Circuit Court for Montgomery County
Case No. C-15-CR-23-001132

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1658

September Term, 2024

MARCOS SAUL CHICAS

v.

STATE OF MARYLAND

Friedman,
Zic,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: May 21, 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).

In the Circuit Court for Montgomery County, a jury convicted Marcos Saul Chicas, appellant, of child sexual abuse. The court sentenced him to a term of twenty-five years' imprisonment, with all but five years suspended.

In this appeal, Mr. Chicas presents four questions for our review. For clarity, we have consolidated those questions into three questions and rephrased them as[1]:

1. Did the trial court err or abuse its discretion in limiting defense counsel's redirect examination of a defense witness?

[1] Mr. Chicas phrased the questions as:

1. Whether the trial court erred in denying the defense's request to question [O.] on redirect examination to clarify that the reason for frequent body safety talks with G. was [O.'s] independent experience with sexual assault and had nothing to do with Mr. Chicas[.]

2. Did the court err in denying defense counsel's request for a specific curative instruction or an instruction to disregard the analogy after the prosecutor argued that the reasonable doubt is "something that people use in their every day decisions"; that "[t]here are hundreds of times throughout people's everyday lives that they make decisions beyond a reasonable doubt"; and that the likelihood that there is a reasonable doubt is the same likelihood that Lucky Charms are in a Cheerios box?

3. Did the trial court err in denying the defense's request for curative instructions and mistrial motion where the State made erroneous and improper statements in rebuttal closing argument including (a) misrepresenting the reasonable doubt standard in a way that was patently contrary to the pattern jury instruction; (b) declaring that the State was "disgusted and offended" by the defense's arguments; and (c) implying that defense counsel was lying to the jury?

4. Did the trial court err when, in responding to a jury note regarding the child sexual abuse instruction asking "what is considered 'unde[r] a wide range of behaviors,'" it declined the defense's request to instruct the jury that to be sexual abuse under the molestation theory pursued by the State, the act must be sexual and for the defendant's benefit?

2. Did the trial court err or abuse its discretion in issuing a general curative instruction after defense counsel objected to several statements made by the prosecutor during rebuttal closing argument and requested a mistrial or, in the alternative, a specific curative instruction as to each objectionable argument?

3. Did the trial court err or abuse its discretion in denying defense counsel's request for a supplemental jury instruction after the jury, during deliberations, submitted a note seeking clarification as to one of the elements of the crime of child sexual abuse?

Finding neither error nor an abuse of discretion, we affirm.

BACKGROUND

Mr. Chicas was arrested and charged with child sexual abuse and third-degree sexual offense following an incident involving his wife's cousin, G. At trial, G. testified that, in 2020, when she was ten years old, she lived in a townhouse with others, including her mother L., her cousin O., and her cousin's husband, Mr. Chicas. G. testified that, in the summer of 2020, her family held a birthday party for one of Mr. Chicas's daughters. At approximately 9:00 p.m. that evening, G. went into the living room to get a charger when Mr. Chicas was sitting on the couch. After grabbing her charger and beginning to walk out of the room, Mr. Chicas asked for a hug. When G. complied, Mr. Chicas grabbed her waist and made her sit on his lap. He then moved his hand upward and squeezed one of her breasts. Shortly thereafter, G. got up and went into the kitchen. There, she found her mother L. and her cousin O., and immediately reported the incident to her mother.

On cross-examination, defense counsel asked G. if L. and O. had "talks" with her about telling them "if something uncomfortable happens to [her] with a man or with a

boy[.]" According to G., she had had such talks with L., but she did not remember if O. had talked to her. When asked about the frequency of those talks, G. stated that L. "always told [her] that" and she was "emphatic about it[.]" On redirect, G. testified that, during her body safety talks with her mother, Mr. Chicas was not mentioned.

L. testified that, on the evening in question, she was in the kitchen with O. making soup, and, at some point, G. came into the kitchen crying. When L. and O. asked G. why she was crying, G. stated that Mr. Chicas had "touched" her. O. then called him into the kitchen and told him what G. had said. Mr. Chicas responded that he "was playing."

On cross-examination, defense counsel asked L. about her talks with G. about "reporting if anybody had … abused her physically[.]" L. stated that she told G. "that nobody should ever touch her private parts."

O., testifying for the defense, confirmed that, on the evening in question, G. had told her and L. that Mr. Chicas had touched her. She testified that when she later confronted him about the incident, he stated that he "just went around [G.'s] shoulder and kind of point[ed] at her breast like to say, what are those?" According to O., G. had been wearing a see-through pink top with no bra. O. testified that she had "thought about" saying something to G. about it, but she did not.

When Mr. Chicas testified about the incident, he denied touching G.'s breast. He stated that he merely touched her shoulder and pointed to her chest, saying, "what is that?" He did so because "some part of [G.'s] body was showing" and he wanted "her to cover."

The jury found Mr. Chicas guilty of child sexual abuse but not guilty of a third-degree sexual offense. Additional facts will be supplied as needed below.

DISCUSSION

I.

