

Circuit Court for Prince George's County
Case No. CT211046X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2097

September Term, 2023

BLESSING NGUNYI

v.

STATE OF MARYLAND

Arthur,
Kehoe, S.,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: October 28, 2025

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

The appeal before this Court stems from the admission of a child victim’s hearsay statements made during a recorded forensic interview to a social worker prior to the criminal trial of Appellant, Blessing Ngunyi (“Ms. Ngunyi”), for sexual crimes committed against her eight-year-old nephew, J.¹ After a three-day jury trial in the Circuit Court for Prince George’s County, Ms. Ngunyi was convicted of fourth-degree sexual offense. In admitting the hearsay statements made by J., the circuit court relied on Maryland’s “tender years” statute,² which allows for the admission of a child victim’s hearsay statements made to specific professionals – including social workers – while acting lawfully in the course of their profession. We hold that the circuit court did not err in finding that the social worker was acting lawfully in the course of her profession when she conducted the forensic interview of J. Therefore, the circuit court did not err in ruling that J.’s hearsay statements were admissible at trial. We affirm Ms. Ngunyi’s conviction and the judgment of the circuit court and explain our reasoning below.

I. QUESTION PRESENTED

Ms. Ngunyi posed one question for our review: “Did the motions court err by admitting the video of J.’s forensic interview under Maryland Code, Criminal Procedure Article § 11-304?” In its brief, the State rephrased the question presented as follows: “Did the circuit court properly rule that the video of the child victim’s forensic interview was

¹ Although minor child J.’s full name was disclosed prior to and during Ms. Ngunyi’s trial, we will refer to him as J. throughout this opinion out of respect for J.’s privacy.

² Md. Code Ann., Crim. Proc. (“CP”) Art. § 11-304.

admissible under the tender years statute, § 11-304 of the Criminal Procedure Article of the Maryland Code?”

II. FACTUAL & PROCEDURAL BACKGROUND

On December 15, 2023, Ms. Ngunyi was convicted of fourth-degree sexual offense in violation of Md. Code Ann., Crim. Law (“CL”) § 3-308(b)(1)³ for engaging in sexual contact without the consent of her nephew, minor child J.⁴ The events that led to Ms. Ngunyi’s conviction are summarized below.

In June 2021, when J. was eight years old, he attempted to engage in sexual contact with his mother, Rachel Tanji (“Ms. Tanji”). Following the incident, Ms. Tanji demanded J. explain where he had learned about such behavior, and J. reported that Ms. Ngunyi (J.’s aunt) had touched him. Ms. Tanji told her mother Helen Ani (“Ms. Ani”) (J.’s grandmother) and together, Ms. Tanji and Ms. Ani called 9-1-1 to report what J. had told Ms. Tanji. Shortly after, a criminal investigation began, and J. was brought to the Prince George’s County Department of Social Services (“Department”) Child Advocacy Center (“CAC”) for a forensic interview on June 29, 2021.

Licensed social worker Sanyambe Kasembe, LMSW (“Ms. Kasembe”) conducted the forensic interview of J. at the CAC. The forensic interview was audio and video

³ The relevant text of the sexual assault statute states as follows: “A person may not engage in...sexual contact with another without the consent of the other[.]” CL § 3-308(b)(1).

⁴ Importantly, J. could not consent by law. Generally, the age of consent in Maryland is sixteen, though limited exceptions allow for fourteen-year-olds to consent if the defendant is close in age. Nevertheless, no provision of Maryland law allows for an eight-year-old to consent to any form of sexual contact.

recorded and watched live by a multidisciplinary team. The multidisciplinary team included an additional social worker from the Department, a child and family advocate, a prosecutor, and Detective Krystal Culbreth (“Det. Culbreth”)—the lead detective assigned to the case.

At two points in time during the forensic interview, Ms. Kassembe exited the interview room and consulted with the multidisciplinary team. Prior to doing so, Ms. Kassembe alerted J. of her intention to take a break. In the beginning of the interview, Ms. Kassembe said to J.: “And at some point, we’ll stop and we’ll take a break, and I’ll step out of the room and see if they have any questions for you because they’re not in the room with us today. Okay?” Approximately fifty-three minutes into the forensic interview, the following conversation occurred between Ms. Kassembe and J.:

MS. KASSEMBE: So remember when we first started talking, I talked about taking a break, okay?

