Circuit Court for Montgomery County
Case No. C-15-CR-23-001349

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2160

September Term, 2024

HERBER ALEXIS CAMPOS-SAMBRANO

v.

STATE OF MARYLAND

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 10, 2026

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

A jury, in the Circuit Court for Montgomery County, convicted Herber Alexis Campos-Sambrano, appellant, of one count of sex abuse of a minor, three counts of second-degree rape, and two counts of third-degree sex offense. The court sentenced Campos-Sambrano to a total term of fifty years' imprisonment.

In this appeal, Campos-Sambrano presents two questions for our review. For clarity, we have rephrased those questions as[1]:

1. Did the trial court err or abuse its discretion in excluding, pursuant to Maryland's "Rape Shield Statute," evidence that the victim had been sexually abused by another household member around the time that the victim was being abused by Campos-Sambrano?

2. Did the trial court err or abuse its discretion in admitting hearsay statements made by the victim to her guidance counselor regarding the abuse?

Finding no error or abuse of discretion, we affirm.

BACKGROUND

The victim in this case, M.S., was born in Honduras in 2007. When M.S. was four years old, her mother moved to the United States. M.S. remained in Honduras with her

[1] Campos-Sambrano phrased the questions as:

1. Did the trial court abuse its discretion in excluding highly relevant evidence regarding prior abuse of M.S. by a third party when such conduct was not subject to the exclusions of the rape shield law and the conduct nonetheless fit within the rape shield law's exceptions?

2. Did the trial court abuse its discretion in admitting prejudicial hearsay of a disclosure of abuse to M.S.'s guidance counselor when such disclosure came at least five months after the last act of alleged abuse?

father. In 2018, when she was ten years old, M.S. moved to the United States and began living with her mother in Montgomery County. At the time, M.S.'s mother lived in a home with her boyfriend, Campos-Sambrano, and several other individuals M.S. did not know.

In 2022, M.S. reported that Campos-Sambrano had been abusing her sexually. Campos-Sambrano was subsequently arrested and charged with one count of sex abuse of a minor, one count of second-degree sex offense, three counts of second-degree rape, and three counts of third-degree sex offense.

At trial, M.S. testified that the first act of abuse occurred in 2018, shortly after she arrived in the United States. On that occasion, Campos-Sambrano grabbed M.S., kissed her on the lips, and put his tongue inside her mouth. M.S. testified that she did not tell anyone what happened because she "didn't know the people who were in the house[,]" and "[t]hey were mean[.]"

M.S. testified that another act of abuse occurred soon after the first act. On that occasion, Campos-Sambrano came into M.S.'s bedroom, threw her on the bed, took off her clothes, and "put his fingers inside [her] lady parts." M.S. testified that she did not report the incident because she was "scared."

M.S. testified that, in the years that followed, Campos-Sambrano continued to abuse her sexually. On one occasion, which occurred while M.S. was in middle school, M.S. was in her mother's bedroom watching television when Campos-Sambrano came into the room, took M.S.'s clothes off, and penetrated her vagina with his penis. On another occasion, M.S. was again in her mother's bedroom when Campos-Sambrano came in, threw her on the bed, pulled his pants down, and forced her to perform oral sex. On a third occasion,

M.S. was in her bedroom when Campos-Sambrano came in, removed her clothes "aggressively," and penetrated her vagina with his penis. M.S. testified that, after the two incidents of vaginal intercourse, she failed to get her period and, when she informed Campos-Sambrano, he gave her pills to restart her period. M.S. testified that, overall, Campos-Sambrano penetrated her vagina with his penis "more than 20 times[.]"

M.S. testified that, in April 2022, she disclosed the abuse to her mother. According to M.S., her mother slapped her and told her she was "a bad daughter[.]" On a subsequent date, which occurred on a Friday, M.S. and her mother had another argument, and M.S. ran away from home. The following Monday, M.S. went to school and told her guidance counselor about the abuse.

On cross-examination, defense counsel sought to question M.S. about allegations that she had been sexually abused by her uncle, who also lived in the family home, around the time that M.S. was being abused by Campos-Sambrano. The trial court ultimately denied the request on the grounds that the evidence was inadmissible under Maryland's "Rape Shield Statute."

