Circuit Court for Baltimore City
Case No. 122327021

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2357

September Term, 2023

ROBERT EVANS

v.

STATE OF MARYLAND

Leahy,
Zic,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 4, 2026

* This is an unreported opinion. The 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).

On July 3, 2020, the mother of V.,[1] the victim in this case, told V. to leave her house following an argument. The next evening, V. returned to her mother, bruised and distraught, and reported that she had been held against her will, drugged, and sexually assaulted.

Appellant Robert Evans was subsequently indicted with second-degree rape, third-degree sexual offense, fourth-degree sexual offense, and second-degree assault in the Circuit Court for Baltimore City. After a trial, a jury found Evans guilty of second-degree rape and second-degree assault. He was sentenced to 20 years' imprisonment for the second-degree rape conviction.[2]

Evans timely appealed and presents four questions for our review, which we rephrase as follows:[3]

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[1] We refer to the victim as V., an initial unrelated to her name, to protect her privacy.

[2] Evans's second-degree assault conviction was merged into his second-degree rape conviction for sentencing purposes.

[3] Evans presents the following questions in his opening brief:

I. Did the trial judge improperly limit the cross-examination of the victim?

II. Did the trial judge err by not allowing the defense to introduce evidence of, or make any arguments about, an additional person who reportedly sexually assaulted the victim?

III. Did the trial judge err in ruling it was permissible for the prosecutor to argue in closing that "rapes don't get reported" because "people like [the victim] who get raped know that if they report the rape, they're liable to end up in court being cross-examined about every piece of baggage in their lives"?

IV. Did the trial judge abandon his neutral role, create a pervasive atmosphere of partiality that likely influenced the jury, and deprive Mr. Evans of a fair trial?

I. Did the trial court improperly limit Evans's cross-examination of V.?

II. Did the trial court abuse its discretion by not allowing Evans to introduce evidence of an additional assailant?

III. Did the trial court abuse its discretion by not limiting the State's rebuttal closing argument?

IV. Did the trial court abandon its neutral role?

We are not persuaded by Evans's contentions that the trial court erred or abused its discretion or abandoned its neutral role. *First*, we hold that the trial court did not violate the Confrontation Clause by limiting Evans's cross-examination of V. because the court granted Evans a threshold level of inquiry that allowed the jury to draw inferences about the reliability of V.'s testimony. We also discern no abuse of discretion in the court's ruling because Evans did not provide a basis for the question he sought to ask V. on cross examination. Moreover, defense counsel failed to follow the requirement, under Maryland's Rape Shield Statute, to request a closed hearing during which the trial court could determine whether the evidence that the defense sought to elicit during cross examination of the victim was admissible.

Second, we conclude that the trial court properly applied the Rape Shield Statute to restrict cross-examination of V. about a prior sexual assault, and to deny defense counsel's request to introduce an unredacted version of the SAFE report into evidence. *Third*, we hold the trial court did not abuse its discretion by allowing the State to respond to defense counsel's closing remarks under the opened door doctrine. *Finally*, we hold that Evans failed to preserve his claim that the trial court abandoned its neutral role. Nevertheless,

after reviewing Evans's unsubstantiated claims of judicial bias, we reject Evans's contention that the proceedings were infused with bias amounting to structural error or meriting review under the plain error doctrine.

We shall affirm the judgments of the Circuit Court for Baltimore City.

BACKGROUND[4]

Evans was tried before a jury over three days from October 17 to October 19 of 2023. During its case-in-chief, the State called five witnesses: V.; V.'s mother; Sergeant ("Sgt.") David Testa of the Baltimore Police Department; Shawn Morgan, a registered nurse; and Christy Silbaugh, a forensic scientist. Evans testified on his own behalf.

The State's first witness, V., testified that she has struggled with alcoholism and opiate addiction "[o]n and off since 2006." She also admitted to having a relapse in November 2020 and to seeking treatment in December 2020. According to V., as of July 2020, she was taking methadone daily, which restrained her opiate addiction to controllable levels, and she "had been sober" since February 2020.

On July 3, 2020, V. and her mother had an argument because V.'s mother discovered money was missing when she went to retrieve her wallet. She questioned V. about the money, and then told V. to leave her house. When V. departed, she walked a few blocks until she saw children selling snow cones and "Trish," a woman V. knew "from when [she]

[4] The following account is derived from the evidence adduced at Evans's jury trial, viewed in the light most favorable to the State. *Molina v. State*, 244 Md. App. 67, 87 (2019). Since Evans does not challenge the sufficiency of the evidence to sustain his conviction, we only provide a summary of the record necessary to address the dispositive issues in this appeal. *Lovelace v. State*, 214 Md. App. 512, 518, n.1 (2013).

was using[.]" After getting a snow cone, V.'s "memory start[ed] to fade" and sometime later she woke up in a house. V. had been to the house, but she could not remember its address. V. testified during her direct examination that she remained there for two days.

When she woke up in the house she heard "Trish and a male voice[,]" before she fell on the floor and hit her head against the wall. V. then recalled going upstairs into a room where she saw Evans. V. did not know Evans and could not recall if he ever told her his name. Nevertheless, she observed that he was "missing part of his ear" and appeared to be a Caucasian male in his late 40s. She also realized that she was wearing someone else's shorts. Evans then put her on a bed and proceeded to have sex with her.[5] However, she repeatedly told him, "no, please stop." Evans "pushed both of [her] arms down" and "pushed his body on [her]," causing "two contusions . . . and bruises" on her legs. Afterward, V. was put into a shower. At some point, she found a phone, called her mother, and told her that she could not identify her whereabouts. Trish and her boyfriend then brought V. downstairs and injected drugs into her legs, at which point V.'s memory again faded.

On the second day, July 4, V. asked a man smoking crack to take her home in exchange for "whatever [he] want[s][.]" When V. arrived at her mother's house, she told her mother "just give [the man] ten dollars and he'll leave[.]" Her mother gave the man the money, went inside, and V. told her mother what happened. V.'s mother called the

[5] Although V. could not recall who removed her clothes, she denied taking them off herself.

police and V. was taken to Mercy Hospital. After V. was sent home, she "still didn't feel well[,]" so she went to Johns Hopkins, where she stayed for 10 days.

During cross-examination, defense counsel asked V. about her statements to the police. Defense counsel asked whether V. told detectives "there was a black man that was between [her] legs[,]" and the State objected. During the ensuing bench conference, defense counsel proffered that V. had told the police about a separate sexual encounter with another individual at a different house. After hearing argument, the court ruled that defense counsel could only ask "whether [V.] recollects having told the police that she was in two houses over the course of two days," warning counsel not to "go down the road of any sexual activity with anyone else." The court did not instruct the jury to disregard the statement.

V. acknowledged that she had told the police that she had been to two different houses. She denied going to those residences willingly, and confirmed that she told police that she was prevented from leaving either house. V. also acknowledged having "fresh needle tracks in both of [her] arms[,]" as well as "two needle track marks on both sides of [her] vagina[.]" Defense counsel then asked the court whether he could ask V. if she "was solicited for sex for $80[,]" but following a bench conference, asked instead, whether the "sex was actually done with [her] consent[,]" to which V. responded, "[n]o, sir."

V.'s mother told police that V. left her house around 1:30 p.m. on Friday afternoon. Then, "about a day and a half later," V.'s mother received a call from a caller ID that read, "Robert Evans." When she picked up the phone, V. was on the line. According to V.'s

mother, she "panicked" because "it was . . . a very brief phone call" and, as V. "started to speak . . . the line went dead[.]" When V. returned to her mother's house with a man, she told her mother to pay the man ten dollars, which she did. V. came into the house and told her that "she was held against her will, she was drugged, she was sexually assaulted, and they would not let her go." V. said she was able to escape by telling the man, "if you let me go[,] my mother has money." V.'s mother observed that V. appeared "very distraught and kind of out of sorts[,]" and that she had "some bruises" on her face and upper legs. She told V. to "go to the hospital and get checked out."