J.: Uh-huh

MS. KASSEMBE: So we’re going to go ahead and do that now. And when we take a break, I step out of the room, but I’ll have you wait for me in the room, okay? And I’m going to close that door. Are you okay with that?

J.: Okay.

MS. KASSEMBE: If you’re not, I can leave the door open.

J.: It’s okay.

[MS. KASSEMBE exited the interview room]

* * *

J.: I don’t like this. Wait, how many minutes is this break? Nah, this is for eternity.

Ms. Kassembe returned approximately ten minutes later and said to J.: “So I just wanted to go over some of what you shared with me before we went on break. Okay?” Ms. Kassembe proceeded to ask J. additional questions.⁵ After some time, Ms. Kassembe exited the room and consulted with the multidisciplinary team again, this time for two minutes and thirty-one seconds. Ms. Kassembe returned to the room and concluded the interview shortly thereafter.⁶

Following the forensic interview, the Prince George’s County State’s Attorney’s Office filed a criminal indictment that charged Ms. Ngunyi with sexual abuse of a minor (by a family member), third-degree sexual offense, fourth-degree sexual offense, and second-degree assault.

On May 6, 2022, the State filed a notice of its intention to use J.’s hearsay statements made during the forensic interview to Ms. Kassembe at trial pursuant to CP § 11-304(d)(3).⁷

⁵ Although Ms. Kassembe clarified some of her previous questions, consistent with her statement to J. before the break, some questions were new. For example, Ms. Kassembe asked J. whether anyone else had ever made him touch their body like Ms. Ngunyi did.

⁶ The substantive content of the forensic interview contains explicit depictions of the sexual abuse J. experienced, which is not relevant to our analysis. Hence, we omit these details.

⁷ The relevant portion of the “tender years” statute, CP § 11-304, states as follows:

To provide the defendant, child respondent, or alleged offender with an opportunity to prepare a response to the statement, the prosecuting attorney shall serve on the defendant, child respondent, or alleged offender and the attorney for the defendant, child respondent, or alleged offender within a reasonable time before the juvenile court proceeding and at least 20 days

On July 14, 2023, the Honorable Gladys M. Weatherspoon presided over a pretrial motions hearing in the circuit court to determine whether the statements made by J. during the forensic interview with Ms. Kassembe possessed the requisite particularized guarantees of trustworthiness as required under CP § 11-304(e).⁸ At the motions hearing, Ms. Kassembe testified that she is “licensed at the master’s level in the State of Maryland” as a social worker, and that she is employed by the Department as a social worker *and* forensic interviewer. Ms. Kassembe also described the “evidence-based” and “nationally accredited” forensic interviewing protocols that she was trained and certified in, that involve building “rapport” and using open-ended questioning to allow children to give a “narrative regarding allegations.” Ms. Kassembe stated that when she conducted the forensic interview of J., she conducted the forensic interview according to protocol and was working in her capacity as a licensed *social worker or forensic interviewer* for the Department at that time.

At the motions hearing, defense counsel argued that J.’s statements did not qualify for admission under CP § 11-304 because Ms. Kassembe was not acting in her role as

before the criminal proceeding in which the statement is to be offered into evidence, notice of:

- (i) the State’s intention to introduce the statement;
- (ii) any audio or visual recording of the statement; and
- (iii) if an audio or visual recording of the statement is not available, the content of the statement.

CP § 11-304(d)(3).

⁸ See *infra* Section III.C.

social worker when she conducted the interview, but rather Ms. Kassembe was acting as a forensic interviewer and therefore an agent of the State. Defense counsel explained to Judge Weatherspoon:

She said that there was a social worker there that was doing their function as a social worker as a part of the team, but that was not her role.

* * *

She did not conduct the aftercare plan or anything like that to do with a social worker's role. She was not a principal or a vice principal, a teacher.

There was no, she's not a counselor, she was not a therapist. And I would also argue, outside of the fact that she was not filling the role of a social worker, she was filling the role of an agent of law enforcement...

* * *

So here, with the police officer observing, providing feedback, and the forensic interviewer conducting questioning based on the feedback of the police officer, I would at least argue that that portion is...questioning from the police and she's acting as an agent of the police and not as a social worker.

Because a "forensic interviewer is not one of the defined roles that allows for an out-of-court child statement to be introduced in court," defense counsel argued, the video of J.'s interview should not be admitted under CP § 11-304.