The first claim of error concerns an issue that arose during defense counsel's redirect examination of O. As previously noted, defense counsel raised the issue of "body safety talks" during his cross-examination of G. and L. In addition, during his direct examination of O., defense counsel asked O. if she talked to G. about the shirt she was wearing on the day of the incident. The prosecutor subsequently asked O. about those issues during cross-examination:

> Q. All right. [Defense counsel] asked you if you had made any comments about [G.'s] shirt?
>
> A. I didn't make any comment.
>
> Q. Right. You said you didn't make any comments, but you did notice it.
>
> A. Yes.
>
> * * *
>
> Q. Had you ever talked to her before about body safety?
>
> A. Yes. We did talk about it multiple times before that incident happened.
>
> Q. Okay. Because you're concerned about her?
>
> A. I mean yes, because we were talking about, yes, because she just, you know, start developing, and we were like concerned about it like

thought of stuff won't happen to her like if she ever – something happen to please speak up.

Q. So did you ever talk to her about what kind of clothing she should or shouldn't wear?

A. No, we never spoke about it. She always like to wear like tight clothes.

Q. Okay. So if you felt like her clothing was putting her in a position that would create a situation that you were worried about that caused you the type of situation you were talking to her about, body safety –

A. Uh-huh.

Q. – you wouldn't say anything to her?

A. I was thinking what to say and saying something to her that day, like, you know, don't wear something like this again, but it was like, you know, a kid's birthday. It was like a very short.

Later, during redirect examination, defense counsel asked O. if the subject of her "talks" with G. was "a somewhat high interest for [her] personally[.]" Before O. could answer, the prosecutor objected. At the ensuing bench conference, the court asked defense counsel about the relevancy of his question. Defense counsel responded that, as a result of the prosecution's cross-examination, "the jury may think the reason that [O.] had these repeated talks with [G.] was because she was afraid [Mr. Chicas] was going to do something." Defense counsel proffered that he believed O. would testify that the reason the talks were important was because she had been abused as a child.

Following that proffer, the court found that defense counsel was "creating a trial within a trial" and "getting a little off topic here about whether or not she has talks with the child." The court noted that "[i]t's really about what [Mr. Chicas] did or did not know."

Although the court ultimately sustained the prosecutor's objection, the court ruled that defense counsel could ask O. a more general question about whether she takes the talks with G. seriously. When the redirect examination resumed, defense counsel asked O. if her talks with G. were "of particular importance to [her] for a long time[.]" O. responded in the affirmative.

Parties' Contentions

Mr. Chicas contends that the trial court violated his right to confrontation and denied him a fair trial by preventing him from questioning O. as to the reasons why her "body safety talks" with G. were important to her. He argues that,

> whether [O.] experienced sexual abuse would not have been relevant in this case prior to the State's cross-examination, once the State questioned her on cross about the "body safety" conversations she had with G., the State opened the door to evidence of her prior personal experience with sexual assault which motivated the talks.

Mr. Chicas asserts that the proposed line of questioning on redirect became "necessary to rebut any misunderstanding by the jury that [O.] had these talks with G. because she feared that [her husband] would abuse [G.,]" and that limiting his redirect examination "allowed the jury to draw a false inference that [his] own spouse believed that he was dangerous."

The State contends that the trial court properly exercised its discretion in limiting the redirect examination. The State argues that the inquiry into the reasons behind O.'s body safety talks with G. was not relevant to the charge and would have likely confused the jury. According to the State, it was defense counsel, not the prosecution, who introduced the subject of body safety talks and that Mr. Chicas did not suffer any unfair

prejudice by the prosecutor's limited cross-examination of O. In addition, the State asserts that any error was harmless because the prosecutor's cross-examination did not create any misimpression that O.'s body safety talks with G. arose out of a fear that Mr. Chicas might abuse G.

Analysis

"The trial court has wide discretion to control the scope of redirect examination." *Joiner v. State*, 265 Md. App. 546, 570 (cleaned up), *cert. denied*, 492 Md. 647 (2025). "The court's discretion is 'particularly wide where the inquiry is directed toward developing facts made relevant during cross-examination or explaining away discrediting facts.'" *Id.* (cleaned up) (quoting *Daniel v. State*, 132 Md. App. 576, 583 (2000)). "Even inquiry into new matters not within the scope of cross-examination may be permitted, and a party is generally entitled to have his witness explain or amplify testimony that he has given on cross-examination and to explain any apparent inconsistencies." *Daniel*, 132 Md. App. at 583.

"Under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, a criminal defendant has the right to present witnesses and evidence to establish his defense." *Holmes v. State*, 236 Md. App. 636, 668 (2018). That right is subject to two rules of evidence: one, that irrelevant evidence is inadmissible; and two, that, even if relevant, evidence may still be excluded "'if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or

misleading the jury.'" *Id.* (cleaned up) (quoting *Taneja v. State*, 231 Md. App. 1, 11 (2016)).