Later, M.S.'s school counselor, Shawn Guthrie, testified, over objection, that M.S. had reported that Campos-Sambrano had been sexually abusing her. Ms. Guthrie subsequently testified that her conversation with M.S. had occurred in the fall of 2022 and that, during that conversation, M.S. had told her about "an incident" that occurred in the spring of 2022.

The jury ultimately convicted Campos-Sambrano of one count of sex abuse of a minor, three counts of second-degree rape, and two counts of third-degree sex offense. This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Campos-Sambrano's first claim of error concerns the trial court's refusal to permit defense counsel to cross-examine M.S. about allegations that she had been sexually abused by her uncle. Prior to trial, the State filed a motion indicating that defense counsel was intending to call M.S.'s uncle as a witness. The State noted that M.S.'s uncle was "currently serving a prison sentence because he was convicted of sexually abusing M.S. two times between 2018 and 2019." The State requested that M.S.'s uncle be precluded from testifying pursuant to Maryland's "Rape Shield Statute."

Under that statute, evidence related to a victim's reputation for chastity or abstinence is inadmissible in a prosecution for a sexual crime. Md. Code, Crim. Law ("CR") § 3-319(a). The statute also precludes the introduction of evidence of "a specific instance of a victim's prior sexual conduct" unless the court finds that the evidence is relevant and material to a fact in issue, that the inflammatory or prejudicial nature of the evidence does not outweigh the evidence's probative value, and that the evidence is being offered for one of four enumerated purposes. CR § 3-319(b). One of those four purposes is that the evidence "is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma[.]" CR § 3-319(b)(4)(ii).

Following the filing of the State's motion, the court held a motions hearing. At that hearing, the State proffered that the parties had reached an agreement, whereby the defense agreed not to call M.S.'s uncle as a witness and the State agreed not to call a proposed expert witness. Defense counsel confirmed that agreement.

At trial, following M.S.'s direct testimony, defense counsel requested a bench conference and, at that bench conference, argued that he should be permitted to question M.S. about the abuse perpetrated by her uncle. Defense counsel noted that M.S. had testified that Campos-Sambrano may have impregnated her and that he had caused her to feel "traumatized." Defense counsel argued that the sexual conduct involving M.S.'s uncle could explain the source of the pregnancy and trauma. Defense counsel also noted that the sexual conduct involving M.S.'s uncle occurred during the same time period that Campos-Sambrano was alleged to have abused M.S. Defense counsel argued that the sexual conduct involving M.S.'s uncle could show that M.S. had an ulterior motive to accuse Campos-Sambrano. Defense counsel argued further that the evidence was relevant and highly probative because the jurors "need to know … what's going on in that home at the same period of time."

Ultimately, the trial court denied defense counsel's request:

> So relevant evidence is evidence that tends to make a fact more or less likely – I think that that's the actual definition – and I struggle to see how if this child was abused by her uncle that makes the abuse in this case any more or less likely. I just – I don't see how one is related to the other. No one has proffered that to me other than they are both in the same home but just because one is happening doesn't mean that the other can't. And so I don't see how it makes it more or less likely.

> And so I don't find it relevant and even if it might have some minor relevance, I find that the inflammatory nature is – doesn't outweigh – or the inflammatory nature does outweigh the probative value. I also with regards to the pregnancy implications, there was no evidence that this child was pregnant, only that she told the defendant that she hadn't gotten her period and then there's evidence that he may have thought she was pregnant and gave her these pills.
>
> So I don't find that this has anything – any of that had anything to do with the uncle. And I just don't see how the rape shield statute exceptions have been met. So, I am going to deny the defense request to cross-examine the witness with regards to the uncle and the abuse by the uncle.

Parties' Contentions

Campos-Sambrano now claims that the trial court abused its discretion in excluding evidence that M.S. had been sexually abused by her uncle around the time that she was being abused by Campos-Sambrano. He argues that the evidence was not subject to the strictures of the Rape Shield Statute because the abuse did not constitute "sexual conduct" within the meaning of the statute. Citing *Shand v. State*, 103 Md. App. 465 (1995), Campos-Sambrano contends that "sexual conduct" is limited to willing sexual activity and does not encompass unwilling or coerced sexual activity. He argues that the evidence at issue here, which concerned non-consensual sexual activity, did not meet that definition.

