UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 507

September Term, 2016

---

CRYSTAL LATRICE EVANS

v.

STATE OF MARYLAND

---

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Sharer, J.

---

Filed: March 27, 2017

*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.

In a joint trial in the Circuit Court for Anne Arundel County, a jury convicted Crystal Latrice Evans, appellant, and her co-defendant, Javonie Harper, of second-degree child abuse and second-degree assault. Before this Court, appellant presents three issues for review, which we have rephrased:[1]

1. Was the evidence sufficient to sustain appellant's convictions for second-degree child abuse and second-degree assault?

2. Did the court abuse its discretion in permitting portions of State's rebuttal closing argument?

3. Did the court err in excluding character evidence from a defense witness?

For the reasons stated below, we answer the first question in the affirmative and the second in the negative. Further, we answer "yes" to appellant's third question, but conclude that the error was harmless. Accordingly, we affirm the trial court.

---

[1] Appellant's questions presented, verbatim from her brief read:

1. Was the evidence insufficient to sustain Ms. Evans' convictions for second-degree child abuse and second-degree assault?

a. Was the evidence insufficient to prove that Ms. Evans disciplined [the child] in a manner that exceeded the bounds of parental justification?

b. Was the evidence insufficient to prove that Ms. Evans caused any physical injury to [the child]?

2. Did the trial court abuse its discretion when it permitted the prosecution to make improper and misleading statements during rebuttal closing argument?

3. Did the trial court err by excluding admissible character evidence regarding the truthfulness of [the child]?

## BACKGROUND

In August 2015, appellant resided with her partner, Ms. Harper, and Ms. Harper's twin children in Severn, Anne Arundel County. At the time of the events in the case, the twins were nine years old.

On the evening of August 3, 2015, one of the twins – whom we shall refer to as "the child" or "the victim" – took some candy from his mother's room, without permission. Appellant stopped the child and ordered him to go to his room, strip, and return to the railing next to Ms. Harper's room. Appellant told the child to place his hands on the railing, whereupon she proceeded to beat his back, buttocks, legs, and neck with a belt. The child did not recall how long the beating lasted or how many times he was hit, but he testified that appellant hit him "[a] lot" and "[h]ard." At various times during the beating, the child fell crying to the floor and begged appellant to stop, but appellant ordered him to stand up and continued to beat him as he lay on the floor. The child would get up, and the beating continued.

At some point during the beating, Ms. Harper joined in and used the same belt used by appellant to beat the child's back and buttocks. The child testified that after his mother hit him "[a] lot," appellant hit him some more with the belt. Eventually, appellant ceased striking the child and offered to take him to get an iTunes gift card.

The next day, as further punishment, appellant and Ms. Harper kept the child home from the Boys and Girls Club in Severn. When the child returned to the Boys and Girls Club on August 5th, Jessica Tongue, the program director, noticed that he was moving "slow" and was not participating in activities, which was unusual. In speaking

with the child, Ms. Tongue observed bruises on his back and neck, and asked the child about them. The child then showed Ms. Tongue his back, and she saw "a lot of bruises." Ms. Tongue called police.

Officer Michael Smith of the Anne Arundel County Police Department responded to the Boys and Girls Club. He spoke with Ms. Tongue and the child and observed dark red bruises on the child's back and the back of his left arm. The child told Officer Smith that appellant and Ms. Harper caused his injuries. Michelle Jackson, a crime scene technician, took photographs of the child's back, neck, and arms, which the jury viewed at trial.

The State charged both appellant and Ms. Harper with second-degree child abuse, second-degree assault, and reckless endangerment. The State *nolle prossed* the reckless endangerment charge, and the jury convicted both appellant and Ms. Harper of the remaining charges. The circuit court merged appellant's conviction for assault into the conviction for child abuse and subsequently sentenced appellant to a prison term of six years, with all but six months suspended, to be followed by a five-year period of probation.[2]

[2] Following the arrest of appellant and Ms. Harper, the twins went to live with their biological father in Missouri.

## DISCUSSION

### Sufficiency of the Evidence

Appellant first contends that the State failed to produce sufficient evidence to sustain her convictions for second-degree child abuse and second-degree assault.[3] Specifically, appellant argues that the State failed to demonstrate that her action was not a reasonable exercise of parental discipline that had a benevolent purpose.[4] Furthermore, appellant maintains that the force used to instill discipline on the child was reasonable and not excessive or inhumane. Additionally, appellant argues that the State failed to demonstrate that appellant's actions caused the bruises on the child's back, neck, and buttocks. Appellant further posits that because the child could not testify as to which woman caused specific bruises, the State had not established causation.

