Objections Were Not Preserved nor Cognizable

Smith argues next that the trial court erred in admitting evidence of other crimes pursuant to Md. Rule 5-404,[5] which evidence was both irrelevant and prejudicial. Specifically, he contends that the judge failed to limit the prosecutor's cross-examination questioning of Hursey implying to the jurors the existence of other crimes. The State

[5] The relevant section of Md. Rule 4-404 provides:

> (b) Evidence of other crimes, wrongs, or other acts . . . 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.

responds, and we agree, that Smith failed to preserve this question for our consideration.

It is well settled Maryland law that, in order for a party to preserve for appellate review a question, the party must object to *each and every* question concerning the same or similar subject matter, or the matter is waived. *DeLeon v. State*, 407 Md. 16, 31, 962 A.2d 383, 391 (2008) (emphasis added). Further, if a party receives a remedy for which he or she requested when his or her objection was lodged and sustained, there are "no grounds for appeal." *Klauenberg v. State*, 355 Md. 528, 545, 735 A.2d 1061, 1070 (1999).

The flow of relevant events in the present case began with the prosecutor's opening statement where she mentioned numerous times a previous investigation into Smith's activities:

> [STATE]: The testimony you will hear and that I anticipate the evidence you'll hear is . . . on about October 12th of 2015, *detectives with Baltimore County had occasion to come into contact with Mr. Smith, and they conducted an interview. And prior to that point, the detectives had no idea who Ms. C was*. Ms. C is the victim in this case. Prior to that point, the detectives weren't there because of her. *They didn't even know that she - - she existed* . . . But during the course of that interview, *during the course of that contact with Mr. Smith, Mr. Smith told them about sexual contact that he had had with a little girl in Hagerstown about two years prior* . . . [N]o one - - *no one who was [starting] an investigation regarding the sexual abuse, the sexual contact with [Ms. C] until the Defendant told police.* At that point, law enforcement were [sic] able to locate and determine who - - they were able to locate [Vanorsdale] and determine that, yes, indeed, she did have a little girl name [Ms. C], who at that - - who at that time in 2015 was twelve. And [Ms. C] was located and law - - and our local law enforcement here in Washington County, because Washington County's the one that has jurisdiction over crimes here, not Baltimore, *Baltimore got this information and passed it on to Detective Swope and Allison Lillis* with the - - Detective Swope with the Washington County Sheriff's Office and Alisson Lillis with the Department of Social Services. And they were able to speak to [Ms. C]. And that's what brings us here today. It all started with [Smith]. Please remember that throughout this trial as you hear all the evidence before

> you that this case began by his statement, not by law enforcement starting a separate investigation getting that information, it all started with him.

(Emphasis added). Defense Counsel did not object until the end of the prosecutor's opening statement. In his objection, he asked for the following relief:

> [DEFENSE]: I'm [o]bjecting. *I'm asking to, I guess, strike that.* I guess it's incumbent on me to ask for, uh, a curative instruction although that that would just, you know, to preserve the record, I fear that would just draw further attention to it. And at this point ultimately, I think I have to ask for mistrial.

(Emphasis added). The court ruled as follows:

> [THE COURT]: Well motion for mistrial is denied. If you want a curative instruction, I will do it. I don't have a problem striking - - *granting your request to strike the separate investigation.*
>
> [DEFENSE]: But then we say it again, and it just kind of re-emphasizes it in the jury's mind in my complaint here.
>
> [THE COURT]: So it's up to you, [Defense Counsel]. I'm not going to grant a mistrial, but if you want a curative instruction, the ball's in your court whether you want me to say it in - - in which case you'll - - it will be - -
>
> [DEFENSE]: I think at this point, uh, asking for a curative instruction, I think would just draw further attention to it. I just ask that we be very careful from here on out. And, again, I think I preserve my request for mistrial for the record as to that. At least that's what I attempted to do.

(Emphasis added).