Campos-Sambrano further argues that, if we determine that the Rape Shield Statute is applicable to the evidence at issue here, said evidence was admissible pursuant to the statute's exceptions. Campos-Sambrano notes that the statute permits the admission of a victim's prior sexual conduct to show the source or origin of pregnancy or trauma. He argues that, in his case, M.S. gave testimony suggesting that he had impregnated her and that his actions had caused her mental trauma. He contends that the prior sexual abuse

perpetrated by M.S.'s uncle could have been the source of M.S.'s alleged pregnancy and mental trauma.

Finally, Campos-Sambrano argues that the evidence was relevant and that the inflammatory or prejudicial nature of the evidence did not outweigh its probative value. He contends that the evidence was relevant to M.S.'s credibility because it showed that M.S. had accused her uncle of abuse, and not Campos-Sambrano, at a time when both men were supposed to have been abusing her. He argues that the evidence was also relevant to show that M.S. knew "the playbook for getting rid of an adult in her life," to test the accuracy of M.S.'s memory as to the details of the abuse, and to show that the source of M.S.'s mental trauma may have been a different perpetrator. Campos-Sambrano argues that the prejudicial effect of the evidence "was minimal and, if anything, would prejudice the jury against [him]" because the evidence would have garnered sympathy for M.S. (Emphasis omitted.)

The State argues that the trial court did not err or abuse its discretion in refusing to admit the disputed evidence pursuant to the Rape Shield Statute. The State argues that Campos-Sambrano's argument regarding the applicability of the Rape Shield Statute is unpreserved because he did not raise that argument at trial. The State contends that, regardless, the argument is without merit, as this Court, in *Westley v. State*, 251 Md. App. 365 (2021), considered and rejected a similar argument. The State further argues that Campos-Sambrano's reliance on the "pregnancy" exception and the "trauma" exception to the Rape Shield Statute is misplaced because neither of those exceptions was at issue here. Finally, the State argues that, even if those exceptions were applicable, the court properly

determined that the disputed evidence was irrelevant and that its probative value, if any, was outweighed by the risk of unfair prejudice.

For reasons to follow, we hold that the evidence concerning the sexual abuse perpetrated against M.S. by her uncle fell within the meaning of "sexual conduct" and thus was subject to the strictures of the Rape Shield Statute. We further hold that, pursuant to that statute, the trial court did not err or abuse its discretion in precluding Campos-Sambrano from presenting that evidence at trial.

Analysis

As discussed above, Maryland's Rape Shield Statute, codified in CR § 3-319, contains two main provisions limiting the use of certain evidence pertaining to a victim's sexual history in a prosecution for a sexual crime. The first provision, subsection (a), reads as follows:

> (a) Evidence relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence may not be admitted in a prosecution for:
>
> (1) a crime specified under this subtitle or a lesser included crime;
>
> (2) the sexual abuse of a minor under § 3-602 of this title or a lesser included crime; or
>
> (3) the sexual abuse of a vulnerable adult under § 3-604 of this title or a lesser included crime.

CR § 3-319(a).

The second provision, subsection (b), which is the only provision relevant here, reads as follows:

> (b) Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that:
>
> (1) the evidence is relevant;
>
> (2) the evidence is material to a fact in issue in the case;
>
> (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and
>
> (4) the evidence:
>
> (i) is of the victim's past sexual conduct with the defendant;
>
> (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
>
> (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
>
> (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.

CR § 3-319(b).

"The Rape Shield Statute was originally enacted in 1976 primarily in response to trial courts of the time sometimes admitting evidence of a victim's lack of chastity in rape cases when consent was a defense." *Westley*, 251 Md. App. at 392. In so doing, the General Assembly's intent was: "(1) 'to protect rape victims from unscrupulous defense attorneys who try to shift the focus away from their clients and onto the victims'; and (2) 'to encourage more victims to report the crimes and help bring rapists to justice.'" *Id.* (quoting *White v. State*, 324 Md. 626, 633-34 (1991)). In addition, the General Assembly sought to "'lessen the likelihood of exacerbating the psychological injury already suffered by the

victim of a sexual offense.'" *Id.* (quoting Report of Md. Senate Judicial Proceedings Committee on Senate Bill No. 399, at 1 (1976)).