What is known as the opened door doctrine "'is based on principles of fairness and permits a party to introduce evidence that otherwise might not be admissible in order to respond to certain evidence put forth by opposing counsel.'" *Joiner*, 265 Md. App. at 571 (quoting *Mitchell v. State*, 408 Md. 368, 388 (2009)). It is generally applicable where "the cross-examination of a witness has 'expanded the scope of the witness's testimony' on direct." *Id.* (cleaned up) (quoting *Miller v. State*, 421 Md. 609, 629 (2011)). We review *de novo* whether the door has been opened to rebuttal evidence, but the "'secondary inquiry regarding the proportionality of a party's rebuttal evidence is a separate issue that we review for abuse of discretion.'" *Williams v. State*, 251 Md. App. 523, 560 (2021) (quoting *State v. Robertson*, 463 Md. 342, 367 (2019)).

Against that legal backdrop, we hold that the trial court did not err or abuse its discretion in not allowing defense counsel to question O. as to why her body safety talks with G. were important to her. To begin with, the prosecutor was not responsible for introducing the topic of body safety talks during her cross-examination of O. The record shows that defense counsel had introduced the issue during his cross-examinations of G. and L., long before the prosecutor broached the subject during her cross-examination of O. Therefore, Mr. Chicas cannot rely on the "opening the door" doctrine for the admission of his admittedly irrelevant line of inquiry when his own counsel first introduced the topic of body safety talks. *See Joiner*, 265 Md. App. at 571 ("The opened door doctrine … permits

a party to introduce evidence that otherwise might not be admissible in order to respond to certain evidence put forth *by opposing counsel*." (quotation marks and citations omitted) (emphasis added)).

But even assuming that the prosecutor had opened the door to the body safety talks, the rebuttal evidence offered by defense counsel – that O.'s talks with G. were motivated by O.'s own experiences as a victim of sexual abuse – was not "proportional" in light of the prosecutor's cross-examination. During his direct examination of O., defense counsel asked O. about the shirt G. was wearing at the time of the alleged incident, and O. testified that the shirt was a "see-through" pink top and that, upon seeing the shirt, she "thought about" saying something to G. Given Mr. Chicas's subsequent testimony, in which he maintained that he had merely pointed at G. to indicate that her "body was showing," it appears that defense counsel's questions to O. on direct were intended to lend credence to Mr. Chicas's claims regarding the see-through nature of G.'s shirt. On cross-examination, the prosecutor asked O. whether she noticed the shirt, whether she had body safety talks with G., whether those talks included conversations about clothing, and whether O. would talk to G. if she believed that G.'s clothing "would create a situation that [she was] worried[.]" Thus, it appears that the prosecutor's questions were intended to indicate that, had G.'s shirt been "see-through" or otherwise inappropriate, O. would have likely said something to G., which she did not. In other words, the questions sought to undermine Mr. Chicas's testimony.

It is unlikely that the prosecutor's questioning would have been construed as implying that O.'s body safety talks with G. were motivated by fear that Mr. Chicas would abuse G. In fact, after the topic of body safety talks was first introduced during defense counsel's cross-examination of G., G. testified on redirect that Mr. Chicas was never mentioned. Looking at the record of the trial, we are not persuaded that the jury would draw a "false inference" from O.'s testimony on cross-examination. Therefore, defense counsel's inquiry on redirect regarding O.'s motivations for the body safety talks exceeded the scope of the State's cross-examination and had little, if any, probative value.

But, even if some negative inference could have been drawn from the prosecution's cross-examination, such that O.'s motivations for the body safety talks somehow became relevant in addressing any such inference, we still perceive no abuse of the court's discretion in limiting the redirect. As the court explained, delving into O.'s own sexual abuse experiences as a motivation for her body safety talks with G. would likely have confused the issues, and the court did allow O. to testify that her talks with G. were "of particular importance to [her] for a long time[.]" That permitted defense counsel to address O.'s motivation for the body safety talks without delving into the specifics of that motivation. Under the circumstances, we are persuaded that that was a reasonable exercise of the court's discretion.

II.

Mr. Chicas's next claim of error concerns remarks made by the prosecutor in rebuttal during closing argument, some of which touched on the State's burden of proof.

Prior to those remarks, the court had instructed the jury on the reasonable doubt standard as follows:

> The defendant is not required to prove his innocence. However, the State is not required to prove guilt[] beyond all possible doubt or to a mathematical certainty, nor is the State required to negate every conceivable circumstance of innocence. A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs.

Defense counsel devoted a large portion of closing argument to the State's burden of proving guilt beyond a reasonable doubt. In that argument, defense counsel asked the jury to view reasonable doubt as being at the end of a "probability spectrum," and to find Mr. Chicas guilty only if "all reasonable circumstances of innocence" had been "negated" by the State. Defense counsel also likened reasonable doubt to "a circumstance in your life where you were sure," only to realize later that "you were dead wrong[,]" referring to General Colin Powell's 2003 statement to the United Nations that he had been "certain there [were] weapons of mass destruction" in Iraq but had been "dead wrong."

Defense counsel, in closing, also discussed the testimony concerning the shirt that G. was wearing at the time of the incident. At one point, defense counsel stated: "The things the State can do, I don't know why the shirt wasn't brought in. I've been thinking about that for quite some time."