[3] Rule 4-324(a) ordinarily requires a defendant to make a motion for a judgment of acquittal at the conclusion of the State's case-in-chief and at the end of the presentation of evidence in order to preserve an argument as to the sufficiency of the evidence on appeal. Notably, the rule requires the defendant to "state with particularity all reasons why the motion should be granted." Rule 4-324(a).

Appellant moved for judgment of acquittal at the conclusion of the State's case-in-chief, but, when prompted for a particularized argument, stated that she "submit[ted]." This is not a sufficiently particularized argument and would, ordinarily, not preserve this issue for appeal. *See Peters v. State*, 224 Md. App. 306, 353 (2015) (citing *Garrison v. State*, 88 Md. App. 475, 478 (1991)), *cert. denied*, 445 Md. 127 (2015). Appellant, however, then presented evidence, effectively withdrawing the motion for judgment of acquittal. *See Steward v. State*, 218 Md. App. 550, 557 (2014) (citing *Warfield v. State*, 315 Md. 474, 487 (1989)). At the conclusion of the presentation of evidence, appellant made a sufficiently particularized argument in a motion for judgment of acquittal, preserving the issue for appeal.

[4] The State acknowledged at trial that appellant may claim the parental privilege as a household member. The State further conceded the point at oral argument.

The State responds that the evidence was sufficient for a rational jury to convict. The State maintains that appellant's actions were not reasonable or appropriate discipline and, therefore, she cannot assert the parental privilege to excuse her conduct. Specifically, the State points out that the beating was "extensive and malicious" and far surpassed whatever reasonable amount of force appellant may have used to discipline the child. Moreover, the State notes, appellant continued to beat the child when he fell to the floor several times. Furthermore, the State contends that the jury had sufficient evidence to conclude that appellant caused some of the bruising to the child. The State argues that appellant's causation standard is too exacting and does not comport with the law.

**Standard of Review**

"'The standard of review for appellate review of evidentiary sufficiency is whether any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. We view the evidence in the light most favorable to the prosecution.'" *Spencer v. State*, 450 Md. 530, 549 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487 (2004)) (internal citations omitted). "'We defer to the fact-finder's decisions on which evidence to accept and which inferences to draw when the evidence supports differing inferences. In other words, we give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether . . . [we] would have chosen a different reasonable inference.'" *Mason v. State*, 225 Md. App. 467, 475 (2015) (quoting *Montgomery v. State*, 206 Md. App. 357, 385 (2012)). The Court of Appeals has stated that "'[t]he purpose [of reviewing for sufficiency of the evidence] is not to undertake a review of the record that would amount to, in essence, a retrial of the case. Rather, . . . we do not re-

weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.'" *Derr v. State*, 434 Md. 88, 129 (2013) (quoting *Titus v. State*, 423 Md. 548, 557 (2011)).

**The Offenses**

Maryland Code (2002, 2012 Repl. Vol., 2016 Suppl.), Criminal Law Article ("C.L."), § 3-601(d)(1)(ii) provides that "[a] household member or family member may not cause abuse to a minor."[5] C.L. § 3-601(a)(2) defines abuse as "physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act."

C.L. § 3-203(a) criminalizes assault. Maryland recognizes three "types" of assault: "(1) the 'intent to frighten' assault, (2) attempted battery and (3) battery." *Snyder v. State*, 210 Md. App. 370, 380 (2013). Before us is a battery-type assault. This Court has defined a battery as "a touching that is either harmful, unlawful or offensive." *Quansah v. State*, 207 Md. App. 636, 647 (2012) (citing *Marlin v. State*, 192 Md. App. 134, 166 (2010)).

Appellant first asserts a parental privilege in disciplining the child. The Court of Appeals recognized this privilege, stating:

> "Long before the advent of contemporary child abuse legislation, it was a well-recognized precept of Anglo-American jurisprudence that the parent of a minor child or one standing *in loco parentis* was justified in using a

[5] C.L. § 3-601(a)(4) defines a household member as "a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse." The State established at trial that appellant was a household member at the time of the events in this case.