On cross-examination, V.'s mother acknowledged that V. had been "off and on" drugs for ten years. She also said that V. "sometimes would fabricate but never to this extent, it was always something very minor like oh, I lost my phone or ooh, I lost my change purse, but never this detailed." However, during the cross-examination of Sgt. Testa, the defense introduced his July 5, 2020 interview of V.'s mother that was recorded on his body-worn camera. In the body-camera footage that was played for the jury, V.'s mother said that every time V. relapses "[V.] comes up with some type of incident that happened . . . like a coverup."

During his testimony at trial, Sgt. Testa related that he interviewed V. on July 6, 2020.[6] She described the male who "was on top of her" as a "white male, approximately 50 years old, with . . . part of the ear missing[.]" V. told Sgt. Testa she was in two

[6] Sgt. Testa initially tried to interview V. when she first went to the hospital but was unable to conduct the interview because of V.'s "intoxication level." He returned to conduct the interview on July 6, 2020.

residences on the third and fourth of July "after the snowball encounter[,]" and that it was in the second house where she remembers being sexually assaulted by this male.

Weeks later, on July 28, 2020, Sgt. Testa interviewed Evans. Sgt. Testa testified that V.'s mother had showed him the phone with the phone number and caller ID from which "she received a phone call from her daughter[.]" He "entered the phone number in several police databases and it came up with" Robert Evans. During the interview, Evans told Sgt. Testa that V. was at his residence during the "4th of July weekend[.]" Evans said he "showed [V.] where the bathroom was" and "shook her hand." Evans claimed he saw "individuals inject [V.] with what looked like a syringe," and told Sgt. Testa that "she [ ] appeared intoxicated." Sgt. Testa asked Evans numerous times whether he had sexual relations with V., and "if there was any reason his DNA would come back" to which Evans responded "no."

The State showed Sgt. Testa a photograph of V., and he confirmed that this was the same photograph that he showed Evans during his interview. Evans identified the person in the photograph with a different name than V.'s name and told Sgt. Testa that he had two or three interactions with the individual. Defense counsel later asked Sgt. Testa whether it is "not uncommon for those" who suffer from the disease of addiction "to be so desperate that they would become prostitutes[,]" but the State objected, the question was stricken, and the jury was instructed to disregard the question.

Sgt. Testa told the jury that he took a DNA swab of Evans, recovered the SAFE kit from Mercy Hospital, and requested a comparison DNA test. The DNA comparison was

conducted by Silbaugh, a forensic scientist, who testified that there was a match to Evans's DNA on V.'s "external genitalia swabs." Silbaugh stated that it would be unlikely for Evans's DNA to appear in the external genitalia swabs only through a handshake, but that Evans's DNA could appear if "there was sexual contact with that area[.]" However, Silbaugh clarified that if someone touched a phone and skin cells were left on the phone they could "be transferred on to the next person who touched" the phone. She explained that "environmental factor[s]" such as how easily someone sheds skin cells or whether they have washed their hands, "impact the ability to extract [ ] DNA that would have been left behind[.]"

Some of the items Silbaugh analyzed were from V.'s SAFE exam, which was conducted by Morgan, a registered nurse, on July 5, 2020. Morgan testified to having conducted a forensic interview and a head-to-toe examination of V. She memorialized her exam in a report, a partially redacted copy of which was introduced into evidence. According to Morgan, V. told her that "[s]omeone gave me an [I]cee, it tasted fine to me, then the next thing I remember, I was waking up on the kitchen floor with my face on the ground . . . I felt penetration later on and the white gentleman." Morgan found bruises and at least ten fresh track marks on V.'s arms and legs, abrasions on her hands, and her tox screen came back positive for cocaine, methadone, opiates, and benzodiazepine. Morgan stated that "the injuries [she] observed on [V.]" were "consistent" with the narrative V. provided in the forensic interview. During cross-examination, Morgan said V. also told her "[t]here was a Black gentleman[.]" The State objected to this testimony because that

portion of the report was redacted. The court did not admit an unredacted report into evidence, but did allow Evans's counsel to ask Morgan whether V. reported having been "sexually assaulted by more than one person" to which Morgan responded that "there was two different people."

Evans's version of the events was, as expected, different from V's. He testified that on July 4, 2020, he came downstairs to "feed the dog" when he heard the door open and saw V. According to Evans, V. was "smiling" and "joking and laughing about something." After returning upstairs, Evans began to work on his computer when V. "tapped on the door" and said "she needed 40 dollars" and that "Trish told her that sometimes I date for money, meaning that sometimes I pay for sex." Evans stated that V. "said she really needed 40 because that's what the person was selling crack, in 40-dollar bags." Evans said V. took a "hit of crack" before she took her shorts off, gave him oral, and "jumped on top" of him, startling him. After Evans paid her, V. went back downstairs.

Two hours later, V. "tapped on the door again" and said, "I really would like to do this again, you think you could do it – would you be willing to do it again for another 40, because we're trying to go back down and get some more coke." They then "repeated the same exact thing." Evans said that at no time during sexual intercourse did V. "push or kick" him off or instruct him to stop. He claimed that "she was happy" about the 40 dollars and "happy to have sex[.]" Evans testified that later V. sat "on the toilet in plain view" and "inject[ed] herself between the legs[.]" After injecting herself, V. asked, "can I use your phone" and Evans "picked it up off the desk and handed it to her."

During closing argument, defense counsel proposed two theories of the case:

> So that's in a nutshell is the State's story. So either you believe that and believe beyond a reasonable doubt or the second alternative. [V.] had a relapse two days before, part of the relapse she took money out of her mother's wallet, the mother got upset, told her get out, you can't come back until you go to treatment, in fact I'm going to have your stuff packed for you. That's the second alternative.
>
> She goes, Trish or whatever, she goes to the house on 329 Ann Street, uses drugs, go to my client, [asks] him for sex so that she can have money to get drugs, twice, not only that, she used additional drugs that she can't afford, now she owes someone money. And then, and again, she called her, you know, her mother said she was fine, so she called her to make sure she was home. Then she goes because she owes money, ten dollars, and then that sounds – what sounds more feasible?

The jury found Evans guilty of second-degree rape and second-degree assault and he was ultimately sentenced to 20 years' incarceration. He filed a motion for a new trial, but the motion was denied. Evans then timely noted this appeal.

We supplement these facts in our discussion of the issues.

DISCUSSION

I. Cross-examination of V.

Evans argues that the trial court violated his constitutional right to confrontation by denying defense counsel's request to cross-examine V. about: "(1) whether she had sexual intercourse with [] Evans in exchange for money, which was the theory of defense; and (2) her report that an additional man sexually assaulted her in a different house after she was drugged, which was inconsistent with her trial testimony and showed another potential source for her bruises."

Additional Facts

Shortly into V.'s cross-examination, V. confirmed that her testimony on direct

examination was that after she ate a snow cone, she woke up and went upstairs where Evans put her on the bed and started to have sex with her. Defense counsel countered:

> [DEFENSE COUNSEL]: But that's not what you told detectives when you first interviewed. **Isn't it true that you told detectives that initially there was a black man that was between your legs**, do you recall stating that, in the first house? You can take your time.
>
> [V.]: **Yes, however, I was instructed not to mention him** –
>
> [THE STATE]: Objection. Can we approach, Judge?
>
> THE COURT: Please approach. Just hold your thought, please.
>
> (Whereupon, counsel and the defendant approached the bench, and the following ensued:)
>
> THE COURT: There's an objection. What's the basis of the objection, as to ["]I was instructed.["]
>
> [THE STATE]: Yeah, she [is] going to talk about [the additional assailant] who –
>
> THE COURT: Who is number two on the list of question number seven during voir dire.
>
> [THE STATE]: Yeah, and he is – she did say that he had some sexual contact with her as well but he hasn't been charged with it and –
>
> THE COURT: Slow down, please.
>
> [THE STATE]: Okay.
>
> THE COURT: Are you now alluding to something that could have occurred in the house, in the first house that she told the police she was in . . . before she was moved to the second house?
>
> [DEFENSE COUNSEL]: Yes, Your Honor, yes, yes.
>
> * * *
>
> [THE STATE]: This is a separate incident, a wholly separate incident and he wasn't

charged but Mr. Evans was, so –

THE COURT: **And is there [ ] some evidence that would make that relevant?**

[DEFENSE COUNSEL]: **It is relevant (inaudible at 3:52:25 p.m.) she went to two houses and then she told police officer (inaudible at 3:52:32 p.m.).**

THE COURT: So you would like to ask her, this witness, to confirm or dispel first if she has a recollection of her conversation with the police and statements she made to the police about those couple of days; right?