During closing, defense counsel displayed a PowerPoint presentation to the jury. It included multiple slides with bullet points and short statements reflecting defense counsel's recollection of certain evidence. One slide was headlined: "G.'s story was nowhere near

beyond a reasonable doubt, especially when looking at all of the evidence." Another slide was headlined: "We know [L.] is exaggerating," while a third slide stated: "[Mr. Chicas] only touched her shoulder, but she does not remember." The final slide stated: "It is not a close call at all: [Mr. Chicas] is NOT GUILTY on all counts."

During rebuttal, the prosecutor responded to the PowerPoint slides with the following comments:

> Things that the State didn't do, bring the shirt in. Honestly, I'm disgusted and offended how much time we spent over the last two days dissecting in details of a 10-year-old child's t-shirt and whether or not it was low cut or whether or not it was see-through, whether or not it was appropriate for her to be wearing or whether or not somebody thought that or said that or talked about it amongst themselves. What were you wearing, [G.]? What were you wearing? As if [G.] is responsible for what the defendant does with his hands. As if what she wears is what causes him to do something with his hands. This was never about her shirt or what she was wearing, but it does bring to light how much he was focused on her breasts and that he touched her breasts.
>
> * * *
>
> Those PowerPoint slides that you just looked at, those are in no way an official transcript. Those are all notes from [defense counsel] and his law clerk that they wrote down, and they can write whatever they want for you to read and put it up on a screen. It is not an instruction for you to believe it. It is not going to overpower what you wrote down or what you remember. And it contained inaccuracies because it's what they heard and it's what they want to know portrayed to you. You don't have to take it and overpower what you remember. His closing argument had a lot of emphasis on beyond a reasonable doubt. Yes, it is a high burden, as it should be. We are talking about criminal charges. It should be a high burden. It is also not something that we created for this case. It's not a new burden. It has been a part of the United States justice system for a very long time, and it has not been insurmountable.
>
> Beyond a reasonable doubt is something that people use in every day decisions. So say, for instance, this weekend you run out of cereal and you

> want some Cheerios. You can go to the store. You know where the grocery store is. You know where the cereal aisle is. You know what the Cheerios look like. So you go and you find them. You put them in your cart and you go to check out.
>
> If [defense counsel] were to come to you, approach you in line and say don't buy those cereal, don't buy those Cheerios until you know that it's not Lucky Charms, that would not be a reasonable doubt. You don't have to open it and taste it and ensure that it's Cheerios before you make the decision beyond a reasonable doubt that you're buying a product you paid for. There are hundreds of times throughout people's everyday lives that they make decisions beyond a reasonable doubt. It is not an impossible standard.

After the prosecutor concluded her rebuttal argument, the court addressed the jurors prior to dismissing them for deliberations. At the conclusion of its remarks, the court noted that defense counsel was "itching to come up here[.]" The court held a bench conference, during which the following colloquy ensued:

> [DEFENSE]: Sorry. The prosecutor's first statement, I am disgusted. Maybe I misheard that. But that's what I thought she said.
>
> THE COURT: Okay. Talking about the shirt of a 10-year-old child?
>
> [DEFENSE]: Right. And I think it's inappropriate for her to talk about her own emotions, number one, in that way, number two, and number three, it's directed towards something that I did that is disgusting because it wasn't brought up until I mentioned it in closing, right, meaning that this is somehow something that they need to focus on, right?
>
> THE COURT: Well overruled. I'm not going to say anything.
>
> [DEFENSE]: Okay. Number two, the comment as the defendant, as if the victim is responsible for his – for the defendant's behavior by what she wears, and she brought that up in the context of this argument that I made, it's not in a vacuum. And again, it's goes [sic] my first point that it was an inappropriate comment about my motives and my tactics, which were not – it was not a fair response because nothing I did was inappropriate in that context.

So again, I would ask Your Honor to consider this as a global motion for a mistrial, and in the alternative a corrective instruction on each of these points. If I can move to the third?

THE COURT: Go ahead.

[DEFENSE]: So the next point is they can write whatever they want up there about what they want to believe. If I could just represent that those – we carefully listened to the testimony, my law clerks, and again, it was a comment about something that I may have done that was inappropriate to do something to sort of pull the wool over the eyes of the jury or do something deceptive, and again talk [sic] goes with the first point I made, the second, and the last one –

* * *

THE COURT: She's not allowed to comment what you said?

[DEFENSE]: Right. Absolutely. What they put up there, what they put up there, it's your memory controls, instead of going further and saying that we may have done something and put up there what we want them to believe which is somehow dishonest. That was the implication.

Next, the point about the cereal and the checkout line, it's completely inappropriate arguing about beyond a reasonable doubt. It is not an important affair in one's business or personal affairs, completely inconsistent with the instruction. I would ask the Court to instruct them to disregard the metaphor. All right.

So in all of these points … I'd ask for some global management for this proffer and this individual instruction on each one.

(Bench conference concluded)

THE COURT: Okay. Thank you. You heard a lot of argument from both sides, and you heard analogies and other kinds of references. Follow jury instructions, okay? And as I told you, one of the instructions is what the attorneys say is not evidence. Okay? It's their arguments as to what they believe (sound). Anything else before I release the jury for deliberations?