To meet those ends, the General Assembly, in addition to barring evidence relating to a victim's reputation for chastity or abstinence in prosecutions for sexual crimes by way of subsection (a) of the Rape Shield Statute, severely limited, via subsection (b), the circumstances under which evidence of a specific instance of a victim's prior sexual conduct could be admitted. That latter provision of the statute reflected a balance between the inherent trauma suffered by victims of sexual crimes during trial and the constitutional protections afforded defendants in our criminal justice system. *Id.* at 392-94. In reaching that balance, "the General Assembly intended to protect victims of sexual offenses from the introduction of humiliating evidence about their past, except in the rare circumstances when such evidence was necessary to a defendant's legitimate defense[.]" *Id.* at 394. As we later recognized, forcing a victim of a sexual crime "to relive on the witness stand the circumstances of a prior sexual crime would discourage victims from coming forward[, a]nd the risk of jury confusion from the introduction in one sexual offense trial of evidence of a different sex crime by another perpetrator is great." *Id.* at 395. Thus, while subsection (b) was enacted with an eye toward preserving a defendant's right to present a legitimate defense, the primary purpose of the subsection was to:

> (1) encourag[e] victims of sex crimes to report them; (2) avoid[] further trauma to victims who do report such crimes; and (3) avoid[] confusing juries and diverting their attention from the defendant's guilt or innocence with the introduction of evidence of limited or no probative value, but which is highly prejudicial or inflammatory.

Id. at 394.

With those principles in mind, we now turn to Campos-Sambrano's arguments.

A.

We begin with Campos-Sambrano's argument that the Rape Shield Statute does not apply. Preliminarily, we agree with the State that this argument was not preserved. When the matter was first brought to the trial court's attention, defense counsel argued that the evidence should be admitted pursuant to the statute's exceptions. At no point during his subsequent argument did defense counsel contend that the statute was inapplicable. To the contrary, defense counsel's entire argument was premised on the assumption that the statute applied. Because Campos-Sambrano's appellate argument was not raised at trial, that argument is unpreserved. Md. Rule 8-131(a).

Assuming, *arguendo*, that the argument was preserved, it is without merit. To be sure, in *Shand*, we held that "sexual conduct" within the meaning of the Rape Shield Statute was limited to "physical contact indicating a willingness to engage in either vaginal intercourse or a sexual act." *Shand*, 103 Md. App. at 480-81 (footnotes omitted). But, in *Westley*, we expressly rejected the notion that *Shand* could be interpreted as limiting the reach of the Rape Shield Statute to only consensual sexual conduct. *Westley*, 251 Md. App. at 384-400. After reviewing *Shand* and the Rape Shield Statute's language, purpose, and context, we ultimately held that "prior sexual conduct" under the Rape Shield Statute "includes all sexual conduct, whether willing or not." *Id.* at 400. Consequently, Campos-Sambrano is incorrect in asserting that M.S.'s uncle's sexual abuse did not constitute "sexual conduct" because it was unwilling. Our holding in *Westley* makes plain that the

"willingness" of the sexual conduct is irrelevant to whether the conduct falls within the purview of the Rape Shield Statute.

B.

We now turn to Campos-Sambrano's claim that the evidence was admissible to show the source or origin of M.S.'s pregnancy or mental trauma. We review for abuse of discretion the trial court's decision to admit evidence of a victim's prior sexual conduct under one of the four exceptions to the Rape Shield Statute. *Smith v. State*, 71 Md. App. 165, 181-89 (1987).

As noted, evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution for a sexual crime if, among other things, the court finds that the evidence "is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease or trauma." CR § 3-319(b)(4)(ii). We discussed that provision at length in *Smith*. In that case, the defendant, Michael Smith, wanted to present evidence of a rape victim's prior sexual conduct to explain the source of semen found in the victim and on her clothes, but in proffering the nature of that evidence at trial, Smith failed to provide specific facts as to how the proffered evidence would explain the semen. *Smith*, 71 Md. App. at 187-89. Ultimately, the court denied the request pursuant to the Rape Shield Statute. *Id.* at 182-83.

After Smith was convicted, we affirmed and held that the court did not abuse its discretion in precluding the evidence. *Id.* at 189-90. We explained that limited evidence of a specific act of sexual intercourse to explain the existence of semen may be admissible "where expert evidence establishes that such a contact could (to a reasonable certainty)

account for the sperm or semen found in the post-rape medical tests." *Id.* at 183. That is, in order for a defendant to establish the relevance and materiality of such evidence, "the offer of proof must be specific as to when the sexual contact took place and a proper medical foundation must be made to establish, scientifically, the probative value of the testimony." *Id.* at 187. We also noted that, because the Rape Shield Statute was intended to protect victims from undue embarrassment, it was "incumbent upon [Smith] to produce scientific, rather than purely speculative, evidence as to how the presence of semen and/or the injury to the victim occurred." *Id.* at 189. We held that, because Smith failed to provide such facts, the court did not abuse its discretion in denying his request. *Id.* at 189-90.