> reasonable amount of force upon a child for the purpose of safeguarding or promoting the child's welfare. . . . So long as the chastisement was moderate and reasonable, in light of the age, condition and disposition of the child, and other surrounding circumstances, the parent or custodian would not incur criminal liability for assault and battery or a similar offense."

*Fisher v. State*, 367 Md. 218, 271 (2001) (quoting *Bowers v. State*, 283 Md. 115, 126 (1978)). The Court continued:

> "On the other hand, where corporal punishment was inflicted with 'a malicious desire to cause pain' or where it amounted to 'cruel and outrageous' treatment of the child, the chastisement was deemed unreasonable, thus defeating the parental privilege and subjecting the parent to penal sanctions in those circumstances where criminal liability would have existed absent the parent-child relationship."

*Id.* (quoting *Bowers*, 283 Md. at 126).

Stated more succinctly, "corporal punishment is legal as long as 'the force [is] truly used in the exercise of domestic authority by way of punishing or disciplining the child – for the betterment of the child or promotion of the child's welfare – and [is] not [] a gratuitous attack.'" *B.H. v. Anne Arundel Cnty. Dep't of Social Servs.*, 209 Md. App. 206, 229 (2012) (quoting *Anderson v. State*, 61 Md. App. 436, 444 (1985)). This Court has held that "'[w]hen a court is deciding whether a particular parental discipline is child abuse . . . the court always determines whether the corporal punishment was reasonable.'" *Id.* (quoting *Charles Cnty. Dep't of Social Servs. v. Vann*, 382 Md. 286, 303 (2004)). *See also Fisher*, 367 Md. at 272 (noting that in determining whether a parent acted to discipline child or with malice, we "look[] to the objective facts of the intended conduct and not to the subjectively perceived result").

Appellant relies principally on *Deloso v. State*, 37 Md. App. 101 (1977), to support her assertion of the parental privilege.[6] Deloso, on two separate occasions, disciplined his five-year-old daughter. *Id.* at 102-04. He was convicted of two counts of child abuse, but this Court reversed his convictions, determining that the State had relied almost exclusively on inadmissible hearsay evidence to support the convictions. *Id.* at 104-07.

In analyzing whether a new trial should be ordered, we concluded that "it is apparent that the degree of force administered by [the father] . . . was not so unreasonable in disciplining this child as to constitute 'cruel or inhumane' treatment . . . nor was the statutory alternative of malice on the father's part in any way indicated." *Id.* at 112 (internal citations omitted). We noted that there was evidence that the child often misbehaved – even recognizing that the foster parents who then had custody of her spanked her on occasion; that the child often told her parents she would "tell her teacher" for supposed slights; and that the child sometimes ran away from home. *Id.* at 113-14. Moreover, we concluded that the punishment in that case – a slap on the shoulder following running away from home and three spanks on the child's posterior with a belt with no buckle in another instance of the same behavior – was reasonable given the

[6] We note, too, that appellant cites a host of extra-territorial cases to support her arguments concerning whether bruises are sufficient to constitute child abuse, whether medical attention is a necessity to show child abuse, and whether spanking is a form of child abuse. Because there is ample jurisprudence from this State as to child abuse and the parental privilege, we do not find these cases persuasive.

child's age and misconduct. *Id.* at 113-15. Ultimately, we determined that "the question of child abuse should never have been, nor be, submitted to a jury." *Id.* at 115.

We are not persuaded that *Deloso* controls our review. Here, a nine-year-old boy took candy from his mother's room, a seemingly minor transgression. The child and other witnesses testified that he sometimes got in trouble and was disciplined. However, there was evidence from which the jury could have determined that appellant engaged in a malicious beating in this instance. The child testified that appellant made him remove his clothes and used a belt to whip him on his back, buttocks, legs, left arm, and neck for an indeterminate amount of time. The victim stated that appellant hit him "[a] lot" and "[h]ard. Furthermore, the child testified that during the beating, he fell crying to the floor more than once, and appellant would order him to stand up, all the while continuing to whip him. Additionally, the jury viewed photographs of the victim's injuries, which show extensive bruising and whip marks. Unlike in *Deloso*, then, we cannot say objectively that appellant acted without malice or solely for the purpose of discipline.