Defense counsel did not lodge any further objections, and the court excused the jury for deliberations. Shortly thereafter, defense counsel stated to the court that it did not

expressly rule on the mistrial motion, and the court agreed, and denied the motion, stating that the corrective instruction "addressed the concerns[.]" When defense counsel indicated to the court that he had also requested a corrective instruction on each improper comment, the court stated that, under the circumstances, it had decided to give "a global" instruction. Noting that the request came long after the comments were made and would require the court "to go back to the transcript of what was said[,]" the court explained that it was "difficult for a judge, many minutes afterwards, while I was wrapping up my spiel with the jury to go back in time."

Parties' Contentions

Mr. Chicas claims that the prosecutor made several improper comments during her rebuttal argument. First, he contends that the prosecutor improperly argued the law when she equated the reasonable doubt standard to buying cereal and stated that "[t]here are hundreds of times throughout people's everyday lives that they make decisions beyond a reasonable doubt." He argues that the jury had been instructed that "proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs." According to Mr. Chicas, the prosecutor contravened that instruction by insinuating that an "important business or personal matter" was the kind of decision that people make "hundreds of times" throughout their everyday lives. As to the prosecutor's buying cereal analogy, he asserts that it "was, at best,

confusing and, at worst, willfully misleading because buying cereal is not 'an important personal or business matter.'"

In addition, Mr. Chicas contends that the prosecutor improperly maligned the defense in commenting that she was "disgusted and offended" by the focus on G.'s shirt and that the PowerPoint "contained inaccuracies." He maintains that "[t]elling the jury that the defense was disgusting and offensive and suggesting that the defense had lied to the jury about the evidence [was] outside of the bounds afforded during closing argument[.]"

As to the court's response to his arguments, he maintains that the importance of the reasonable doubt standard and the gravity of the prosecutor's mischaracterization of that standard rendered the court's curative instruction insufficient. More particularly, he asserts it was an abuse of the court's discretion to not expressly correct "the prosecutor's incorrect and inappropriate statements that the defense was disgusting and offensive and the suggestion that defense counsel's characterization of the witnesses' testimony was false and intended to mislead the jury." Mr. Chicas also argues that the court abused its discretion by denying his request for a mistrial. He states that a mistrial was required because "the jury's credibility determination was the most critical issue in the case[,]" and the prosecutor's inappropriate comments, which were "peppered throughout her rebuttal closing argument," related to "the burden of proof and denigration of defense counsel[.]"

The State contends that Mr. Chicas's claims are not preserved because he did not object when the comments were made or after the court gave its curative instruction. But even if they were preserved, the court's response was not an abuse of its discretion because

the curative instruction addressed any potential prejudice suffered by Mr. Chicas as a result of the prosecutor's comments and thus, a mistrial was not warranted.

Preservation

The State's preservation arguments are not persuasive. To preserve an objection to an allegedly improper remark, the objection must be made either immediately after the remark is made or immediately after the prosecutor's argument is completed. *Small v. State*, 235 Md. App. 648, 696-97 (2018). Here, defense counsel lodged an objection shortly after the conclusion of the prosecutor's argument, and it appears from the record that defense counsel had been trying to object and was merely waiting for the court to finish remarks to the jury. We are persuaded that defense counsel's objection sufficiently preserved the issue for our review.

As to the curative instruction, the record indicates defense counsel objected to that instruction after the jury had retired to deliberate. To the extent that the State is claiming the objection was untimely, we are not persuaded that an earlier objection would have made any difference. When the objection was lodged, the court explained that it had understood defense counsel was asking for a curative instruction as to each allegedly improper comment when it gave its curative instruction, but it had declined to do so in favor of a more general instruction. In other words, when the court gave the curative instruction, it had already made up its mind regarding defense counsel's request and any further objection would have been futile. For that reason, the lack of a contemporaneous objection did not render Mr. Chicas's claim unpreserved. *Wright v. State*, 247 Md. App. 216, 228 (2020)

("The exception to the general rule for a contemporaneous objection is when it is apparent that any further ruling would be unfavorable, *i.e.*, an objection would be futile.").

Analysis

To be sure, closing arguments are important. "[T]hey give counsel 'an opportunity to creatively mesh the diverse facets of trial, meld the evidence presented with plausible theories, and expose the deficiencies in his or her opponent's argument.'" *Donaldson v. State*, 416 Md. 467, 487 (2010) (quoting *Henry v. State*, 324 Md. 204, 230 (1991)). Therefore, attorneys, including prosecutors, are given "a great deal of leeway in making closing arguments." *Whack v. State,* 433 Md. 728, 742 (2013). As our appellate courts have long held, the parameters within which an attorney is confined during closing argument are vast:

> 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 may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

State v. Gutierrez, 446 Md. 221, 242 (2016) (quotation marks and citation omitted).