On August 2, 2023, the circuit court issued written findings and concluded that the statements made by J. contained the particularized guarantees of trustworthiness and would be admissible at trial. In so ruling, the circuit court considered several factors listed in CP § 11-304(e)(2)(i)–(xiii). The circuit court explained:

This finding is based on, but not limited to, evidence that the child victim has personal knowledge of the event, there is certainty that the statement was made, there does not appear to be a motive for fabrication by the child

victim, the child victim's young age, a showing of evidence that the defendant had an opportunity to commit the act, and the credibility of the statement.

The Honorable Dorothy M. Engel presided over Ms. Ngunyi's trial on the merits, which began on December 12, 2023. In reliance on Judge Weatherspoon's "Findings" with respect to the trustworthiness of the forensic interview, Judge Engel admitted the audio and video recording of the forensic interview into evidence on December 13, 2023. The recording was subsequently played for the jury. In addition to the forensic interview, the State also played a portion of the 9-1-1 call made by Ms. Tanji and Ms. Ani. Several witnesses were called by the State including Det. Culbreth, Ms. Kassembe, Ms. Tanji, and J. Notably, on cross examination, Ms. Kassembe explained how J.'s case was referred to her, who attended the forensic interview, and who she communicated with prior to and during the interview:

DEFENSE COUNSEL: Do you remember why or how this, do you remember how this case was referred to you?

THE COURT: That was it. Yes or no?

MS. KASSEMBE: Okay, yes.

DEFENSE COUNSEL: Okay. And other than [J.], did you speak to anyone else in preparing to interview or conducting this interview?

MS. KASSEMBE: Yes, I did.

DEFENSE COUNSEL: Okay, who else did you speak to?

MS. KASSEMBE: I spoke to the social worker who was assigned to the case.

DEFENSE COUNSEL: *You also spoke to the detective who was assigned to the case; is that correct?*

MS. KASSEMBE: *Not directly.* So if I may explain? So before we conduct the forensic interviews, we have a briefing with what we call a multidisciplinary team. And that would be the social worker assigned to the case, the detective assigned to the case, we also have a family advocate as well as the State's attorney who's on call and who would be present to observe the case. So it wasn't a one-on-one conversation but more of a briefing before.

* * *

DEFENSE COUNSEL: Okay. *And there was a point in time during the interview where you stepped out to speak to members of the multidisciplinary team; is that correct?*

MS. KASSEMBE: *Yes.*

DEFENSE COUNSEL: And you don't remember the conversation that you had with the members of the multidisciplinary team when you stepped out; is that correct?

MS. KASSEMBE: No, I do not remember that specific conversation. No.

DEFENSE COUNSEL: Okay. And so then you came back after that meeting with the multidisciplinary team back to the room with [J.]; is that correct?

MS. KASSEMBE: *Yes.*

DEFENSE COUNSEL: And is my recollection correct that you asked [J.] some more questions after that?

MS. KASSEMBE: *Yes.*

DEFENSE COUNSEL: Okay. *Do you recall whether or not those questions were based on what the multidisciplinary team told you or not?*

MS. KASSEMBE: *Most probably they were.*

On redirect, the State inquired as to the process by which a case is referred to the CAC, the function of the multidisciplinary team, and the purpose of a forensic interview:

THE STATE: There was a little bit of talk on cross examination about what happens when cases come to the CAC. I guess, what would be the typical pathway of a case and how would it get to you?

MS. KASSEMBE: Okay. So typically, reports would be called into the Prince George's County Department of Social Services Screening Department. They would then filter them down to the respective units, and then thereafter assigned to a social worker. And after the social worker's assigned the case and the need for forensic interview has been, has come to, then they would schedule that with me.

THE STATE: And so there's a little bit of talk about a multidisciplinary team. What is that team and what's its, well, I think there was already who's on that team, but what's the function of that multidisciplinary team in the context of a child advocacy interview?

MS. KASSEMBE: Okay. So a Child Advocacy Center, and one of the [bases] of the model of it is to ensure that when allegations of child maltreatment are being addressed, we're trying to minimize the amount of people who speak to a child. And so the CAC is supposed to be a coming together point for law enforcement, for medical, if that's part of the team for social services, as well as advocacy. And so we try and make it, as with the forensic interview, one time, get all the information that's required, and then be able to offer services in one spot.

THE STATE: Why would you want to minimize how many people talk to the child?