[DEFENSE COUNSEL]: Correct.

THE COURT: And would then like to ask her if she recollects having told police about an event which occurred, presumably against her will –

[DEFENSE COUNSEL]: Yes.

THE COURT: -- prior to the event she's talked about today; correct?

[DEFENSE COUNSEL]: Yes.

THE COURT: And ask her if she remembers saying that; correct?

[DEFENSE COUNSEL]: Correct.

THE COURT: And then if she doesn't, would you then like to show her the statement?

[DEFENSE COUNSEL]: Yeah, I think she was going to, she was mumbling, I think she was going to give an explanation (inaudible at 3:53:19 p.m.) And the reason that I'm not (inaudible at 3:53:24 p.m.).

THE COURT: The line of the questioning goes to the witnesses' ability to recollect; right? And with regard to what was recorded to police and to determine the accuracy of the witnesses' memory which is a factor to be considered by jurors as to believability of witness testimony, one of many factors; correct?

[THE STATE]: I see where you're going with this, but this – was my thought, it's not relevant to the case against Mr. Evans. We're talking about someone who's not been charged with anything.

THE COURT: She did not accuse another man, white, black, yellow, brown or whatever, with having sexually assaulted her; correct?

[DEFENSE COUNSEL]: She did.

THE COURT: She did?

[DEFENSE COUNSEL]: Yes, she said that there was one in the house, a black man, and I believe words were licking her between her legs and that was the first house**. In this, her testimony, she didn't say anything about a first house**, she was clear about the snow cones and everything and then to the home where this happened and the reason I asked about (inaudible at 3:54:42 p.m.), a State's witness is saying that this happened over a period of two days, (inaudible at 3:54:46 p.m.).

THE COURT: So you essentially want to ask her, isn't it so that you alleged to the police when you reported this event to the police that you were also essentially assaulted by a different person the day before?

[DEFENSE COUNSEL]: In another house.

THE COURT: In another house who was not this defendant?

[DEFENSE COUNSEL]: That's correct because I think her testimony that she said today is she only mentioned one house, not two houses.

THE COURT: So you know what? **The Court is not going to permit you to ask her about whether she recollects being sexually assaulted by anyone other than this defendant** and frankly, she hasn't even said if she recollects that this defendant, but for the description matched; right? Could be the person who committed the assault in the second house, or what you understand is the second house.

THE DEFENDANT: Can I say something?

THE COURT: No, you may not. **What you may be permitted to ask this witness is whether she recollects having told the police that she was in two houses over the course of two days**, neither one of which was her house.

[DEFENSE COUNSEL]: Thank you.

[THE STATE]: Thank you.

THE COURT: **Don't go down the road of any sexual activity with anyone else.**

(Whereupon, counsel and the defendant returned to the trial tables, and the following ensued:)

THE COURT: Thank you.

[DEFENSE COUNSEL]: [V.], do you recall or recollect you telling the officers that you were actually in two homes on July 3rd and then at some point you were moved to another house on July 4th, and you don't remember how you got there, do you recall saying that to the officers?

[V.]: Yes, sir.

[DEFENSE COUNSEL]: And [V.], isn't it true, however, that you weren't taken to either one of those homes against your will, you went there willingly to use drugs; is that correct?

[V.]: No, sir.

(Emphasis added). After further cross-examination, defense counsel asked the court for a bench conference during which the following ensued:

[DEFENSE COUNSEL]: So my next question (inaudible at 4:04:51 p.m.) . . .

That she was solicited for sex for $80 and this is before (inaudible at 4:05:13 p.m.).

THE COURT: Did she report that to somebody that she had been doing that?

[DEFENSE COUNSEL]: No, Your Honor, but that's –

THE COURT: **What's the basis of that question?**

[DEFENSE COUNSEL]: The basis of that question, Your Honor, going to my (inaudible at 4:05:32 p.m.).

THE COURT: **What is the independent evidence of a business transaction in exchange for sex, as undertaken by this witness?**

[DEFENSE COUNSEL]: Your Honor, that – **I don't want to show my hand**, but I can – I will say that may be the defense, but again, at least I could ask her if

(inaudible at 4:06:05 p.m.).

THE COURT: So you would like to ask this witness after what this jury has just heard and say isn't it so that you were in that home for a period of time engaging in exchange of sexual favors for money, you want to ask her that?

[DEFENSE COUNSEL]: Yes, and I can even be more direct, I can just (inaudible at 4:06:38 p.m.) Again, if she denies it, she denies (inaudible at 4:06:54 p.m.).

* * *

[THE STATE]: . . . I think that's under rape shield, I don't think that the question that the initial ask, was asking was [ ] she [ ] soliciting other people, that's certainly not rape shield.

THE COURT: The rape shield goes to prior sexual conduct with others; correct? And [defense counsel] –

[THE STATE]: Oh, it goes to evidence relating to the victim's reputation, their chastity or abstinence.

THE COURT: Well, but reputation would be under other conduct with others. The question here, is in the here and the now as to this event, this event. [Defense counsel] merely wants to ask this witness, isn't it so that with regard to the events you've talked about here today, that you engaged in those relations willingly.

* * *

[THE STATE]: . . . But I think that the inflammatory and prejudicial nature of this outweighs any probative value of it. The rape shield statute specifically says that that's this sort of b[alancing] that has to be done in considering whether this evidence comes in, and as the Judge knows, in a trial like this, as soon as we start talking about exchanging of money for sex . . . that's going to completely damage the victim's reputation [f]or chastity –

THE COURT: Or it could have hugely unintended consequence on this defendant, should this jury hold that type of offensive question against defense counsel.

[THE STATE]: Yeah, well –

THE COURT: Do you want to reconsider that?

> [DEFENSE COUNSEL]: Not according to my client.
>
> THE COURT: **What's the independent evidence that there was a money transaction?** Just lay it on the table, if you would, please, so I understand it a little better, [defense counsel].
>
> [DEFENSE COUNSEL]: Your Honor, that's (inaudible at 4:10:30 p.m.).
>
> THE COURT: [Defense counsel], **you may certainly ask this witness if it's her sworn testimony that she stated on cross-examination, that the act complained of was done without her consent. You cannot ask her whether it was an act in the furtherance of any act of exchange of money for a sexual act or prostitution.** There is no way the Court is going to permit you to ask that question. **If upon the conclusion of the State's case in chief, the defense would like to pursue that consensual angle, the defense would have an opportunity to do so**, subject to the witness being recalled. Thank you. Step back. The objection is sustained.

(Emphasis added). After the State rested its case, the defense did not recall V. to the stand.

Parties' Contentions

Evans assigns error to the trial court's rulings sustaining the State's objections to defense counsel's requests to ask V. whether she had sexual intercourse with Evans in exchange for money, and whether an additional man sexually assaulted her in a different house after she was drugged. Evans claims these rulings violated his right to confront his accuser under the Confrontation Clause of the United States Constitution and insists trial courts "have no discretion to limit cross-examination until after the defendant has been afforded the 'constitutionally required threshold level of inquiry.'" (quoting *Martinez v. State*, 416 Md. 418, 428 (2010) (emphasis in original)).