Turning back to the instant case, we hold that the trial court did not abuse its discretion in refusing to admit evidence of M.S.'s prior sexual abuse by her uncle to show the source or origin of pregnancy or mental trauma. To begin with, there was no evidence that M.S. was pregnant. The only evidence suggesting pregnancy was M.S.'s testimony that, on two occasions following sexual intercourse with Campos-Sambrano, she missed her period. But, M.S. testified that, on each of those occasions, she ultimately got her period after Campos-Sambrano had her take pills. The clear purpose of that testimony was to show the lengths to which Campos-Sambrano had gone to cover up the abuse. The testimony was not offered to show that Campos-Sambrano had, in fact, gotten M.S. pregnant.

As to Campos-Sambrano's claim that M.S.'s prior sexual conduct was relevant as an alternate source for her mental trauma, we are not convinced that the General Assembly intended "trauma" to include mental trauma. The other categories contained in that particular exception – semen, pregnancy, and disease – all involve physical characteristics,

which suggests that "trauma" refers to physical trauma, i.e., bruises or scratches. That interpretation is consistent with our discussion of the matter in *Smith*, wherein we concluded that the defendant in that case needed "to produce scientific, rather than purely speculative, evidence as to how the presence of semen *and/or the injury* to the victim occurred." *Id.* at 189 (emphasis added). In addition, our Supreme Court has recognized, albeit while discussing a matter not relevant here, that the General Assembly's use of the term "sexual activity" in that exception has "strong physical connotations." *Shand v. State*, 341 Md. 661, 675 (1996).

Even if the exception was applicable under the facts of the case, Campos-Sambrano's offer of proof as to the relevance of M.S.'s prior sexual conduct lacked the requisite specificity. At best, Campos-Sambrano's offer of proof established that M.S. was sexually abused by a different household member, her uncle, at some point in 2018 and/or 2019. Campos-Sambrano offered no specifics as to exactly when that sexual activity took place or how it could be connected to M.S.'s alleged pregnancy or trauma, and Campos-Sambrano provided no medical or scientific foundation as to the probative value of the evidence. In short, any connection between M.S.'s prior sexual conduct and her alleged pregnancy and trauma was "purely speculative." *Smith*, 71 Md. App. at 189. Accordingly, the trial court did not abuse its discretion in refusing to admit the evidence under one of the exceptions to the Rape Shield Statute.

C.

Finally, had the trial court found that the evidence fell within one of the exceptions to the Rape Shield Statute, the court could not admit the evidence unless it also found that

the evidence was relevant and material and that the inflammatory or prejudicial nature of the evidence did not outweigh the evidence's probative value. We review that decision for abuse of discretion.[2] *Id.* at 182.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "'Evidence which is thus not probative of the proposition at which it is directed is deemed irrelevant.'" *Urbanski v. State*, 256 Md. App. 414, 432 (2022) (quoting *Sifrit v. State*, 383 Md. 116, 129 (2004)). Moreover, "[p]roffered evidence of past sexual conduct must contain a direct link to the facts at issue in a particular case before it can be admitted." *White*, 324 Md. at 638.

Here, the only proffer provided by Campos-Sambrano at trial was that M.S. had been sexually abused by another household member, her uncle, around the time that she was purportedly being abused by Campos-Sambrano. Aside from that temporal connection and the fact that all parties lived in the same house, Campos-Sambrano offered no explanation as to how the two events were related or how M.S.'s prior sexual conduct was directly linked to a fact at issue. Like the trial court, we are at a loss as to how the evidence was reasonably related to any of the matters at issue in the case. *See Snyder v. State*, 361

[2] Although not previously mentioned, the Rape Shield Statute includes an additional provision, which states that a victim's prior sexual conduct "may not be referred to in a statement to a jury or introduced in a trial unless the court has first held a closed hearing and determined that the evidence is admissible." CR § 3-319(c)(1). Here, the court did not hold a closed hearing prior to determining the evidence's admissibility. Although the court's failure to abide by the statute was ultimately inconsequential because the evidence was not referred to in a statement to the jury or introduced at trial, the court nevertheless should have held a closed hearing before making its decision.