"We review a trial court's allowance of allegedly improper remarks by a prosecutor under an abuse of discretion standard." *Pietruszewski v. State*, 245 Md. App. 292, 318 (2020). We extend deference to the trial court in our review because it "is in the best

position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case." *Ingram v. State*, 427 Md. 717, 726 (2012). When assessing whether improper statements made during closing argument constitute reversible error, "'a reviewing court may consider several factors, including the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused.'" *State v. Newton*, 230 Md. App. 241, 255 (2016) (quoting *Spain v. State*, 386 Md. 145, 159 (2005)). Reversal is required "only 'where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.'" *Pickett v. State*, 222 Md. App. 322, 330 (2015) (cleaned up) (quoting *Spain*, 386 Md. at 158).

Moreover, granting a mistrial "'is an extraordinary remedy that should only be resorted to under the most compelling of circumstances.'" *Bynes v. State*, 237 Md. App. 439, 457 (2018) (emphasis omitted) (quoting *Molter v. State*, 201 Md. App. 155, 178 (2011)). A court's refusal to declare a mistrial is reviewed for abuse of discretion. *Choate v. State*, 214 Md. App. 118, 133-34 (2013). In determining whether a mistrial was warranted, the issues are not limited to whether error occurred or whether the defendant was prejudiced. The determining issue is "whether the defendant has suffered such an extreme degree of prejudice that it is no longer possible to secure a fair trial." *Mason v. State*, 258 Md. App. 266, 283 (2023).

In full recognition that credibility was for the jury the "most critical issue in the case[,]" we hold that the trial court did not abuse its discretion in denying Mr. Chicas's

requests for a mistrial and a curative instruction to each disputed comment. As we explain in detail below, we are persuaded that the disputed comments were not as consequential as Mr. Chicas claims, and that the court's single curative instruction was sufficient to mitigate any prejudice that he may have suffered as a result of the comments.

A. The Reasonable Doubt Argument

Because the reasonable doubt standard of proof is an essential component in every criminal proceeding, a trial judge in Maryland is required "to give an instruction to the jury explaining reasonable doubt." *Ruffin v. State*, 394 Md. 355, 363 (2006). "Due to the binding nature of the trial court's jury instructions on reasonable doubt, the substance of the instructions are not subject to debate by counsel before the jury during closing argument." *Ingram*, 427 Md. at 728. "The purpose of requiring a uniform reasonable doubt jury instruction is to 'eliminate confusion and foster fairness for defendants, the state, and jurors alike.'" *Id.* at 729 (quoting *Ruffin*, 394 Md. at 369). "Although there is no analogous rule establishing explicit boundaries for counsel expounding upon the reasonable doubt pattern jury instruction, allowing counsel to expand too far afield upon the trial court's binding jury instructions during closing argument carries with it a similar danger that the jury may misapply the law." *Id.*

Applying those principles to the comments here, we are not persuaded that the prosecutor's remarks regarding reasonable doubt would cause the jury to misapply the law. The court's instruction stated that the reasonable doubt standard of proof required such proof as would convince a juror "of the truth of a fact to the extent that you would be

willing to act upon such belief without reservation in an important matter in your own business or personal affairs." To be sure, the prosecutor's purchasing cereal analogy was not a good illustration of reasonable doubt because purchasing cereal is not likely "an important matter" in a juror's own business or personal affairs. Likewise, the prosecutor's comment that there are "hundreds of times throughout people's everyday lives that they make decisions beyond a reasonable doubt" was hardly consistent with the reasonable doubt instruction, as people are not ordinarily faced with matters as important as purchasing a vehicle or hiring or releasing an employee, much less determining whether someone is guilty of a crime, "hundreds of times" throughout their daily lives. What we do "hundreds of times" are most often done as a matter of routine without much thought.

Those remarks, however, did not expressly dispute the substance of the reasonable doubt instruction given to the jury by the court. What the prosecutor was presumably trying to point out was that proof beyond a reasonable doubt was, as it should be, a "high burden," but it was not an "insurmountable" or "impossible standard." And those remarks were in response to defense counsel's argument that reasonable doubt was at the end of a "probability spectrum" and akin to General Powell's statement that he had been "certain there [were] weapons of mass destruction" in Iraq, but was "dead wrong."

Viewed in the context of the overall trial, we are not persuaded that the prosecutor's comments were so "far afield" from the given reasonable doubt instruction to create a

danger of the jury misapplying the law. In addition, we believe the court's curative instruction was sufficient to mitigate any possible resulting prejudice.[2]

As soon after defense counsel objected to the prosecutor's comments and requested a curative instruction, the court instructed the jurors that, although they had "heard analogies and other kinds of references[,]" they should "[f]ollow jury instructions." By doing so, the court instructed the jury to discount the reasonable doubt analogies they had just heard and to rely on the instructions provided to them by the court. The timely curative instruction was sufficient to mitigate any confusion the prosecutor's remark may have created. It made clear that the court's reasonable doubt instruction set forth the appropriate law for the jury to follow in reaching its verdict. *See Jones v. State*, 217 Md. App. 676, 697 (2014) ("'[T]o be sufficiently curative, the judge must instruct contemporaneously and specifically to address the issue such that the jury understands that the remarks are improper and are not evidence to be considered in reaching a verdict.'" (emphasis omitted) (quoting *Lee v. State*, 405 Md. 148, 177-78 (2008))); *Freeman v. State*, 259 Md. App. 212, 251-52 (2023) ("'[W]hen curative instructions are given, it is presumed that the jury can and will follow them.'" (quoting *Brooks v. State*, 68 Md. App. 604, 613 (1986))).