Evans also urges that we give no deference to the trial court's interpretation of Maryland's Rape Shield Statute, codified at Maryland Code, Criminal Law Article (2002, 2021 Repl. Vol.) ("CR"), § 3-319. He argues that CR § 3-319 does not prohibit a defendant

from adducing evidence about the same sexual conduct for which he is standing trial. Evans points to *Johnson v. State*, in which, the Supreme Court held that the trial court abused its discretion when it determined evidence of the victim exchanging sex for drugs one week before the rape was inadmissible. 332 Md. 456, 560, 474-75 (1993). According to Evans, if evidence that the victim in *Johnson* exchanged sex for money with another person a week before the defendant allegedly raped her is admissible, then evidence that V. exchanged sex for money with Evans on the occasion for which he is on trial is certainly admissible. Furthermore, Evans posits that evidence of an additional assailant was admissible under CR § 3-319(b)(4)(ii) because it "showed another potential source" for V.'s injuries. He claims that he was prejudiced because the questions that defense counsel was unable to ask, "went to the core of this entire case—the existence of consent, the motive for [V.] to lie about consent, an alternative explanation for the bruises attributed to Mr. Evans, and whether [V.'s] testimony on direct was truthful and complete."

In response, the State highlights that "[t]he right to cross-examine is not without limits" and that "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness's safety, or interrogation[.]" (quoting *Smallwood v. State*, 320 Md. 300, 307 (1990)). The State notes that under the Rape Shield Statute evidence "of prior sexual conduct is presumptively excluded" and can only be admitted "after a closed hearing in which the court has ruled it admissible."

According to the State, the trial court's regulation of defense counsel's cross-examination of V. on the issue of an alleged prior sexual assault was proper for four reasons. First, the State asserts "there was no error" because Evans "got the benefit" of V.'s affirmative answer when defense counsel questioned V. whether she had told detectives "there was a black man that was between her legs[.]" Because the jury heard the testimony without being told to disregard it, the "fact that the judge ultimately ruled that the evidence could not come in had no effect."

Second, the State asserts that Evans did not comply with the requirements of the Rape Shield Statute because no *in camera* hearing took place to address the admission of the evidence. The State adds that Evans "does not cite to any part" of the Rape Shield Statute under which evidence of the additional assailant was admissible. Third, the State argues that evidence of another source for V.'s bruises was not relevant to whether V. was raped by Evans as the "State's theory was not that Evans forcibly raped" V., and the "bruising was not material to its case." Finally, the State urges that introducing particularized evidence about the additional assailant risked confusing the jurors and prejudicing the State by suggesting Evans's conduct was proper because V. had an earlier sexual encounter. Regarding the court's decision to deny cross-examination of V. on whether she exchanged sex for money with Evans, the State underscores defense counsel's failure to identify a good faith basis for the question—a necessary foundational requirement. The State points out that the defense did not recall V. at the conclusion of the State's case, as the court offered, which the State claims "represent[s] a strategic choice on

counsel's part."

In his reply, Evans asserts that evidence that V. was addicted to drugs, was kicked out of her mother's house, and ingested drugs the next day provided a sufficient foundation for his question regarding whether V. exchanged sex with Evans for money. Evans argues the trial court's ruling prevented him from fully presenting his defense that V.'s addiction "provided a motive for her to have sex with Evans to obtain money for drugs and to lie about it to cover up her relapse." Evans maintains this case is distinguishable from the cases cited in the State's brief, such as *Elmer v. State*, 417 Md. 1 (1999), because counsel was not injecting inadmissible matters or trying to provide the jury with a false impression. Finally, Evans claims he did not fail to comply with the Rape Shield Statute's hearing requirement because it was not until trial that the State asserted that the Rape Shield Statute prevented the admission of such evidence.

Legal Framework

A. Standard of Review

Normally, when a case involves the interpretation of Maryland statutes and case law, we examine whether the trial court's conclusions are legally correct under a *de novo* standard of review, *Walter v. Gunter*, 367 Md. 386, 392 (2002); but "when a [trial] court implements its interpretation of the Maryland Rules to determine whether evidence is admissible, it is exercising discretion conferred by those rules[,]" and then we review for an abuse of discretion. *Otto v. State*, 459 Md. 423, 446 (2018); *see Thomas v. State*, 301 Md. 294, 317 (1984) ("Decisions on the relevance of evidence rest in the sound discretion

of the trial court and will not be reversed absent a showing that such discretion was clearly abused."). An abuse of discretion exists "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *North v. North*, 102 Md. App. 1, 12 (1994)).

When we examine whether a trial court's restriction of defense counsel's cross-examination violated an appellant's constitutional rights under the Confrontation Clause, our standard of review "takes into account both the defendant's constitutional right of confrontation and the discretionary authority of the trial judge to assert 'control over the mode and order of interrogating witnesses and presenting evidence.'" *Manchame-Guerra v. State*, 457 Md. 300, 311 (2018) (quoting *Peterson v. State*, 444 Md. 105, 124 (2015)). In *Peterson*, the Supreme Court explained how the gradations in the standard apply:

> In controlling the course of examination of a witness, a trial court may make a variety of judgment calls under Maryland Rule 5-611 as to whether particular questions are repetitive, probative, harassing, confusing, or the like. The trial court may also restrict cross-examination based on its understanding of the legal rules that may limit particular questions or areas of inquiry. Given that the trial court has its finger on the pulse of the trial while an appellate court does not, decisions of the first type should be reviewed for abuse of discretion. Decisions based on a legal determination should be reviewed under a less deferential standard. Finally, when an appellant alleges a violation of the Confrontation Clause, an appellate court must consider whether the cumulative result of those decisions, some of which are judgment calls and some of which are legal decisions, denied the appellant the opportunity to reach the "threshold level of inquiry" required by the Confrontation Clause.

444 Md. at 124.

B. Confrontation Clause

The Confrontation Clause of the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights "guarantee a criminal defendant the right to confront the witnesses against him." *Martinez,* 416 Md. at 428. This right "includes the opportunity to cross-examine witnesses about matters relating to their biases, interests, or motives to testify falsely." *Id.* As the Supreme Court instructed in *Peterson*, these constitutional principles "are incorporated in Maryland Rule 5-616(a)(4), which provides that '[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely.'" 444 Md. at 122. A trial court must allow a "threshold level of inquiry[,]" which entails exposing the jury to "the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness[.]" *Martinez,* 416 Md. at 428.

Once the constitutional threshold is met, a trial court "may limit the scope of cross-examination 'when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.'" *Peterson,* 444 Md. at 122-23 (quoting *Martinez,* 416 Md. at 428). Maryland Rule 5-611 provides that, a trial court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." We noted in

Westley v. State, that "the rights to compulsory process, confrontation, and due process give the defendant a constitutional right to present relevant evidence" but that right is not absolute. 251 Md. App. 365, 403 (2021). It is subject to

> two paramount rules of evidence, embodied both in case law and in Maryland Rules 5-402 and 5-403. The first is that evidence that is not relevant to a material issue is inadmissible. The second is that, even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

Id. at 402 (quoting *Holmes v. State*, 236 Md. App. 636, 688 (2018)); *see* Md. Rule 5-402 ("Evidence that is not relevant is not admissible."). Rule 5-403 provides:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Therefore, while the defendant has "wide latitude" during cross-examination "the questioning must not be allowed to stray into collateral matters which would obscure the trial issues and lead to the factfinder's confusion." *Peterson*, 444 Md. at 121-23 (quoting *Smallwood*, 320 Md. at 307-08).

For example, in *Stanley v. State*, the appellant contended "that the trial court's limitation on cross-examination unfairly prevented the defense from exposing" relevant facts. 248 Md. App. 539, 558 (2020). The trial judge had sustained objections to defense counsel's attempt to impeach a jailhouse informant by cross-examining him "about the multitude of other people he identified as murderers[.]" *Id*. at 550. We held that the "trial court did not violate [the appellant's] right of confrontation, because the challenged rulings did not prevent defense counsel from cross-examining [the witness] about his cooperation

with the State, including his expectation of leniency based on the information that he proffered against 'many' people other than" the appellant. *Id*. at 558. The appellant was able to "expose 'facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" *Id.* at 561 (quoting *Martinez*, 416 Md. at 428). "It was unnecessary for [the witness] to name each person he had denounced for the defense to make the point" that he was an informant. *Id*. at 559.

In the instant appeal from a second-degree rape conviction, we must also review whether the trial court's decision to limit cross examination complied with the Maryland Rape Shield Statute.