On appeal, Smith argues that the State should not have been permitted to introduce any mention to the jury regarding a prior police investigation of another matter. Smith did not object, however, until the end of the State's opening statement, after the State had mentioned a prior investigation to the jury numerous times. Therefore, because Smith remained silent too long when this issue was raised initially and did not interpose an

objection timely at each mention of the topic, it was not preserved for our review. *See Shelton v. State*, 207 Md. App. 363, 385, 52 A.3d 995, 1008 (2012) (holding that "a defendant must object during closing argument to a prosecutor's improper statements to preserve the issue for appeal."); *see also Brown v. State*, 90 Md. App. 220, 225, 600 A.2d 1126, 1128 (1992) (holding that because the defendant did not object each and every time to the admission of the handgun or alternatively request a continuing objection, the defendant waived his objection; thus, he did not preserve the issue for appellate review); *DeLeon*, 407 Md. at 31, 962 A.2d at 391 ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.").

After the prosecutor's opening, she began the direct examination of Rees. The following transpired:

> [PROSECUTOR]: Okay. And did [Smith] express any hesitation at that point about going in the bedroom and talking to you guys?
>
> [REES]: No, he did not.
>
> [PROSECUTOR]: And did you later make the same request of his mother?
>
> [REES]: Yes.
>
> [PROSECUTOR]: Okay. Prior to that point, had you talked to the Defendant and his mother collectively about anything? In other words, did you conduct an interview of them, the two of them together?
>
> [DEFENSE]: Objection.
>
> [THE COURT]: Overruled.
>
> [REES]: Yes.
>
> [PROSECUTOR]: You did?

> [REES]: Yes.
>
> [PROSECUTOR]: Okay. Uh, and at that point when you spoke to the two of them together, was that at all related to any events in Hagerstown?
>
> [DEFENSE]: Objection.
>
> [THE COURT]: Come on up.
>
> [DEFENSE]: Here we go again. In suggesting another investigation, now here's another indication of that that they were there to talk about something else. I certainly would ask to strike the questions. And again, I'm going to move for a mistrial because (inaudible)…
>
> [THE COURT]: Well there's no answer so…
>
> [DEFENSE]: What's that?
>
> [THE COURT]: *There's [been no] answer from - - from the witness. You objected in a timely fashion, so it's - - the Motion for Mistrial is denied. Your objection is sustained. You're ask - - you're asking to strike the question?*
>
> [DEFENSE]: *Yes.*
>
> [THE COURT]: *All right, again, for what it's worth, granted.*

(Emphasis added).

Because Smith received his requested alternate remedy and rejected the judge's offer to give a curative instruction to the jury, Smith received what he asked for (except for a mistrial, which he is not arguing on appeal was denied erroneously). Thus, there are no grounds for appeal with respect to the State's statements about a separate investigation. *See Ball v. State*, 57 Md. App. 338, 358-59, 470 A.2d 361, 372 (1984), *aff'd in part and rev'd in part on other grounds by Wright v. State*, 307 Md. 552, 515 A.2d 1157 (1986) (receiving the remedy he requested and asking for no other relief, "[i]n a nutshell, the appellant Ball got everything he asked for. This is not error.").

C. Smith's Educational Background Is Admissible

At the pre-trial hearing regarding the requested redactions to the content of a transcription of Smith's interviews by the detectives, Smith wanted his statement redacted regarding his background in psychology:

> [PROSECUTOR]: Uh, is I would actually like to start on line 9 because, once again, he's talking about psychology, uh, abnormal psychology and that's when we really - - that's kind of the beginning part of how we get into talking about his education, his schooling, his background is to start at, uh, line 9.
>
> * * *
>
> [DEFENSE]: Your Honor, I think that whatever the benefit that state gets as far as voluntariness would be adequately covered starting at line 14. Whereas lines 9 through 12, uh, "I originally went to school for psychology. Paraphilias was my favorite subject." . . . That again might arguably suggest a - - a disposition on the part of Mr. Smith or at least interest in, I guess, paraphilia, which I - - I believe, you know, may have something to do with abnormal sexuality. Uh, it - - certainly is arguably prejudicial in the sense that the jury may, "Well if that was his favorite subject, then he must have done this here." You know? And so I think there's a danger there. And I think whatever bene- so that the danger outweighs the benefit, the prejudice. And, uh, the - - the benefit in terms of - - to the State in terms of the case as far [as] voluntariness, I think is adequately covered if you start at line 14, which talks about his - - his college education and studying psychology. I believe or least his college education.
>
> [PROSECUTOR]: Your Honor, if I may just very briefly? Uh, the - - part of the reason why, uh, I think it's significant is the defendant introduces the subject of his schooling, which is part of why the State believes is relevant. It's not - - it wasn't like really just – because if we just start with the school, then it kind of sounds more like, uh, just an interrogation aspect of, "Okay, tell me where you went to school." Well the Defendant introduces the subject of school.
>
> [THE COURT]: Yeah
>
> [PROSECUTOR]: And then law enforcement follows up with that asking him follow-up questions about his schooling. Also the interest in abnormal . . .