Md. 580, 591 (2000) (noting that relevancy is "a relational concept" and that "an item of evidence can be relevant only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case"). As such, the court did not abuse its discretion in finding that the evidence was irrelevant.

As discussed, Campos-Sambrano argues that evidence of M.S.'s prior sexual conduct was relevant to test M.S.'s credibility and memory and to show that M.S. may have accused Campos-Sambrano in order to "get[] rid" of him. But, as the State correctly notes, those arguments were not raised in the trial court and thus are not preserved for our review. Md. Rule 8-131(a). Even so, we do not find them persuasive. A sexual abuse victim's credibility, memory, and motivation are at issue in virtually every case where the victim testifies. Were M.S.'s prior victimization by her uncle probative of those issues, we would have difficulty imagining a situation in which such prior sexual conduct would *not* be relevant. Such a result cannot be what the General Assembly intended in enacting the Rape Shield Statute. In fact, the General Assembly has made clear that using a victim's sexual history to disparage her credibility is exactly the sort of behavior that the Rape Shield Statute was designed to prevent.

In any event, to the extent that M.S.'s prior sexual conduct may have had some probative value, we cannot say that the court abused its discretion in determining that said probative value was outweighed by the inflammatory or prejudicial nature of the evidence. Permitting the jury to hear about the sexual abuse perpetrated against M.S. by her uncle would have almost certainly confused the jurors and diverted their attention away from Campos-Sambrano's guilt or innocence. That danger was compounded by the fact that

M.S.'s prior sexual abuse had nothing to do with the allegations against Campos-Sambrano, other than that both perpetrators had lived in M.S.'s home and had committed the sexual abuse at overlapping times. Under the circumstances, requiring M.S., who was seventeen years old at the time of trial, to relive the sexual abuse she suffered as a young child at the hands of her uncle would have been traumatic and would have discouraged other victims of sex crimes to identify and report their attackers. Furthermore, although Campos-Sambrano insists that exposing the jury to the prior sexual abuse would have garnered sympathy for M.S., the evidence could very well have had the opposite effect, in that it may have caused the jury to conclude, unfairly, that M.S. was somehow less credible because she had made similar allegations before. *See Westley*, 251 Md. App. at 412-13 ("An additional risk of unfair prejudice is that the jury might have unreasonably concluded that [the victim] was inherently less credible because she had made multiple allegations of sexual abuse."). As we concluded in *Westley*, that risk would "heighten[] the already significant risk of jury confusion inherent from injecting into a sexual abuse trial unrelated allegations of sexual abuse of the same victim by a different perpetrator." *Id.* at 413. For those reasons, the court exercised sound discretion in precluding the evidence.

II.

Campos-Sambrano's next claim of error concerns the trial court's decision to permit M.S.'s school counselor, Ms. Guthrie, to testify that M.S. told her about the abuse. As discussed, M.S. testified at trial that Campos-Sambrano began abusing her in 2018 and that she did not report the abuse because she "didn't know the people who were in the house" and she was "scared." M.S. testified that the abuse continued for several more years and

that she finally disclosed the abuse to her mother in April 2022. M.S. testified that she told her mother because she "was exhausted of being mistreated at the house" and was "exhausted of him." Upon being told about the abuse, M.S.'s mother slapped her and told her she was "a bad daughter." M.S. testified that, although things "changed" from that point forward, Campos-Sambrano remained in the home. M.S. testified that, on a later date, which occurred on a Friday, she and her mother had another argument that caused M.S. to run away from home. M.S. stated that, the following Monday, after she went to school, her mother came to the school and reported her missing. When M.S. found out that her mother was there, she got scared. M.S. testified that she did "not want to be alone with" her mother because her mother was "an abusive woman." At that point, M.S. informed her guidance counselor that Campos-Sambrano had been abusing her sexually. M.S. testified that she did not report the abuse sooner because she was "afraid of not being believed" and because "they always told [her] that [her] voice doesn't matter[.]"