B. Other Arguments

As to the prosecutor's other remarks, we find no merit to the claim that they were meant to denigrate defense counsel. Indeed, "a prosecutor may not impugn the ethics or

[2] Mr. Chicas's reliance on *Carrero-Vasquez v. State*, 210 Md. App. 504 (2013), is misplaced because no curative instruction was given in that case.

professionalism of defense counsel in closing argument." *Smith v. State*, 225 Md. App. 516, 529 (2015). The prosecutor's remarks that she was "disgusted and offended" by the focus on G.'s shirt was clearly related to defense counsel's closing argument. At the heart of the defense was the shirt G. was wearing that Mr. Chicas claimed exposed her breasts and that he touched her on the shoulder and pointed to her breasts to let her know they were exposed. The State could have discounted or supported that claim by providing the shirt at the trial. By referring to the State's failure to produce G.'s shirt several times during closing argument, defense counsel was implying that the shirt would support Mr. Chicas, which is why the State did not produce it. Expressly referencing that implication, the prosecutor stated that she was "disgusted and offended" that G.'s shirt was somehow relevant to the jury's determination of guilt for touching G.'s breasts. The prosecutor reinforced that position by insisting that the case "was never about [G.'s] shirt or what she was wearing" but about whether Mr. Chicas had "touched her breasts." While perhaps an overreaction, the prosecutor's remarks, when considered in context, did not directly impugn defense counsel's ethics or professionalism. *See id.* at 528-29 (holding that the prosecutor's comments "were clearly directed to defense counsel's argument and did not impute impropriety or unprofessional conduct to defense counsel").

Nor are we persuaded that the prosecutor impugned defense counsel's ethics or professionalism by arguing that the PowerPoint presentation exhibited by defense counsel during closing argument "contained inaccuracies." Prior to that comment, the prosecutor had accurately explained that defense counsel's PowerPoint was not "an official

transcript," but "notes from [defense counsel.]" The prosecutor implored the jury not to let the PowerPoint "overpower what you wrote down or what you remember." Following that, the prosecutor stated that the PowerPoint "contained inaccuracies because it's what [defense counsel and the law clerk] heard and it's what they want … portrayed to you." The prosecutor was simply arguing that the defense's version of what the evidence established in his closing and in the PowerPoint, such as "We know [L.] is exaggerating," Mr. Chicas "only touched her shoulder," and "G.'s story was nowhere near beyond a reasonable doubt," were conclusions the defense wanted the jury to reach, and that the jury should rely on their recollection of the evidence when determining guilt. We see nothing improper in that argument.

But even if the prosecutor's comments could be considered improper, any potential prejudice was sufficiently cured by the court's curative instruction. The court, in its general instructions, clearly instructed the jurors that "arguments of the lawyers are not evidence" and are to be considered accordingly. In its curative instruction, the court emphasized that, although they had "heard a lot of argument" and "other kinds of references[,]" they must "follow" the jury instructions they received. The court then again informed the jurors that "what the attorneys say is not evidence[,]" and that closing arguments are merely "what they believe[.]" As was the case with respect to the prosecutor's reasonable doubt argument, the court's instruction was timely and specific, and, in our view, curative of any potential prejudice arising out of the prosecutor's remarks.

C. The Request for a Mistrial and the Global Curative Instruction

For much of the same reasoning related to the above issues, we hold that the court's comprehensive curative instruction and denial of a mistrial were not an abuse of discretion. Certainly, the evidence against Mr. Chicas was not overwhelming, but the disputed remarks, in our view, were unlikely to cause prejudice, and, to the extent they did, the curative instruction adequately mitigated that prejudice. Therefore, we are not persuaded that Mr. Chicas "suffered such an extreme degree of prejudice that it [was] no longer possible to secure a fair trial." *Mason*, 258 Md. App. at 283.

Nor are we persuaded that the court abused its discretion by giving a single curative instruction rather than a separate instruction related to each of the disputed remarks. As discussed above, the court's more global curative instruction sufficiently addressed all of the prosecutor's remarks. Furthermore, as the court later explained when defense counsel objected to the court's curative instruction, the timing of that request made giving individualized instructions particularly difficult. The objection came after the rebuttal argument, which would have required the court to review the transcript or rely on its own memory to determine exactly what the prosecutor said. That would have been time consuming and delayed the beginning of the jury's deliberations. In addition, expressly revisiting the prosecutor's remarks specifically at that point in the proceeding risked placing undue emphasis on each of the remarks and offsetting the mitigating effects of the curative instruction itself.

III.