C. Rape Shield Statute

Maryland's Rape Shield Statute applies in a criminal trial of a sex crime to "(1) preclude[] the introduction of evidence concerning a victim's reputation for chastity or abstinence and (2) limit[] the introduction of evidence concerning specific instances of a victim's prior sexual conduct to evidence that is relevant, material, not more inflammatory or prejudicial than probative, and falls within one of four categories of evidence bearing special relevance to a defendant's case." *Westley*, 251 Md. App. at 378. The statute provides:

> (a) *Reputation and opinion evidence inadmissible*. — 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.

(b) *Specific instance evidence admissibility requirements.* — 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 a 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.

(c) *Closed hearing.* — (1) Evidence described in subsection (a) or (b) of this section 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.
(2) The court may reconsider a ruling excluding the evidence and hold an additional closed hearing if new information is discovered during the course of the trial that may make the evidence admissible.

CR § 3-319. The statute thus "treats evidence concerning a victim's reputation for chastity or abstinence—which is always prohibited—differently from evidence of specific instances of the victim's prior sexual conduct—which is admissible under limited circumstances." *Westley*, 251 Md. App. at 386. Those circumstances are outlined in section (b) and require that the prior evidence of sexual conduct "(1) be relevant; (2) be material; (3) have probative value that is not outweighed by its inflammatory or prejudicial nature; and (4) fit within one of four identified exceptions." *Id.* at 400-01. Before the evidence outlined in section (b) can be "referred to in a statement to a jury" or introduced

at trial, the court must hold a "closed hearing" and determine that the evidence is admissible. CR § 3-319(c); *see Shand v. State*, 341 Md. 661, 663-64 (1996). The hearing requirement also applies to evidence outlined in section (a), "relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence[.]" CR § 3-319(c).

Our opinion in *Westley* is instructive as to the trial court's limitation on defense counsel's cross examination of V. regarding a prior sexual assault. In *Westley*, the appellant, who was convicted of multiple counts of sexual abuse, argued on appeal "that the circuit court erred by excluding evidence of [the] [v]ictim's prior sexual abuse[.]" 251 Md. App. at 379. More specifically, we were asked to determine "whether the Rape Shield Statute's protections extend to a 12-year-old victim of sexual abuse so as to preclude her alleged abuser from introducing at his criminal trial evidence that the victim had suffered another incident of sexual abuse, by a different abuser, a year earlier." *Id.* at 378-79. Despite the appellant's arguments to the contrary, we determined, after reviewing the statute and its relevant legislative history, that "the Rape Shield Statute applies to a victim's prior sexual conduct regardless of whether such conduct was willing." *Id.* at 385. We explained that the statute addresses "two different categories of evidence[:]"

> Subsection (a) concerns general reputation or opinion evidence concerning a victim's chastity or abstinence, which the General Assembly has determined to be categorically inadmissible. We can presume that such evidence, which is not necessarily tied to any specific instance of conduct, would necessarily be limited in scope to a victim's reputation for engaging in sexual activity willingly, because unwilling engagement would not reflect at all on chastity or abstinence.

> Subsection (b), by contrast, is concerned not with reputation or opinion evidence but with evidence of the occurrence of "a specific instance of a victim's prior sexual conduct," which we will refer to as "specific instances evidence." Structurally, subsection (b) stands independent of subsection (a) in that it addresses a different type of evidence.[] The two subsections are complementary, to be sure, but they do not overlap. Unlike subsection (a), there is nothing inherent in the provisions of subsection (b) that would limit its scope to willing conduct.

Id. at 390. Applying the plain language of the statute to the question before us, we concluded that evidence of the victim's prior sexual conduct was inadmissible under the Rape Shield Statute. *Id.* at 401. We observed that the evidence in question did not fit within any of the four exceptions contained in the statute that would permit its introduction. *Id.* After resolving the question under the Rape Shield Statute, we turned to consider appellant's contention that the statute could not stand in the way of his constitutional rights to confrontation and due process.

The appellant claimed he had a constitutional right to present evidence of the victim's prior sexual assault to rebut any presumption the jury may have that the victim, a minor, was "too sexually innocent to fabricate" the charges.[7] *Id.* Considering the decisions

[7] The appellant relied on the "sexual innocence inference" which is:

> based on the premise that because most children of tender years are ignorant of matters relating to sexual conduct, a child complainant's ability to describe such conduct may persuade the jury that the charged conduct in fact occurred. To demonstrate that the child had acquired sufficient knowledge to fabricate a charge against the defendant, the theory reasons, the court should allow the defense to offer experience with someone else before he or she accused the defendant.

Westley, 251 Md. App. at 404-05.

of other state courts, we joined the majority in finding that when a defendant seeks to admit evidence to dispel a presumption of sexual innocence:

> [A] court must assess on a case-by-case basis whether the exclusion of such evidence would violate the defendant's constitutional rights. In making that assessment, a court must first determine if the facts of the case actually give rise to a presumption of sexual innocence.
>
> * * *
>
> If a court determines that the facts of the case would give rise to a presumption of sexual innocence, the court must then determine whether the proffered evidence actually rebuts the presumption.
>
> * * *
>
> Finally, the court must assess whether 'the inflammatory or prejudicial nature of the evidence . . . outweigh[s] its probative value[.]' [CR] § 3-319(b)(3). In making that determination, a court should consider, among other relevant factors, the proximity in time between the prior sexual conduct and the complainant's allegations; whether the presumption can be rebutted in other, less prejudicial ways; if not, whether the evidence of prior sexual conduct can be presented through means other than cross-examination of the complainant; and, if not, whether reasonable limits on cross-examination can be imposed to protect the complainant while protecting the defendant's constitutional rights.

Id. at 409-10. We held that the trial court "did not err in determining that the evidence of prior abuse was irrelevant because the facts of th[e] case did not give rise to a presumption of sexual innocence."[8] *Id.* at 410. Highlighting the significant prejudice, risk of jury confusion, and public policy interest reflected in the Rape Shield Statute, we noted that

[8] We reasoned that the victim "was 12 years old at the time" and "her allegations were of basic sexual conduct, including that [the appellant] touched her private parts with his hands, mouth, and penis, and that white 'stuff' came out of his penis." *Westley*, 251 Md. App. at 410-11. We also noted that the appellant "did not present any basis of support for his claim that an ordinary juror would presume that a 12-year-old child would lack sufficient sexual knowledge to describe such actions, nor did the State introduce any evidence to suggest that this particular 12-year-old would lack such knowledge." *Id.*

even if we identified a presumption of sexual innocence, we would hold that the court did not abuse its discretion in concluding the "probative value was outweighed by the inflammatory and prejudicial nature" of the evidence. *Id.* at 412-13. Therefore, we concluded the court "did not err, abuse its discretion, or violate [appellant's] constitutional rights by excluding evidence of [the] Victim's prior sexual abuse." *Id.* at 413.

Regarding defense counsel's request to cross examine V. about whether she exchanged sex for money, Evans relies on *Johnson v. State*, 332 Md. 456, 460 (1993), which involved factually similar circumstances, except that, unlike here, defense counsel obtained the requisite ruling in a closed hearing pursuant CR § 3-319(c). In *Johnson*, the victim, who was addicted to drugs, accused the appellant of rape, which she alleged occurred after an evening of drug use. *Id.* at 459. To support his argument that the sexual relations with the victim at the time of the alleged rape "occurred while the victim was 'freaking' for drugs, *i.e.* exchanging sex for drugs[,]" the appellant sought to cross-examine the victim about whether she had exchanged sex for drugs in the recent past. *Id.* at 459. He aimed to prove that "not only are the victim's prior 'freaking' activities relevant, material, and non-prejudicial" but her rape allegation is "but a vindictive response to not receiving drugs for the sexual relations she engaged in[.]" *Id.* at 465.

Following the prerequisites of the Rape Shield Statute, the appellant filed a motion *in limine* under CR § 3-319(c) seeking a pre-trial ruling on the admissibility of the evidence. *Id.* at 459-60. During an *in-camera* hearing, the appellant elicited testimony from the victim that "she had been freaking for crack cocaine for approximately six months" and that she

would do so "when she wanted to get high." *Id.* The trial court found the evidence inadmissible under the Rape Shield Statute reasoning that "the prejudicial factor is greater than any probative factor." *Id.* at 461.