MS. KASSEMBE: Well, to minimize the amount of stress and trauma that a child might experience sharing allegations of child maltreatment. The more people that talk to them and make it a little bit difficult for the child and the family. It just makes the process a lot longer.

At the conclusion of the State's case-in-chief, the circuit court denied Ms. Ngunyi's motion for judgment of acquittal.

The defense called witness, Ms. Ani, to the stand. Lastly, Ms. Ngunyi testified in her own defense. After the presentation of all evidence and closing arguments, the circuit court denied Ms. Ngunyi's renewed motion for judgment of acquittal. The case proceeded to the jury. On December 15, 2023, the jury returned a verdict of guilty on the fourth-degree sexual offense charge, and acquitted Ms. Ngunyi on all other charges. Following trial, Judge Engel imposed a sentence of one year incarceration, all but eleven months suspended, followed by five years of probation. On December 28, 2023, Ms. Ngunyi timely noted her appeal. Both parties submitted briefs to this Court.

Additional facts will be included in the discussion as they become relevant.

III. DISCUSSION

The circuit court was not clearly erroneous in making the foundational factual finding that Ms. Kasembe was acting lawfully in the course of her profession when she interviewed J. Therefore, we hold that circuit court was legally correct in admitting the audio and video recording of the forensic interview.

A. Parties' Contentions

Ms. Ngunyi contends that the circuit court erred in finding that Ms. Kasembe was acting as a "social worker" during J.'s forensic interview, and erred in ruling that J.'s statements to Ms. Kasembe were therefore admissible under CP § 11-304. Ms. Ngunyi argues that since the legislative history of CP § 11-304 specifically excluded law enforcement personnel from the eligible persons who could testify about a child victim's hearsay statements, any statements made to a forensic interviewer acting in tandem with

law enforcement would similarly be excluded by CP § 11-304. Ms. Ngunyi contends that Ms. Kasembe's role as part of an investigative team thereby transformed her into an agent of the State and thus, she was not lawfully acting in the course of her profession as a social worker as required by CP § 11-304(c)(4).

To support her argument, Ms. Ngunyi distinguishes *Lawson v. State*, 389 Md. 570 (2005), where the circuit court also admitted statements made by a social worker on behalf of a child victim under CP § 11-304. Ms. Ngunyi contrasts the facts of her case with those relied on by the Court in *Lawson*. She explains that in *Lawson*, the only fact of significance was how mere police notification prompted the forensic interview, whereas here, Det. Culbreth notified, supervised and assisted with the interview of J. from another room. Ms. Ngunyi argued that the fact that Ms. Kasembe consulted with the multidisciplinary "team—including the detective—to make sure there were no additional questions she needed to ask J. for purposes of the investigation," was a step too far.

Ms. Ngunyi also argues that *State v. Snowden*, 385 Md. 64 (2005) is instructive. In *Snowden*, our Supreme Court held that the Confrontation Clause barred the admission of statements made by three minor children to a social worker during a forensic interview due to the "testimonial" nature of the statements. Ms. Ngunyi describes how the Court in *Snowden* reasoned that the questions posed and the responses elicited were in every way the functional equivalent of formal police questioning discussed in *Crawford v. Washington*⁹ as a prime example of what may be considered "testimonial," requiring that

⁹ 541 U.S. 36 (2004).

(1) the declarant-witness is unavailable, and (2) the defendant had a prior opportunity to cross-examine the declarant-witness. Ms. Ngunyi argues that similar to *Snowden*, Ms. Kasembe's participation was initiated and conducted as part of a formal law enforcement investigation, and therefore Ms. Kasembe was acting as an agent of the police department, rather than acting lawfully in the course of her profession as a social worker. This argument is bolstered by the fact that there was another social worker present in addition to Ms. Kasembe. Since Ms. Kasembe did not perform the usual job of a social worker, like conducting the aftercare plan, Ms. Ngunyi argues that Ms. Kasembe was not strictly acting in her capacity as a social worker and does not qualify under CP § 11-304(c)(4).

The State responds by contending that the facts of *Lawson* are not meaningfully different, and that our Supreme Court's holding in *Lawson* forecloses Ms. Ngunyi's argument. The State explains that this Court in *Lawson* held, in relevant part:

Social workers are acting in their professional capacity throughout the process even when they are informed of the abuse by police officers or themselves report the abuse to the police.