Appellant also contends that the victim's injuries could not have amounted to child abuse because he was not taken to receive medical care, nor did the State present medical testimony at trial. Appellant notes that in *Deloso*, we commented that medical testimony would have been helpful and relevant. 37 Md. App. at 111. There is, however, no requirement that to constitute child abuse, a parent's corporal punishment must draw blood or require medical care. Additionally, expert medical testimony is not necessary to demonstrate child abuse. In *Deloso* our comment about the lack of medical testimony pertained to the fact that the alleged victim did actually go to a doctor, and the medical

reports were introduced at trial, without the testimony of the treating physician. *Id.* at 102-04. We concluded that the child's statements in the reports were inadmissible hearsay. *Id.* at 106-07.

In this case, by contrast, the child testified. Moreover, in *Deloso*, we determined that without the medical testimony or reports, a description of the injury, or photographs, "the jury was left to speculate whether the 'contusions' [the doctor] found were, as one witness described them, 'whelps' which could arise from a less severe (though recently administered) physical chastisement, or whether **they were deeper bruises which even laymen recognize as occurring from more extreme force**." *Id.* at 111 (emphasis added). In this case, in addition to the child's testimony, the State introduced the testimony of Ms. Tongue, Officer Smith, and Ms. Jackson who observed the bruises, as well as photographs of the child's injuries. Here, the jury did not have to speculate as to the extent of the bruising.

As to causation, appellant asserts that there was insufficient evidence to demonstrate child abuse and assault because the State did not adequately prove which person – either appellant or her co-defendant Harper – left particular individual marks on the child. Appellant is correct that in order to be liable for criminal conduct, the State must demonstrate "that there must be a causal relationship between the person's act and the harm sustained[.]" *Watkins v. State*, 357 Md. 258, 268 (2000). We are persuaded, however, that the jury had ample circumstantial evidence from which to conclude that appellant caused at least some of the marks on the child's body. *See Corbin v. State*, 428 Md. 488, 514 (2012) (holding that circumstantial evidence is sufficient to sustain a

conviction). In a joint trial of multiple defendants, it is not necessary for the State to prove which injuries were caused by a particular defendant. Indeed, the child testified that he did not have bruises on his back, neck, and arms before the beating. Accordingly, a rational jury could have reasonably inferred that the beating caused the bruises.

We, therefore, conclude that the jury heard and saw sufficient evidence from which it could have found, as it did, that appellant committed second-degree child abuse and second-degree assault. We will not second-guess the reasonable inferences drawn by the jury, as they had the opportunity to see the witnesses, hear the testimony, and assess credibility. *See Spencer*, 450 Md. at 549 (citing *Harrison*, 382 Md. at 487-88). There was evidence from which a reasonable jury could have concluded that appellant caused physical injury to a minor that exceeded the bounds of reasonable punishment and amounted to a malicious beating of the child.

**Closing Argument**

The following occurred during the State's rebuttal closing argument:

> [THE STATE]: Thank you, Your Honor. The question was asked who was responsible for this event and certainly the defense has tried very hard throughout this trial to throw some shade on the various people. Let's see, it must have been the eczema skin condition that caused the injury. There is the dodgeball which it can hurt when hit with that but not those kinds of patterns over someone's back. Then there is the slats of the bed and there is the children jumping around the room at 5:30 in the morning and then don't forget, there was also a hint of a suggestion that it was maybe the cat.
>
> Those are all ridiculous. You are allowed to go back in that courtroom and look at those pictures, make up your own mind and there is all this – where is the medical expert, where is the medical evidence? You don't need that. The point is, you are the fact finders and it is to use your common sense. We set the system up so that doctors don't determine who

is criminally responsible, jurors do and you are capable and you don't need a doctor to have common sense and weigh and evaluate this evidence.

It was said over and over again if you can't say what mark was, what injury, that is not guilty. But that is not what Judge Mulford said. If that was the law, he would have told you that. And he did not say that over and over again. You can just change the fact law and assume hypothetical[ly] you are just walking down the street minding your own business and there is a group of unfortunate youths who attack you and you go down and they are all kicking you and every one –

[APPELLANT'S COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[THE STATE]: -- is participating equally and you don't really know what happened and you can't say well it was number 4 who put that injury on me and number 4 put that injury on me, but if I can't say that everyone gets a pass and it is not guilty, that is not the law either.

[APPELLANT'S COUNSEL]: Objection.

THE COURT: Overruled.

[THE STATE]: [The child] is probably not going to be able to say, wait, wait after being beaten and up and down, up and down, up and down – which one, Crystal? Mom? Wait, mom did this one and Crystal did that. He is not going to be able to tell you that. The point is, they did it together and if you have any doubt in your mind about who caused what injuries, I ask[ed] [the child] very carefully, [child] did you have these injuries on your back before you got beaten? He said no. They did the injuries.