Upon review, the Supreme Court determined that the trial court abused its discretion because "there is a close connection between the sexual conduct evidence and the petitioner's defense; in order to establish that he was falsely accused because the victim did not get the cocaine she was promised, it was necessary for the petitioner to establish the basis of the bargain." *Id.* at 474-75. Also, evidence from the victim herself about "her addiction and its effect on her (causing her to have sex for cocaine at any time of the day or night when she wanted to get high)[,]" coupled with her activities preceding the rape allegation, made evidence that the victim "freaked for cocaine within a week of the alleged rape [ ] highly probative." *Id.* The Court explained that when weighing the probative value of the evidence against its inflammatory or prejudicial nature, consideration must be given to the evidence's special relevance, potential for prejudice, and necessity. *Id.* at 473-74.

Analysis

A. Prior Sexual Conduct

We begin by observing that the evidence Evans sought to educe through the cross-examination of V. should have been presented to the trial court during a closed hearing to allow the court to consider whether the evidence, presented *in camera*, was "relevant, material, not more inflammatory or prejudicial than probative, and falls within one of four categories of evidence bearing special relevance to a defendant's case." *Westley*, 251 Md.

App. at 378; *Shand*, 341 Md. at 663-64 ("First, the trial court must find at a mandatory, in camera hearing that the evidence is relevant and material and that its inflammatory or prejudicial nature does not outweigh its probative value. Second, the specific instance evidence must fall within at least one of four exceptions to the prohibition against evidence of specific instances of the victim's prior sexual conduct." (internal quotations omitted)). The commandment in CR § 3-319(c) is unequivocal, requiring that any prior evidence of 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*." (Emphasis added).

During the cross-examination of V., defense counsel plunged into asking her the leading question about a prior sexual assault by another man in another house without first obtaining a ruling on the admissibility of such evidence as required by CR § 3-319(c). Defense counsel not only failed to request a closed hearing before asking V. the question, but even after the trial court sustained the State's objection and warned, "don't go down the road of any sexual activity with anyone else," defense counsel never requested a closed hearing. Accordingly, we may affirm the trial court's ruling limiting V.'s cross examination regarding an alleged prior sexual assault based on defense counsel's failure to comply with the mandatory closed hearing requirements of the Rape Shield Statute. To the extent the trial court *sua sponte* probed the situation during a bench conference following the State's objection, we discern no error or abuse of discretion in its ruling.

We disagree with Evans's argument that evidence of the prior assailant in this case

was admissible because the Rape Shield Statute does not limit evidence of sexual assault but limits admission of prior "sexual conduct[,]" which has been construed to mean, "evidence [of] the victim's ***willingness to engage*** in either vaginal intercourse or a sexual act." (quoting *Shand v. State*, 103 Md. App. 465, 480 (1995) (emphasis added by Evans)). We clarified in *Westley* that "based on the plain language, purpose, and context of the Rape Shield Statute, 'prior sexual conduct' within the scope of subsection (b) includes all sexual conduct, whether willing or not." 251 Md. App. at 400. Subsection (b) states that evidence "of a specific instance of a victim's prior sexual conduct *may* be admitted in a prosecution . . . *only if* " one of the four exceptions outlined in (b) applies. CR § 3-319. That means that any evidence in this case of "prior sexual conduct" involving the alleged prior assailant is presumptively inadmissible unless it falls within one of the exceptions, such as to show "the source or origin of . . . trauma[.]" CR § 3-319(ii).

When the trial court asked defense counsel whether "there is some evidence" that would make the introduction of the prior assailant relevant, defense counsel responded that it was relevant because V. "went to two houses and then she told police officer[.]" When probed by the court, defense counsel confirmed that he wanted to introduce the evidence to identify whether "[V.] has a recollection of her conversation with the police and statements she made to the police[.]" Specifically, that prior to the event with Evans she was sexually assaulted by another person in a different house.

Although Evans argues on appeal that evidence of another assailant "was material and admissible because it showed another potential source" for V.'s injuries, defense

counsel did not raise injuries to V.'s body as a point of relevance during the cross-examination of V., and did not allege that he was introducing evidence of the prior assailant to show an alternative source for her injuries. As will be discussed more below, during Evans's closing argument and cross-examination of Morgan, Evans argued that the evidence of the prior assailant supports his theory of defense that V.'s injuries were caused by someone else. However, to "establish the relevance and materiality required by the Rape Shield Statute, 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." *Smith v. State*, 71 Md. App. 165, 187 (1987). Evans failed to provide a proper foundation to support his inquiry during the cross-examination of V., and therefore we find that the trial court did not abuse its discretion in refusing to admit the evidence. *See Id.* at 189 (explaining that it is incumbent on the defendant "to produce scientific, rather than purely speculative, evidence as to how the presence of semen and/or the injury to the victim occurred."). The court ultimately allowed Evans to ask: "whether [V.] recollects having told the police that she was in two houses over the course of two days[.]" Therefore, the court permitted defense counsel to elicit testimony that would appropriately allow the jury to draw inferences relating to the reliability of V.'s testimony without admitting testimony that was presumptively excluded under the Rape Shield Statute.[9]

[9] Still, as the State points out, the defense "got the benefit of her affirmative answer" because, after defense counsel asked the question about the prior sexual encounter, V. answered: "Yes, however, I was instructed not to mention him[.]"

Finally, our independent appraisal of the trial court's ruling under the Confrontation Clause leads us to conclude that the trial court did not err. Under the circumstances, not only was the court's ruling that the evidence was not material in line with the Rape Shield Statute, it was also well within its discretion to decide that evidence of a prior sexual encounter with another man would have unfairly and substantially prejudiced V., outweighing any probative value. *White v. State*, 324 Md. 626, 638 (1991) ("Even if we were to assume that the proffered testimony may have had some relevancy, albeit minimal, the trial judge may exclude it under [the Rape Shield Statute] if its inflammatory or prejudicial nature outweighs its probative value, having due regard for the defendant's right of confrontation"); *see also Westley*, 251 Md. App. at 404. As the State points out, its theory "was not that Evans forcibly raped [V.], and the bruising was not material to its case[,]" even considering V.'s testimony that Evans pushed her body down causing bruises and contusions. Clearly, evidence that another person engaged in sexual relations with V., whether or not consensual, would have painted V. in a negative light and confused the jury. As mentioned above, the court permitted defense counsel to elicit testimony from V. that appropriately allowed the jury to draw inferences about the reliability of V.'s testimony without admitting testimony that was presumptively excluded under the Rape Shield Statute. Therefore, we conclude that Evans was afforded the "constitutionally required threshold level of inquiry." *Martinez v. State*, 416 Md. 418, 428 (2010).

B. Sex for Money

Evans's claim that his constitutional rights were violated because he was unable to

ask V. whether she exchanged sex for money similarly fails because defense counsel did not provide a proper factual foundation for his inquiry. When the trial court asked defense counsel the basis on which he was introducing this evidence, counsel responded that he did not "want to show [his] hand" because it "may be [his] defense[.]" The trial court offered defense counsel the opportunity to revisit the issue, but defense counsel never did.

The State argues Evans failed to provide a good faith basis for his inquiry and cites three cases: *Elmer v. State*, 353 Md. 1 (1999); *Clark v. State*, 364 Md. 611 (2001); *Gonzalez v. State*, 487 Md. 136 (2024). We agree that Evans failed to provide a good faith basis for his inquiry. *See White*, 324 Md. at 638 ("Proffered evidence of past sexual conduct must contain a direct link to the facts at issue in a particular case before it can be admitted."). The Supreme Court of Maryland considered a similar issue in *White*, a case in which the defense sought to introduce testimony by a witness who claimed that the victim had, in the past, exchanged sex with him for drugs. *Id.* at 633. In affirming the trial court's ruling sustaining the State's objection, and Supreme Court reasoned:

> What . . . [the] testimony would do is paint a picture of the victim as an immoral person who sells herself for illegal drugs. In that manner, the Whites might refocus the trial on Nicole's character, one of the results that the rape shield statute is meant to guard against. Even if we were to assume that the proffered testimony may have had some relevancy, albeit minimal, the trial judge may exclude it under § 461A if its inflammatory or prejudicial nature outweighs its probative value, having due regard for the defendant's right of confrontation, right to present an effective defense and right to due process. *Thomas v. State,* 301 Md. at 318-19[ ]; Annotation 1 A.L.R.4th 283 (1980). The testimony in question would have invited the jurors to stray into collateral matters that would have obscured the issues before them. Its probative value, if any, was far outweighed by its prejudicial effect.