> [THE COURT]: Not that the jurors are going to know that because it's - - the part before that is redacted. So in terms of whether or not he volunteered it or they asked him, that's not going to come out. But I - - to cut to the chase, the Defendant himself volunteers that the paraphilias was his favorite subject. He went to school for psychology. He then defines paraphilia as abnormal - - abnormal psychology. It stops there. Mr. [Defense Counsel], your objections noted and overruled. Lines 9 through 25 coming in.

Smith argues that his favorite subject within the field of psychology is irrelevant and unfairly prejudicial. Smith's basis for this assertion is that his interest in psychology did not relate to the charged crime. The State contends that Smith's educational background is relevant and not unduly prejudicial because it relates to his "attempt to characterize (or perhaps mischaracterize) his interaction with Ms. C as merely playful" and Smith volunteered to police his favorite subject in psychology is paraphilia. For the reasons that follow, we agree with the State's argument.

i. Smith's Educational Background Was Relevant

Pursuant to Md. Rule 5-401, relevant evidence is "evidence having 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." Evidence that does not meet this standard is inadmissible. Md. Rule 5-402. We must consider first, if the evidence is relevant legally, and, if relevant, then if the evidence is inadmissible nonetheless because its probative value is outweighed by the danger of unfair prejudice, or other counter-vailing concerns as outlined in Maryland Rule 5–403. *State v. Simms*, 420 Md. 705, 725, 25 A.3d 144, 156 (2011).

The evidence regarding Smith's education meets the standard in Md. Rule 5-401

because he volunteered this information in the interview that was conducted by the police and attempted to justify his misconduct with Ms. C by falling-back on psychological memes of wanting to be her "role model" and not wanting to "shut her off." Smith does not proffer any case law to this Court in support of his contentions that his favorite subject in psychology is irrelevant. *See State v. Robertson*, 463 Md. 342, 353, 205 A.3d 995, 1001 (2019) (observing that trial judges have a "wide discretion" in weighing the relevancy of evidence to which this Court gives deference). We find that the trial judge did not abuse her discretion in determining Smith's educational background was relevant.

i. Evidence of Smith's Educational Background Was Not Unfairly Prejudicial

Relevant evidence is admissible generally but may be rejected nonetheless if the "probative value is outweighed by the danger of *unfair* prejudice." *State v. Simms*, 420 Md. 705, 724, 25 A.3d 144, 155 (2011) (emphasis added). In the context of Md. Rule 5-403,[6] objectionable prejudicial evidence "tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission[.]" *Hannah v. State*, 420 Md. 339, 347, 23 A.3d 192, 196 (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 jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705, 98 A.3d 444, 453 (2014).

[6] Md. Rule 5-403 provides:

> Although relevant, evidence may be excluded 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.

We agree with the State that references to Smith's education in the field of psychology and his favorite subject are not unfairly prejudicial. The judge only allowed the State to use the definition of "paraphilia" that Smith told police, as opposed to the official definition provided by the Diagnostic and Statistical Manual of Mental Disorders, which is: "any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. Individuals with paraphilic disorders include those who are sexually aroused by exposing genitals to prepubertal children." DSM-5, American Psychiatric Association (2013).

Despite Smith's contention that jurors may have known the more exacting definition from external sources, we agree with the trial judge that jurors were not likely to be so aware as such would seem to be beyond the kin of a reasonable juror. Thus, we see little to no risk that the jury was unduly prejudiced against him. There was minimal danger that the information could have inflamed the jury against him and certainly much less than the jury was "inflamed" already by Ms. C's testimony of what he did with her, which testimony is relevant obviously. *See Quansah v. State*, 207 Md. App. 636, 664, 53 A.3d 492, 508 (2012) ("[S]uch evidence was merely cumulative and, therefore, not unduly prejudicial."). We find no reversible error in the admission of evidence of Smith's educational background.

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