[CO-DEFENDANT'S COUNSEL]: Objection.

THE COURT: Overruled.

On appeal, appellant contends that the court erred in permitting the State to make use of the hypothetical in its rebuttal closing argument. Appellant argues that the hypothetical situation is misleading and misstated the law. Essentially, appellant contends that the State "expressed to the jury that it could consider the actions of the two

defendants together and find both defendants responsible for the results of those actions." Appellant maintains that the State's rebuttal contradicted the jury instructions and appeared to introduce the concept of accomplice liability, which the State had not argued during the trial. Appellant asserts that this error was not harmless because of the closeness of the case.

The State asserts that the rebuttal was a proper response to appellant's counsel's closing argument, in which appellant's counsel argued that the State could not demonstrate which defendant caused which specific mark on the child's body. The State maintains that the rebuttal was a direction to the jury "to focus on the evidence as a whole, rather tha[n] dissect the evidence to match each bruise to each assailant[.]" If the remarks were improper, then the State contends that they were harmless beyond a reasonable doubt.

As to the propriety of remarks during closing arguments, the Court of Appeals has held:

> "The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom. In this regard, generally, . . . the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his [or her] comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the prosecution produces.
>
> While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined – no well-defined bounds beyond which the eloquence of an advocate shall not soar. He [or she] may discuss the facts proved or admitted in the

> pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He [or she] may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions."

*State v. Gutierrez*, 446 Md. 221, 242 (2016) (quoting *Donaldson v. State*, 416 Md. 467, 488-89 (2010)).

"Whether a reversal of a conviction based upon improper closing argument is warranted 'depends on the facts in each case.' Generally, the trial court is in the best position to determine whether counsel has stepped outside the bounds of propriety during closing argument." *Whack v. State*, 433 Md. 728, 742 (2013) (internal citations omitted). Accordingly, "'we do not disturb the trial judge's judgment in that regard unless there is a clear abuse of discretion that likely injured a party.'" *Id.* (quoting *Ingram v. State*, 427 Md. 717, 726 (2012)). In this context, we determine whether a court abused its discretion by examining "whether the jury was actually or likely misled or otherwise 'influenced to the prejudice of the accused' by the State's comments." *Id.* (quoting *Wilhelm v. State*, 272 Md. 404, 416 (1974)).

Appellant's counsel argued during his closing argument, in part, as follows:

> The question becomes, do you believe that a belt was used, who left the marks on [the child]? It is as simple as that. Who left the marks? Now, you can't ask [the child] who left the marks because they are all to his back and he didn't realize it until later on. It is an academic question. Has the State proven to you once you divorce yourself of everything else, do you know – ask yourself. They both used a belt. You can't say well they both did it, so they all left the marks. That is not how – that works in a court of public opinion. If we were watching this on Judge Judy or we were watching this on the news, we can opine that way. We can put it all together, I don't have to sort that out. Because I think they both did it.
>
> But this is a Court of Law, this is not your court of public opinion. In the Court of Law, you need proof. In the court of public opinion, you

can speculate. You can say well, she probably did it. And remember I told you at the very beginning, if you feel as though she probably did it, that is not proof beyond reasonable doubt. You see like that, I know she did. I mean, I didn't see it in Court, I haven't seen all the evidence but I just know they did it. That is not proof beyond reasonable doubt. You can't go by what your gut says, you have to go by what the evidence says.

You have to go by what you saw in this courtroom. If evidence that came out in this courtroom, [the child] doesn't know who left the marks. If you subscribe to the facts that a belt was applied to him. It doesn't –. But if you – there is so much to do and the State makes so much about her theory that [the child] was told to hold onto that railing like that. In the hallway, he is just holding onto the railing, an 8 year old child. And he is just taking it. He says he fell down to the ground.

* * *

And again, I pointed to because one of the instructions to you ladies and gentlemen, was that you have to give separate consideration to each count for each defendant. What did Ms. Evans do to [the child] beyond a reasonable doubt? What mark did she leave on [the victim]?

Which one of those marks did Ms. Evans leave? If you can't answer the question, then you have to find her not guilty . . . .