Mr. Chicas's third claim of error concerns the trial court's response to a question from the jury during deliberations regarding the elements of the charge of child sexual abuse. At trial, the State argued that Mr. Chicas was guilty of child sexual abuse based on G.'s testimony that Mr. Chicas had "squished" one of G.'s breasts with his hand. Mr. Chicas claimed that he was not guilty of that crime because, according to his testimony, he only touched G.'s shoulder. Later, the court instructed the jury on child sexual abuse as follows:

> The defendant is charged with a crime of child sexual abuse. … Child sexual abuse is sexual molestation or exploitation of a child under 18 years of age caused by a family member or member of a child [sic].
>
> In order to convict the defendant of a child abuse, the State must prove that defendant sexually abused [G.] by acts, or it could be singular, act, including sexual molestation and/or sexual offense, the sexual offense is second instruction that I'm going to read you. That at the time of the abuse, [G.] was under 18 years of age. Three, that at the time of the abuse, the defendant was a family member of [G.] A family member means a relative of the child by blood, adoption, or marriage.
>
> Sexual abuse is not limited to any particular criminal act or acts and may include a wide range of behavior. Sexual abuse does not require the defendant commit the act for the purpose of sexual arousal or gratification. Sexual abuse does not require the defendant to physically touch the victim or cause physical injury.
>
> In order to convict the defendant, you must all agree that the defendant sexually abused [G.], but you do not have to all agree on which sexual act or acts constitute the abuse.

During its deliberations, the jury submitted a note to the court asking: "What is considered under 'a wide range of behaviors?'" As to what the court's response should be,

defense counsel stated the jury should be told that "the wide range of behavior still must fall under the definition of molestation and/or third-degree sex offense[,]" and that "the abuse or molestation must be for the defendant's benefit and it must be sexual in nature." The court denied defense counsel's request and instructed the jury as follows:

> As to [your] question, I cannot instruct you or define for you the universe of acts that constitute a wide range of behaviors, and I'm putting up air quotes because that's what your question asked. I can instruct you that the act or acts must relate to or involve sexual abuse, and each of the elements in the instruction must be found beyond a reasonable doubt.

Parties' Contentions

Mr. Chicas contends that the trial court erred by failing to respond appropriately to the jury's note. First, he claims that the court should have instructed the jury that, to convict him of sexual abuse of a minor, the "act" must have been sexual in nature and for the defendant's benefit. He argues that, when the jury asked what was considered "a wide range of behaviors," the court's response "needed to be specific to the facts of this case in which the sole basis of the sexual-abuse-of-a-minor claim was molestation via physical touch for the defendant's benefit." Second, he asserts that the court also should have instructed the jury that the "act" was limited to molestation. That such an instruction was necessary, he argues, was because "only a theory of molestation was being pursued by the State" and thus "only molestation could constitute sexual abuse." By not providing that clarification to the jury, he claims "the court left the possibility open that the jury could have found [him] guilty of child sexual abuse even if they believed his testimony."

The State contends that the court responded appropriately to the jury's question, and that the instructions requested by Mr. Chicas were not correct statements of the law.

Analysis

Maryland Rule 4-325 states, in relevant part, that a court "shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate." Md. Rule 4-325(a). Ordinarily, "'trial courts have a duty to answer, as directly as possible, the questions posed by jurors.'" *Jones v. State*, 240 Md. App. 26, 40 (2019) (quoting *Appraicio v. State*, 431 Md. 42, 53 (2013)). In fact, "a trial court must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the query when the question involves an issue central to the case." *State v. Baby*, 404 Md. 220, 263 (2008). That said, the "supplemental instructions must be an accurate statement of the law." *Jones*, 240 Md. App. at 40. The decision to supplement instructions, "including an instruction given in response to a jury question, is within the discretion of the trial court and will not be disturbed except on a clear showing of an abuse of discretion." *Lindsey v. State*, 235 Md. App. 299, 314 (2018).

We hold that the court did not abuse its discretion in refusing to give Mr. Chicas's requested supplemental instructions. In its general instructions to the jury regarding child sexual abuse, the court had instructed the jury that "sexual abuse is sexual molestation or exploitation of a child under 18 years of age caused by a family member[.]" The court had also instructed the jury that sexual abuse "is not limited to any particular criminal act or acts and may include a wide range of behavior"; that it "does not require the defendant

commit the act for the purpose of sexual arousal or gratification"; and that it "does not require the defendant to physically touch the victim or cause physical injury." That instruction was consistent with the pattern jury instruction MPJI-Cr 4:07.2 for child sexual abuse. Mr. Chicas did not object to that instruction or request a different instruction, and he does not claim, in this appeal, that the court's initial instruction was erroneous. In short, no objection was raised when that instruction was not limited to molestation when given.

Clearly, Mr. Chicas's first requested instruction – that the "act" must have been sexual in nature and for the defendant's benefit – was not a correct statement of law, as the jury had previously been instructed that sexual abuse did not require that the defendant commit the act for the purpose of sexual arousal or gratification. In addition, his other requested instruction – that the "act" must be limited to molestation – was also an incorrect statement of law, as the jury had previously been instructed that sexual abuse includes "sexual molestation *or* exploitation of a child[.]" (Emphasis added.) Neither of the requested responses to the jury's question was a correct statement of the law and they would have contradicted the earlier instruction. The court did not abuse its discretion in refusing those requests.

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