* * *

Presuming, as we must, that the General Assembly knew that it had defined the professional duties of departmental social workers to include interviewing the victims of sexual abuse, when it enacted legislation permitting the same social workers to testify as to statements made to them by victims of such abuse. . . we conclude that performing such interviews falls within scope of the lawful professional actions of a departmental social worker. We therefore hold that, when [the social worker] interviewed [the child victim] about being sexually abused. . . she was "acting lawfully in the course of her profession."

* * *

Although [the social worker’s] interview of [the child victim] aided the state in the collection of evidence against [the defendant] and thereafter in his prosecution, it was, to be sure, principally intended to protect the child from further sexual abuse. That it may have ultimately served more than one purpose does not render it inadmissible.

The State also takes issue with Ms. Ngunyi’s reading of *Snowden*. The State asserts that the Court in *Snowden* did not suggest that by virtue of the testimonial nature of the statement under the then-recent Confrontation Clause¹⁰ jurisprudence, the social worker acted outside the scope of her professional responsibilities in interviewing the child victims, so as not to be covered by the “tender years” statute. The State maintains that the *Snowden* holding and analysis are limited to whether that social worker became—solely for the Confrontation Clause analysis—an agent of the police department.

B. Standard of Review

Our review of “[w]hether the trial court properly admitted a particular statement under an exception to the rule against hearsay often requires separate inquiries with divergent standards of review.” *Curtis v. State*, 259 Md. App. 283, 298 (2023). “It is well established that a ‘trial court’s ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more

¹⁰ The Confrontation Clause refers to a provision of the Sixth Amendment of the United States Constitution which states as follows: “in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. Accordingly, the Confrontation Clause “provides two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination.” *See, e.g., Coy v. Iowa*, 487 U.S. 1012, 1017 (1988).

deferential standard of review.”” *Smith v. State*, 259 Md. App. 622, 666–67 (2023) (quoting *Gordon v. State*, 431 Md. 527, 538 (2013)). Thus, “[w]e review for clear error the trial court’s preliminary findings as to the factual circumstances under which the statement was made.” *Curtis*, 259 Md. App. at 298. A “judge’s decision is not clearly erroneous if the record shows that there is legally sufficient evidence to support it.” *Kusi v. State*, 438 Md. 362, 380 (2014) (quoting *Biglari v. State*, 156 Md. App. 657, 668 (2004)).

C. Applicable Law

Maryland Rule 5-801 defines hearsay as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Md. Rule 5-801(c). A “statement” includes oral and written assertions, as well as nonverbal conduct intended as an assertion. Md. Rule 5-801(a). A hearsay statement is generally not admissible, “except as otherwise provided by these rules or permitted by applicable constitutional provisions or *statutes*.” Md. Rule 5-802 (emphasis added).

CP § 11-304, also known as the “tender years” statute, is a statutory exception to the rule against hearsay. CP § 11-304 allows the admission of hearsay statements made by children under the age of thirteen who are alleged to be victims of child abuse, rape, or another enumerated sexual offense to certain professionals. CP § 11-304(a), (b). This exception is intended to balance the fundamental rights of the accused with the need to protect child victims from further trauma. *See Prince George’s Cnty. Dep’t of Soc. Servs. v. Taharaka*, 254 Md. App. 155, 170 n.8 (2022); *see also Snowden*, 385 Md. at 76 (“The

legislation was enacted in response to concerns that child abuse and sexual offenses were not being prosecuted adequately due to many child victims' inability to testify as a result of their young age or fragile emotional state.”).

Importantly, CP § 11-304 only permits the admission of hearsay by a child victim if the statement was made to one of the professionals listed in CP § 11-304(c)(1)–(7), provided the person was “acting lawfully in the course of the person’s profession when the statement was made.” CP § 11-304(c). Among the list of professionals is a social worker.¹¹ CP § 11-304(c)(4).

¹¹ We would be remiss if we failed to note how the Maryland General Assembly recently amended the text of CP § 11-304, adding “forensic interviewer” to the list of professions. *See* Md. Code Ann., Crim. Proc. § 11-304(c)(8) (2025). Under the revised statute, effective October 1, 2025,

(a)(2) “Forensic interviewer” means a professional who:

- (i) is trained in child forensic interviewing protocols and techniques that allow for neutral, legally sound, nonleading, and developmentally appropriate interviews with children to gather information without influencing the information provided by the child;
- (ii) is not a law enforcement officer; and
- (iii) is employed by or works under contract with a child advocacy center as defined in § 13-2201 of the Health General Article, or an entity in another jurisdiction that would qualify as a child advocacy center in the State.