* * *

Now, when you try to ask who did what? Did Ms. Harper do this one? Did Ms. Evans do this one? Or did Ms. Evans do that one? Or Ms. Harper do this one? Do you know the answer to those questions? Did anybody come in her[e] and tell you what the answers to those questions are? . . .

Because each defendant is entitled to her own separate consideration and quite frankly it is the State's obligation and burden to prove beyond a reasonable doubt who did what because the State [chose] to put these two individuals on trial at the same time. . . .

And so when they endeavored to do that, they must be able to separate the evidence and say okay this person punched him in the eye, this person kicked him in the groin, that is what they are required to do under the law. In this particular case, one of these individuals or both of them

> caused these injuries and I can show you which injury each individual caused. It is not enough to say that he has injuries. . . .
>
> * * *
>
> And so what I am saying to you is, although the State wants you to group every one – all of these things together and just say they just did it together, because that is easy. Just throw a bunch of horrible pictures up and say they both did it. At least – but that doesn't get the job done.

The Court of Appeals has remarked that a prosecutor may respond to the closing argument of defense counsel. *See Gutierrez*, 446 Md. at 242-43. We are not persuaded that the circuit court abused its discretion in permitting State's rebuttal closing argument in this case. In his closing, appellant's counsel argued that in order to convict appellant, the jury needed to be able to identify specific marks left by appellant, similar to a victim of a joint assault testifying that "this person punched him in the eye, this person kicked him in the groin[.]" The State's hypothetical in rebuttal was a proper response to this argument and did not misstate the law. On the record before us, we are not convinced that, upon hearing the State's hypothetical, the jury disregarded the court's instruction to consider the "evidence as it relates to Ms. Harper and Ms. Evans separately[,]" or that the jury "should weigh all of the evidence presented, whether direct or circumstantial."

**Testimony of Defense Character Witness**

As part of her case-in-chief, appellant called character witnesses in an attempt to demonstrate that the child habitually lied and had a temper. One of these witnesses, Lisa Holloway, testified, in part, as follows:

> [APPELLANT'S COUNSEL]: And how did you come to know [the twins]?

[MS. HOLLOWAY]: They – I watched them while she [appellant] has to work sometimes. They play with the kids. We go to parties. We just – we interact with them all the time.

Q: And do you have kids by the way?

A: Yes.

* * *

Q: All right. Now has [the child] been over to your home?

A: Yes.

Q: On how many occasions?

A: Numerous occasions.

Q: And what if anything did [the child] do that was unusual in your home?

[THE STATE]: Objection.

THE COURT: Sustained, unless we can narrow it down to some time period.

[APPELLANT'S COUNSEL]: Did [the child] steal some money from your home in or about July of 2015?

[MS. HOLLOWAY]: Yes.

[THE STATE]: Objection.

THE COURT: Sustained. Parties are to approach the bench.

(Whereupon, the bench conference follows.)

THE COURT: So how are you going to get that in?

[APPELLANT'S COUNSEL]: That he stole money from her?

THE COURT: What?

[APPELLANT'S COUNSEL]: That he stole money from her?

THE COURT: How do you get that in? It is character evidence, isn't it?

[APPELLANT'S COUNSEL]: Of the victim. His propensity for voracity [sic].

THE COURT: What?

[APPELLANT'S COUNSEL]: Propensity for voracity [sic].

THE COURT: You didn't –

[APPELLANT'S COUNSEL]: I am sorry?

THE COURT: So what are you going to ask her?

[APPELLANT'S COUNSEL]: That he stole money and whether or not he told the truth about it.

THE COURT: Stole what?

[APPELLANT'S COUNSEL]: Stole money. He stole $100 from her. And he lied about it.

THE COURT: State?

[THE STATE]: Objection, he is going to ask –

THE COURT: I am going to sustain it.

[APPELLANT'S COUNSEL]: What did the State say?

THE COURT: You didn't ask it the right way.

[APPELLANT'S COUNSEL]: I didn't ask it the right way.

THE COURT: Sustained at this point.

[APPELLANT'S COUNSEL]: Okay, all right.

(Whereupon, the bench conference ends.)

[APPELLANT'S COUNSEL]: In your dealings with [the child], did you find him to be a truthful and honest person?

[MS. HOLLOWAY]: Not all the time, no.

**Q: Why do you say that?**

[THE STATE]: Objection.

THE COURT: The Court is going to sustain the objection. **The witness is allowed to offer an opinion as to character but not the reasons why**.