Following M.S.'s testimony, the prosecutor called M.S.'s guidance counselor, Ms. Guthrie, to testify. When the prosecutor asked Ms. Guthrie about M.S.'s statements regarding the abuse, defense counsel objected, arguing that the statements were inadmissible hearsay. The prosecutor claimed that the statements were admissible as a prompt report of sexual abuse. Defense counsel responded by claiming that statements were not "prompt" given the delay between when the abuse occurred and when the statements were made. Ultimately, the trial court ruled that the statements were admissible:

> Okay. So prompt report is something – it is an exception to the hearsay rule and whether something is prompt or not is in my discretion and I am to take into consideration all of the circumstances and I am taking into

> consideration specifically in this case what I saw as a child who seemed not to be what I estimated would be the emotional development of 17. She seemed younger. She seemed afraid. And this I find that the circumstances she testified to were those where she was scared and kept this bottled up until this explosive fight with her mother, which was on a Friday. And then she ran away and I find that the running away is really the first time that she's not these [sic] suffocating circumstances that she described where she had to hold this all in. And that – so therefore the prompt report to this witness, which was on a Monday following leaving the home on the Friday and the first day she's in school has to be leaving the home is under all of the circumstances here prompt.

Parties' Contentions

Campos-Sambrano now complains that the trial court abused its discretion in admitting the statements under the "prompt complaint" exception to the hearsay rule. He contends that the court should not have admitted the statements because "a delay of at least five months from the most recent act of abuse is stretching the definition of 'prompt' beyond its limit." He notes that M.S. was fifteen years old at the time of the disclosure, that she had spent months at school since the last act of abuse, that she had a good relationship with her guidance counselor, and that she had "many prior opportunities" to disclose the abuse.[3] He argues that the court "further erred … by improperly noting its own evaluation of M.S.'s maturity[.]" He contends that the court "should not have provided its own

[3] Campos-Sambrano also claims that "if the trial court had not erred in excluding testimony of M.S.'s prior abuse by her uncle, the court would have been advised that M.S., while living with her uncle and with [Campos-Sambrano], made a disclosure of her uncle's abuse within weeks." We need not consider that factor because, as discussed in detail above, the court did not err in excluding that evidence.

layperson psychological analysis of M.S." but instead should have determined, objectively, what "a reasonable victim" would have done in M.S.'s position.[4]

The State contends that the court properly determined that the statements at issue were "prompt." The State contends that the court did not abuse its discretion in admitting the statements.

Analysis

"'Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court.'" *Baker v. State*, 223 Md. App. 750, 759 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 708 (2014)). Where, however, an evidentiary determination involves whether evidence is hearsay and whether it is admissible under a hearsay exception, we review that determination *de novo. Gordon v. State*, 431 Md. 527, 538 (2013). If the court renders any factual findings in making a hearsay determination, those findings will not be disturbed absent clear error. *Id.*

"'Hearsay' is 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). Hearsay is inadmissible, "[e]xcept as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802.

[4] Campos-Sambrano also claims that the court "appears to have premised its ruling on the incorrect statement by the State that the disclosure came one month after M.S. had disclosed [the abuse] to her mother, rather than the actual five-month delay." Campos-Sambrano is wrong. According to the record, it was defense counsel, not the State, who proffered that the delay was only one month. Furthermore, the court later clarified that it understood, at the time of its ruling, that the delay had been five months.

One such exception can be found in Maryland Rule 5-802.1(d), which permits the admission of hearsay if the statement "is one of prompt complaint of sexually assaultive behavior to which the declarant was subjected if the statement is consistent with the declarant's testimony[.]" The purpose of that exception "is to bolster the credibility of the victim by corroborating her account of the alleged assault." *Vigna v. State*, 241 Md. App. 704, 731 (2019). That purpose "is fulfilled by allowing the State to introduce, in its case-in-chief, the basics of the complaint, *i.e.*, the time, date, crime, and identity of the perpetrator." *Muhammad v. State*, 223 Md. App. 255, 268 (2015).

There is no set time frame within which a complaint needs to be made for it to be considered "prompt" pursuant to Rule 5-802.1(d). Rather, "promptness is a flexible concept, tied to the circumstances of the particular case." *Gaerian v. State*, 159 Md. App. 527, 540 (2004). For a complaint to qualify as prompt, "it is necessary only that 'the declarant must have made the complaint without a delay which is unexplained or is inconsistent with the occurrence of the offense.'" *Id.* at 541 (cleaned up) (quoting *Robinson v. State*, 151 Md. App. 384, 391 (2003)). Stated another way, "the requirement of promptness is not defeated by some delay in the reporting, so long as the delay is adequately explained." *Id.* at 542.