Id. at 638-39.

Evans argues that the rape shield statute does not prevent a defendant from adducing evidence about the very sexual conduct for which he is standing trial. Further, Evans posits that even if, arguendo, the Rape Shield Statute applied, "(b)(4)(i) expressly allows evidence of a victim's 'past sexual conduct with the defendant' so long as it is relevant, material, and not more inflammatory or prejudicial than probative." In support, as noted, Evans cites to *Johnson*, 332 Md. at 459. The *Johnson* case, however, is clearly distinguishable because Johnson filed a motion *in limine* under CR § 3-319(c) seeking a pre-trial ruling on the admissibility of the evidence. *Id.* at 459-60. Contrary to the underlying proceedings, in *Johnson* the trial court had the opportunity to evaluate the evidence during an *in-camera* hearing wherein Johnson elicited testimony from the victim that "she had been freaking for crack cocaine for approximately six months" and that she would do so "when she wanted to get high." *Id.* Thus, in stark contrast to the instant case, Johnson established the relevancy and the factual predicate to admit the evidence in question.

The Supreme Court of Maryland addressed an issue factually closer to the one before us in *Shand v. State*, 341 Md. 661 (1996). When the State objected to defense counsel's reference during opening statement to the victim having exchanged sex for drugs on the night in question, defense counsel proffered that Shand would testify that the victim had offered Shand sex in exchange for drugs two weeks before the rape. *Id.* at 673. Affirming the trial court's ruling sustaining the State's objection, the Court reasoned:

> [A]bsent any evidence that the victim offered to trade sex for drugs on the night in question, there is little or no relevance to evidence that the victim offered to trade

> sex for drugs two weeks prior to the night in question. The proffered evidence, standing alone, is legally insufficient to support a finding that the victim had traded sex for drugs on the night in question. Petitioners' argument is analogous to a hypothetical motor tort trial in which the plaintiff, who has no proof that the defendant motorist was driving while drunk at the time of the accident, offers to prove that fact by evidence that the defendant was driving while drunk two weeks prior to the accident.

Id. The Court determined that despite there being "no blanket prohibition in" the Rape Shield Statute "against admitting evidence of an . . . offer, by the victim, to trade sex for drugs" the conduct is sexual conduct, the admissibility of which "should be analyzed under the facts and circumstances of each case in accordance with the provisions of the Statute." *Id.* at 680.

Our caselaw establishes that a trial court may properly prohibit counsel from asking a question on cross-examination if that party does not identify a good faith basis for the question. *See Elmer*, 353 Md. at 14-15 (reversing where prosecutor's questions suggested facts which he could not prove and where prosecutor "lacked a good faith belief in the factual predicate implied in the question"); *Clark*, 364 Md. at 655 (noting that on cross examination, "'[t]he witness may be asked about anything that tends to show an inability to recall and to testify accurately, provided counsel has a good faith basis for the question.'" (quoting B. Bergman and N. Hollander, 2 WHARTON'S CRIMINAL EVIDENCE § 9:07, at 598-99 (15th ed 1998))). Here, defense counsel did not proffer that he could produce any supporting evidence to establish that V. exchanged sex for money to buy drugs. Instead, when the trial court pressed defense counsel to provide a good faith basis for the question, counsel responded that he did not want to "show [his] hand[.]" The trial court

offered, "If upon the conclusion of the State's case in chief, the defense would like to pursue that consensual angle, the defense would have an opportunity to do so, subject to the witness being recalled." The court did, however, permit defense counsel to ask V. whether she in fact consented to sexual relations with Evans. She replied "No." It is possible that defense counsel did not take the court's invitation to revisit his request to ask V. about exchanging sex for money because the answer would be the same. Regardless, we discern no error or abuse of discretion in the trial court's ruling. Evans cannot avoid the relevancy requirements by claiming his right to confrontation has been violated. *Westley*, 251 Md. App. at 402-03.

Ultimately, Evans did testify at the end of trial that V. allegedly exchanged sex for money with him. The jury was able to compare this against V.'s testimony. Therefore, we again reach the conclusion that the trial court afforded Evans the "constitutionally required threshold level of inquiry." *Martinez*, 416 Md. at 428.

II. Exclusion of Evidence of Additional Assailant in the SAFE Report

Additional Facts

During Nurse Morgan's direct examination at trial, the State presented her with a redacted version of the SAFE report, after showing the report to defense counsel. The State asked Morgan whether she recognized the document and if it was a fair and accurate copy of the report she authored on July 5, 2020. Morgan responded affirmatively, and later during her examination, the redacted report was received into evidence. Defense counsel did not object. During cross-examination, however, defense counsel read from an

unredacted version of the report:

> [DEFENSE COUNSEL]: **"There was a Black gentleman" –**
>
> [THE STATE]: **Judge, can we approach, please?**
>
> THE COURT: You may approach.
>
> (Whereupon, counsel approached the bench and the following ensued:)
>
> [STATE]: It's redacted, and it's redacted for a reason. [The additional assailant] is not charged in this case and then – and I'm not talking about [the additional assailant]. Because of –
>
> THE COURT: When you say it's redacted, what is redacted?
>
> [STATE]: The – the narrative. The narrative.
>
> [DEFENSE COUNSEL]: I just read it accurately. Because . . . if the State wanted to introduce her report into evidence, this is in the report, it's in evidence. I didn't agree to that part being redacted. I think it's relevant.
>
> [STATE]: Well, I showed you – I showed you the report.
>
> [DEFENSE COUNSEL]: But I didn't look at that –
>
> [STATE]: I showed – I showed you the redacted copy of the report.
>
> [DEFENSE COUNSEL]: I – I didn't see it –
>
> THE COURT: Is the redacted copy in evidence?
>
> [STATE]: Yes.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Well, then I want to introduce that into evidence, Your Honor . . . the report that I have, its unredacted because . . . the victim – or the complaining witness [is] saying that somebody else was, at the same day, was between her legs, that's more than relevant. And that was from her report . . .

> THE COURT: **Is there a DNA profile of a major contributor of a male who is anyone other than your client?**
>
> [DEFENSE COUNSEL]: There was a bit – **it said indeterminate**, it just said indeterminate minor on the DNA
>
> THE COURT: Sustained. Step back. You're not going to quote from a report that's not in evidence.

(Emphasis added). Defense counsel then moved to introduce the unredacted report into evidence, which the State objected to, citing the Rape Shield Statute. The court questioned defense counsel about the relevancy of the additional assailant. Counsel explained that because injuries to V.'s vagina are at issue, evidence that V. told Morgan another man was between her legs was relevant, especially because the additional assailant was not mentioned during V.'s direct examination. The court asked whether counsel would like to ask Morgan if the injuries could have been caused by someone other than Evans, and whether evidence of the additional assailant would be "sexual history of the victim," prompting the State to argue:

> [THE STATE]: . . . the rape shield is designed to address the victim's chastity – reputation or chastity. And the idea that she's just there receiving injuries from more than one person, when only one person is charged here, is confusing to the jury and . . . [defense counsel] has gone to great lengths to drag her reputation through the mud already . . . the rape shield statute is specifically designed to prevent just this sort of thing. Like, oh, jury, she's a loose woman . . . she was molested by more than one person that day. We can't be sure it's my client because there was more – there was all kinds of people molesting her that day.
>
> [DEFENSE COUNSEL]: Saying that she was molested by more than one person is far from saying that she's a loose woman. But what it does show is that, one, her statement is inconsistent, and two, there's a possible other gentleman who is responsible for giving those injuries . . .