[MS. HOLLOWAY]: Repeat that –

THE COURT: You don't answer the question, ma'am. Next question.

[APPELLANT'S COUNSEL]: Let me see –

May we approach just for clarification?

THE COURT: I have clarified it as much as I can.

[APPELLANT'S COUNSEL]: Does that mean no?

THE COURT: That is a no.

[APPELLANT'S COUNSEL]: Court's indulgence.

Was there a time in or about July 2015 that you had a special –

[THE STATE]: Objection.

THE COURT: Let him say it – get the question out.

[APPELLANT'S COUNSEL]: – about stealing money?

[THE STATE]: Objection.

THE COURT: Sustained. The jury is to disregard the question and not speculate as to the answer.

[APPELLANT'S COUNSEL]: Was there a time in or about July 2015 that you had a discussion with [the child] about lying about stealing money?

[THE STATE]: Objection.

> THE COURT: Sustained, jury is to disregard the question and not speculate as to the answer.
>
> * * *
>
> [APPELLANT'S COUNSEL]: An[] hour and a half to two hours? And did you speak with Crystal Evans that day about [the child] and the Church incident?
>
> [MS. HOLLOWAY]: Yes.
>
> [THE STATE]: Objection.
>
> THE COURT: Sustained. It is hear say [sic], sustained and the jury is to disregard the question and disregard the answer.

(Emphasis added).

Appellant contends that the court erred in excluding a portion of Ms. Holloway's testimony, arguing that character witnesses may testify as to a basis for their opinion of the character of an individual, so long as they do not testify as to specific examples. She argues that Ms. Holloway should have been permitted to testify that in her opinion the child was not truthful because he had lied to her in the past. Appellant maintains that this error was not harmless because the child's credibility was central to the case, and Ms. Holloway's testimony would have helped to discredit the child.

The State contends that the court properly excluded Ms. Holloway's testimony about the specific acts supporting her opinion of the child's credibility, pointing out that Ms. Holloway was permitted to testify that in her opinion the child was not truthful "all the time." This opinion was based on her interactions with the child and in babysitting him. As such, appellant put before the jury Ms. Holloway's opinion as to the child's character and the basis for her opinion, as contemplated by Rule 5-608(a)(3)(B).

Moreover, the State argues that any error in excluding Ms. Holloway's testimony was harmless because it would have been cumulative.

Rule 5-608(a)(1) permits character witnesses to impeach another witness by testifying "that the witness has a reputation for untruthfulness," or "that, in the character witness's opinion, the witness is an untruthful person." Rule 5-608(a)(3)(B) limits, however, the testimony of character witnesses and provides:

> On direct examination, a character witness may give a reasonable basis for testimony as to reputation or an opinion as to the character of the witness for truthfulness or untruthfulness, but may not testify as to specific instances of truthfulness or untruthfulness by the witness.

Appellant concedes that the circuit court properly sustained State's objections to her counsel's questions as to specific instances of the child's untruthfulness. Appellant, however, contends that the court erred in restricting Ms. Holloway from answering the question highlighted above.

Determination as to the admission or exclusion of evidence is left to the discretion of the trial court. *See Taneja v. State*, 231 Md. App. 1, 11 (2016) (citing *Sifrit v. State*, 383 Md. 116, 128 (2004)). A court abuses its discretion in this context "'when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law.'" *Id.* at 11-12 (quoting *Cooley v. State*, 385 Md. 165, 175 (2005)). However, a determination as to what a witness may or may not testify to, is a legal determination, which we review *de novo*. *See State v. Johnson*, 367 Md. 418, 423-24 (2002) (stating that issues of law are reviewed *de novo*); *Ray v. State*, 230 Md. App. 157, 189 (2016) (reviewing questions of law *de novo*).

Appellant relies primarily on *Jensen v. State*, 355 Md. 692 (1999). In that case, the State charged four defendants with murder. *Id.* at 694-95. At Jensen's trial, one of the four alleged murderers testified for the State as part of a plea agreement. *Id.* at 695. The defense called a witness to impeach the credibility of the State's witness. *Id.* Outside the presence of the jury, the character witness testified that she believed the State's witness was not truthful because "[a] lot of the stories that he told me didn't add up, saying that one day he would tell me something that happened on that day and then a couple days later he would tell me something else that had happened on the day that wouldn't have been able to happen if what he said before was true." *Id.* at 697. Before the jury, the witness opined that the State's witness was "a compulsive liar[,]" but she was not permitted to offer a basis for her opinion, as she had stated in her testimony outside of the presence of the jury. *Id.* at 697-98.