In determining whether a delay is adequately explained, "we take into account 'what a reasonable victim, considering age and family involvement and other circumstances, would probably do by way of complaining once it became safe and feasible to do so.'" *Vigna*, 241 Md. App. at 730 (quoting *Nelson v. State*, 137 Md. App. 402, 418 (2001)). Where the complainant is a young child, "the time analysis can include factors related to

'the natural fear, ignorance, and susceptibility to intimidation that is unique to a young child's make-up' including 'the relationship between the complainant and the defendant' and 'whether the defendant held a position of trust in the complainant's life.'" *Id.* (quoting *Gaerian*, 159 Md. App. at 542). In some cases, courts "have allowed into evidence, as 'prompt,' complaints of sexual assaults that occurred weeks, months, and even years before the complaint." *Gaerian*, 159 Md. App. at 542-44 (discussing cases).

"The question whether a complaint is sufficiently prompt to be presented to the jury is one that is best committed to the sound discretion of the court." *Id.* at 545. "Once the court determines that the report is 'prompt,' it is for the jury to determine what weight to give it." *Id.*

Here, the evidence adduced at trial established that M.S. emigrated to the United States from Honduras when she was ten years old. M.S. moved in with her mother, who had come to the United States six years earlier, and several other people M.S. did not know, including her mother's boyfriend, Campos-Sambrano. Not long after, Campos-Sambrano began sexually abusing M.S. M.S. did not disclose the abuse because she was scared and did not know any of the people with whom she lived. Over the next several years, Campos-Sambrano repeatedly abused M.S. When M.S. finally got the courage to tell her mother about the abuse in April 2022, her mother slapped her in the face and called her a bad daughter. M.S. continued living with Campos-Sambrano and her mother, whom M.S. described as "an abusive woman," until M.S. ran away from home following another fight with her mother, which occurred on a Friday in September 2022. The following Monday, M.S.'s mother showed up at M.S.'s school and reported her missing. Not wanting to be

alone with her mother, M.S. asked to speak with her guidance counselor, at which point she reported that Campos-Sambrano had been sexually abusing her. M.S. did not report the abuse sooner because she was "afraid of not being believed" and because "they always told [her] that [her] voice doesn't matter[.]"

Against that backdrop, we hold that the trial court did not abuse its discretion in finding that M.S.'s complaint to her guidance counselor was "prompt." First, Campos-Sambrano's claim that a delay of five months stretches "the definition of 'prompt' beyond its limit" is unavailing. As the above case law makes clear, there is no set time limit for when a complaint can no longer be considered "prompt." Instead, promptness is a "flexible concept" that is "tied to the circumstances of the particular case." *Gaerian*, 159 Md. App. at 540. The question, therefore, is not whether a five-month delay is prompt, but rather whether "the delay is adequately explained." *Id.* at 542.

Under that standard, we are persuaded that M.S.'s complaint to her guidance counselor was "prompt." The five-month delay between when the abuse purportedly ended and when M.S. made the complaint was adequately explained by M.S.'s young age when the sexual abuse was being perpetrated and when it was ultimately disclosed, the abusive relationship M.S. had with her mother, and the fact that M.S.'s prior disclosure to her mother was met with ridicule and further abuse. As the trial court noted in its ruling, M.S. was not free of those "suffocating circumstances" until she ran away from home in September 2022. Up until that point, it was not safe and feasible for M.S. to disclose the abuse. When it was finally safe and feasible, i.e., when M.S. went to school the following Monday, she made the complaint to her guidance counselor. Because the delay was neither

unexplained nor inconsistent with the occurrence of the sexual abuse, we cannot say that the court abused its discretion in determining that M.S.'s complaint was prompt.

As to Campos-Sambrano's claim that the court "should not have provided its own layperson psychological analysis of M.S.," we are not persuaded that the court's analysis was improper. Although a promptness assessment involves considering what a "reasonable victim" would do by way of complaining, that assessment includes a consideration of the attendant circumstances. Naturally, those circumstances encompass the victim's actual mental and emotional capabilities, particularly where the victim is a child. Thus, it was practical for the court to consider M.S.'s apparent maturity when deciding what a reasonable victim would have done in her situation.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.