CP § 11-304(a)(2) (2025); *see also* H.B. 442, Fiscal and Policy Note, 2025 Gen. Assemb., 447th Sess. (Md. 2025). Given the timing of this appeal and Ms. Ngunyi’s contentions, for the purposes of our review, we rely on the prior enactment of CP § 11-304, which does not include forensic interviewer as a listed profession. However, we do not consider the current statutory text in a vacuum, but rather, we examine the legislation as a whole, reviewing the “context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute [and amendments].” *Lamone v. Schlakman*,

We agree with the State’s characterization of *Lawson*. In *Lawson*, the Court concluded that “a social worker is acting within the course of his or her profession when investigating alleged child abuse incidents.” 389 Md. at 584. This is true “throughout the process even when they are informed of the abuse by police officers or themselves report the abuse to the police.” *Id.* at 585. During a forensic interview, a social worker’s principal goal is to support the child and prevent further abuse. Any aid to the State in the prosecution of the suspected abuser furthers that goal. When a social worker conducts a forensic interview of a child victim, they act lawfully in the course of their profession. *See Lawson*, 160 Md. App. at 614–15.

To be sure, no provision of CP § 11-304 explicitly states that law enforcement involvement before, during or after a forensic interview, nor any statements made to law enforcement at any stage of the interview process, negates a factual finding that a social worker is acting within the course of their profession. Indeed, social workers are among the list of professionals designated by the legislature as “mandatory reporters” in cases of suspected child abuse.¹²

451 Md. 468, 491 (2017) (citing *CashCall, Inc. v. Md. Comm’r of Fin. Regulation*, 448 Md. 412, 431 (2016)). In expanding the list of professions to include forensic interviewer, we acknowledge the General Assembly’s purpose to clarify and expressly codify our existing precedent that protects professionals who conduct forensic interviews.

¹² Under Md. Code Ann., Family Law (“FL”) § 5-704, “each health practitioner, police officer, educator, or human service worker, acting in a professional capacity in this State who has reason to believe that a child has been subjected to abuse or neglect...shall notify the local department or the appropriate law enforcement agency.” Under FL § 5-701(2)(iii), “...human service worker” includes...any social worker.” CP § 11-304 must be construed liberally to allow social workers, *while acting in their professional*

Finally, CP § 11-304 requires that the circuit court conduct a hearing to determine whether the statement at issue has “particularized guarantees of trustworthiness.” CP § 11-304(e)–(g). The statute provides the following list of non-exclusive factors that the court must consider in assessing the trustworthiness of a child victim’s out-of-court statement:

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

capacity, to report suspected child abuse to law enforcement, in order to exist alongside FL § 5-704.

(xiii) the credibility of the person testifying about the statement.

CP § 11-304(e)(1), (2)(i)–(xiii). The court is required to conduct a hearing outside the presence of the jury and make a finding on the record as to the specific guarantees of trustworthiness that are in the statement and determine the admissibility of the statement. CP § 11-304(f)(1)–(2).

A circuit court is not required to adhere strictly to its prior pretrial rulings if there is a legal basis to reconsider the ruling and the objection is repeated at trial. *See Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 638 (1997) (quoting *Ralkey v. Minn. Mining & Mfg. Co.*, 63 Md. App. 515, 522–23 (1985) (“While the trial judges may choose to respect a prior ruling in a case, they are not required to do so.”); *accord Scott v. State*, 379 Md. 170, 184–85 (2004) (holding that one circuit court judge was not bound by prior ruling made by another judge of the same court where there had been no appellate rulings in the case).

D. Analysis

In this case, the evidence sufficiently supported the circuit court’s preliminary factual finding that Ms. Kassembe was acting lawfully in the course of her profession when she conducted the forensic interview of J. On review of Ms. Kassembe’s testimony at the motions hearing, Judge Weatherspoon’s “Findings” issued August 2, 2023 were entirely appropriate. The circuit court also did not commit clear error in making the requisite factual findings to properly examine the thirteen factors under CP § 11-304(e)(2)(i)–(xiii) which ultimately supported the credibility of J.’s statements. It was therefore proper for Judge Engel to admit the recording of the forensic interview into evidence at trial over the

objection of defense counsel, in reliance on Judge Weatherspoon’s well-supported determination that Ms. Kassembe was acting lawfully in the course of her profession. We affirm the judgment of the circuit court.