The Court of Appeals reasoned that the trial court had erred in restricting the character witness's testimony because she "was not testifying as to a particular incident; she was testifying, as a general matter, to [State's witness]'s tendency to tell mutually inconsistent stories, *i.e.*, his general tendency to be untruthful." *Id.* at 699. The Court further determined that the character witness was not testifying as to specific instances to demonstrate untruthfulness. *Id.* In response to the State's argument that a "reasonable basis" should be limited "to the length and manner of acquaintance[,]" the Court noted that the Rules Committee "felt that a character witness was entitled to some latitude in informing the jury as to the basis for an opinion, so long as that person avoids venturing into the troublesome area of specific instances." *Id.* at 707-08. "Permitting such latitude

allows the witness, within reason, to offer something to the jury beyond a bare conclusion that the witness 'is a truthful person' or 'is not a truthful person.'" *Id.* at 708.

We are persuaded, then, that the circuit court erred in limiting Ms. Holloway's testimony and should have permitted her to testify as to a "reasonable basis" for her opinion that the child was not truthful.[7] The circuit court was correct to sustain the State's objections to appellant's questions concerning specific instances of the child's untruthfulness. The court erred, however, in stating that the "witness is allowed to offer an opinion as to character but not the reasons why." Rule 5-608(a)(3)(B) provides that a character witness may, in fact, provide the reasons why he or she finds another witness to be truthful or untruthful, so long as the character witness does not testify about specific events.

Thus, we turn to the State's harmless error argument. The Court of Appeals has stated: "'[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed harmless and a reversal is mandated." *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). "'Once it has been determined that error was committed, reversal is required unless the error did not influence the verdict;

[7] We note that "[o]rdinarily, a formal proffer of the contents and relevancy of the excluded evidence must be made in order to preserve for the review the propriety of the trial court's decision to exclude the subject evidence." *Merzbacher v. State*, 346 Md. 391, 416 (1997). It is apparent that appellant's counsel was attempting to elicit Ms. Holloway's belief that the child was untruthful.

the error is harmless only if it did not play any role in the jury's verdict. The reviewing court must exclude that possibility beyond a reasonable doubt.'" *Bellamy v. State*, 403 Md. 308, 332 (2008) (quoting *Spain v. State*, 386 Md. 145, 175 (2005)). Stated another way, "'[t]o say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.'" *Id.* (quoting *United States v. O'Keefe*, 128 F.3d 885, 894 (5th Cir. 1997)).

Although "'[a]n evidentiary or procedural error in a trial is bound, in some fashion, to affect the delicately balanced, decisional process . . . [,] [i]t is the impact of the erroneous ruling upon the defendant's trial and the effect it has upon the decisional process which is of primary concern.'" *Dionas*, 436 Md. at 108 (quoting *Dorsey*, 276 Md. at 657-58).

In this case, we are persuaded beyond a reasonable doubt that the court's error in restricting Ms. Holloway's character testimony was harmless.[8] Ms. Holloway was permitted to testify that she did not find the child to be truthful and honest "all the time." The jury also heard testimony from the child, himself, that he sometimes lied, as well as

[8] We note that in *Jensen*, the Court of Appeals concluded that the error in restricting the character witness's reasonable basis testimony was harmless. 355 Md. at 709. The Court of Appeals noted that the defense had vigorously cross-examined the State's witness as to the terms of the arrangement with the State, and there was ample evidence, other than the State's witness, that the jury could have used to convict Jensen. *Id.* at 709-16. Indeed, Jensen admitted that he stabbed the victim, but he claimed self-defense. *Id.* at 716. The Court of Appeals determined that "[t]aken as a whole, even without [the State's witness]'s testimony, Jensen's explanation . . . simply flies in the face of the evidence." *Id.* at 716-17.

from Ms. Tongue that the child missed field trips "most of the time" because he was being punished. Accordingly, Ms. Holloway's character testimony would have been cumulative of the child's own testimony. Moreover, appellant conceded that she disciplined the child, and the State introduced photographs of the child's injuries taken approximately one day after the beating. We are convinced that Ms. Holloway's reasonable basis for her opinion of the child's untruthfulness was unimportant in the jury's consideration.

**JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED.**
**COSTS TO BE PAID BY APPELLANT.**