As a licensed social worker in the State, employed by the Department, Ms. Kassembe had a duty to report any suspected child sexual abuse of J. to law enforcement. *See supra* Section III.C n. 12. Whether Ms. Kassembe consulted with Det. Culbreth during or after the interview of J.—consistent with her status as a mandatory reporter—does not alter our analysis. If social workers are otherwise required to report to law enforcement, we should encourage early open communication and recognize that consultation with the multidisciplinary team, which may include law enforcement, as part of the forensic interviewing process is not outside the scope of a social worker’s official duties.

The record makes plain that Ms. Kassembe testified about her education and credentials to be lawfully licensed and employed as a social worker, along with her specialized training in forensic interviewing techniques and protocol she adhered to. *See supra* Section II. Although Ms. Kassembe stated she was acting *either* as a social worker *or* forensic interviewer, we are confident she acted as *both* when she interviewed J. The expansion of the “tender years” statute, adding forensic interviewers to the list and distinguishing them from social workers, provides greater protection to forensic interviewers who may possess training in forensic interviewing techniques, yet may not be licensed as a social worker like Ms. Kassembe. *See supra* Section III.C n. 11. Nonetheless, Ms. Kassembe is educated, licensed, trained as a social worker and forensic interviewer.

She appropriately functioned in her dual role when she interviewed J. on June 29, 2021. Ms. Kasembe therefore qualifies as a person to whom J.'s hearsay statements may be made to, under either iteration of CP § 11-304.

Contrary to Ms. Ngunyi's assertion, neither social workers nor forensic interviewers veer from their professional responsibilities and act as an arm of the State when conducting a forensic interview. *See Lawson*, 389 Md. at 584–85 (holding that “a social worker is acting within the course of his or her profession when investigating alleged child abuse incidents...even when they are informed of the abuse by police officers or themselves report the abuse to the police”); *see also* CP § 11-304(a)(2)(ii) (“Forensic interviewer” means a professional who...is not a law enforcement officer[.]”).

Ms. Ngunyi's reliance on *Snowden* is inapposite. The State correctly identified that the *Snowden* holding pertains solely to the determination of whether the statements were testimonial under the Confrontation Clause. *See Snowden*, 385 Md. at 86 (“Because [the social worker] was performing her responsibilities in response and at the behest of law enforcement, she became, *for Confrontation Clause analysis*, an agent of the police department.”) (emphasis added). The *Snowden* Court also took care to mention how the circuit court made a “finding that the interviews were made for the express purpose of satisfying the requirements of the tender years statute.” *Id.* at 85. Even if there were a link between testimonial statements and the scope of a professional's employment under CP § 11-304(c), any Confrontation Clause concerns were abated in this case—and so too should concerns about what constitutes the lawful course of Ms. Kasembe's employment

as a social worker who conducts routine forensic interviews at the CAC. Here, J. was an available declarant-witness, and in fact testified as a State's witness and was actually cross-examined by the defense at trial. Ms. Ngunyi's attempt to transform our Supreme Court's pure Confrontation Clause analysis into a limitation on what constitutes "the course of the person's profession" under CP § 11-304(c) is unpersuasive and hinders the legislature's broad intent to promote the prosecution of those who commit heinous sexual offenses against child victims, like J.

As a final matter, we note that defense counsel raised an objection to the admissibility of J.'s hearsay statements before Judge Weatherspoon at the pretrial motions hearing. Defense counsel renewed her objection before Judge Engel at trial. Defense counsel, however, essentially restated her prior objection and did not make any new arguments. Since we hold that Judge Weatherspoon did not commit clear error in making foundational factual findings under CP § 11-304 and we do not observe any legal basis for Judge Engel to have deviated from the circuit court's prior ruling, we hold that the circuit court was legally correct when admitting the recording containing J.'s hearsay statements.

IV. CONCLUSION

In sum, the circuit court did not err in finding that Ms. Kasembe was acting lawfully in the course of her profession as a social worker during J.'s forensic interview, and therefore did not err in ruling that J.'s hearsay statements made to Ms. Kasembe were admissible under Maryland's "tender years" statute.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**