> THE COURT: **A theory of the defense is that the injuries were caused by a person other than the defendant around the same time, correct**?
>
> [DEFENSE COUNSEL]: **Immediately after.**

(Emphasis added). The court decided it will be up to the jury "to determine the weight to be given to that theory based upon evidence, [ ] credibility determinations that the jury will make." The court overruled the State's objection and instructed defense counsel that he could ask Morgan whether she recollects whether V. "reported having been assaulted by more than one person." Defense counsel confirmed, "[y]es" and offered, "I don't have to even say the race[.]" The court concluded that the unredacted report would not be admitted into evidence, but counsel would "get the answer [he] want[ed]." After counsel returned to their trial tables, defense counsel asked Morgan whether she recalled, from her unredacted report, if V. stated "she was sexually assaulted by more than one person[.]" Morgan responded, "[s]he has on page 2 that there was two different people." Counsel then turned to questions about V.'s track marks and concluded his cross-examination.

During his closing argument, counsel again mentioned the prior assailant, pointing out to the jury that:

> [DEFENSE COUNSEL]: When the SAFE nurse testified, she had her report in her hand and she went over it. It wasn't until I had to ask that she said well, another person . . . and I believe as a jury, ladies and gentlemen, you should have all of the evidence and then let you decide. Not just skip over, that's the thing especially since **the State is alleging that my client had non-consensual sex and put these marks but now we found out that [V.] stated that somebody else also had non-consensual sex**, but that was –

(Emphasis added). The State objected, and the court sustained the objection.

Parties' Contentions

Evans argues the trial court erred in not permitting him to introduce Morgan's unredacted SAFE report and the statements contained therein about a prior assailant. Specifically, he argues the statements are admissible under: (1) the Rape Shield Statute, CR § 3-319(b)(4)(ii); (2) Maryland Rule 5-613, as impeachment evidence; and (3) Maryland Rule 5-106, under the doctrine of completeness. Evans acknowledges that the court allowed his counsel to adduce the fact that V. reported another assailant to Morgan but argues the trial court deprived him of a fair trial because he was unable to present additional evidence, confront V. with her prior statements, or use evidence of the prior assailant in closing.

The State counters that the trial court properly exercised its discretion, and that "[t]o the extent that the court prohibited what the defense sought, its rulings were driven first, by defense counsel's effort to introduce inadmissible evidence, and second, by his later misstatement during closing argument that [sic] the prosecutor correctly sought to remedy." Regardless, the State presses, "information about a second assailant was inadmissible under the rape shield statute, where the defense failed to follow the path" of requesting a closed hearing under CR § 3-319(c).

Regarding the SAFE report, the State underscores that defense counsel was shown the redacted report and did not object to its introduction. And, the State asserts, when defense counsel subsequently sought admission of the unredacted report, defense counsel was unable to "refute [] that the forensic analysis performed on the sperm sample obtained

from [V.] yielded no 'DNA profile of a major contributor of a male' other than Evans." The State posits that Evans's challenge to the court's ruling fails for two additional reasons. First, the court's ruling was favorable to Evans because the court overruled the State's objection and instructed defense counsel that he could ask Morgan whether she recollects whether V. "reported having been assaulted by more than one person." Second, defense counsel confirmed the court's instruction, replying "[y]es" and offered, "I don't have to even say the race[.]" Evans should have made it known if he believed the court's ruling restricted his ability to cross-examine Morgan. According to the State, Evans cannot appeal from a favorable ruling; moreover, by failing to object he waived review on appeal. The State rejects Evans's argument that the unredacted report should have been admitted under the doctrine of verbal completeness because the redacted portions did not correct any misleading impressions and were unnecessary insofar as Evans failed to identify important information contained therein "other than the lone phrase about a second assailant."

Finally, the State avers that during closing argument defense counsel was able to recount Morgan's testimony about the additional assault without objection, and it was only when defense counsel made the misstatement that "we found out that [V.] stated that *somebody else also had non-consensual sex*," that the court sustained the State's objection. "The context of counsel's argument showed that he meant to say that [V.] *reported* that *she* had non-consensual sex with someone else[.]" Any error, the State insists, was harmless because V. acknowledged a second assault, Morgan testified that V. reported being assaulted by two men, and defense counsel was able to argue those points during closing.

Evans responds he did not "get the benefit of the evidence of the second assailant" because the jury should have been aware of "what was actually reported" to evaluate "the believability of the narrative." In response to the State's argument about defense counsel misspeaking during closing argument, Evans claims the State objected to this because of the State's position that evidence of the other assailant was not admissible, not because defense counsel misspoke.

Analysis

A. Alternative Source for V.'s Injuries

As already discussed, under the Rape Shield Statute evidence of prior sexual conduct is presumptively excluded and can only be admitted after a closed hearing in which the court has ruled it admissible. The best practice would have been for defense counsel to request a closed hearing to examine whether the narrative from the SAFE Report concerning the victim's mention of a prior sexual assault by another assailant could be admitted into evidence. Because defense counsel claimed, however, that he did not realize the State would introduce a redacted SAFE report, we cannot say defense counsel failed to comply with the mandatory closed hearing requirements of the Rape Shield Statute in this instance.

Turning to the merits of Evans's argument, we reiterate that the Rape Shield Statute authorizes admission of evidence "showing the source or origin of . . . trauma" if the evidence is relevant, material, and not more prejudicial or inflammatory than probative. CR § 3-319. To meet the relevance and materiality requirement of CR § 3-319, "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." *Smith v. State,* 71 Md. App. 165, 187 (1987). In *Smith*, a jury found the defendant guilty of three counts of rape, along with attempted murder and related crimes. *Id.* at 169. After the State presented its case, which included the testimony of the victim and medical evidence showing her condition immediately following the incident, the defense sought to call the victim to "question her concerning other sexual contact she may have had shortly before the alleged attack." *Id.* at 169, 182. "The State moved to preclude any testimony concerning the victim's prior sexual conduct." *Id.* at 181. Smith claimed that the testimony was "necessary to explain the source of semen." *Id*. at 181. Although during a pre-trial hearing defense counsel had been instructed not to ask questions about the victim's prior sexual conduct, defense counsel proffered that the issue had been generated during cross-examination of the State's chemist and the doctor who examined the victim because both testified that "vaginal swabs indicated the presence of acid phosphatase, a male sexual fluid[.]" *Id.* at 182.

On appeal, we held that the trial court did not abuse its discretion in refusing to admit the evidence. *Id.* at 189. We acknowledged that ordinarily, "limited evidence of specific acts of sexual intercourse by a rape victim within a short period of time prior to the alleged rape will not be so highly inflammatory or prejudicial to outweigh its probative value, *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*." (emphasis

added) (internal citations omitted). *Id.* at 183. We determined, however, that "the probative value of the victim's prior sexual conduct is minimal in light of Smith's failure to proffer any specific facts tending to show that the acid phosphatase was not his." *Id.* at 188.

Similarly, in the present appeal we hold that the trial court did not abuse its discretion by refusing to admit evidence from Morgan's unredacted report because defense counsel failed to provide the requisite foundation for its admission. Moreover, we agree with the State that the court's ruling was favorable to Evans insofar as the court overruled the State's objection and instructed defense counsel that he could ask Morgan whether she recollects whether V. "reported having been assaulted by more than one person." Morgan responded, "[s]he has on page 2 that there was two different people." The court therefore allowed evidence of an additional assailant, but simply did not allow the unredacted report or the statements contained therein to be admitted. Evans waived his claim that he was unable to deduce more information about the additional assailant when defense counsel agreed with the court's ruling and offered, "I don't have to even say the race[.]"

Still, Evans presses that the evidence of the prior assailant contained in the SAFE report was admissible under CR § 3-319(b)(4)(ii) to demonstrate an alternative source for V.'s bruising. However, when asked by the trial court whether there was DNA evidence of "anyone other than" Evans, defense counsel responded that it was "indeterminate[.]" As we stated in *Smith*, the proffer "must be precise and clearly articulate both the relevance of the evidence as well as why it is not unduly prejudicial." *Id.* at 189. We reiterate our

predecessors' observation in *Smith* that "to allow the defense to engage in a 'fishing expedition' or to admit such evidence without a foundation to show its relevance would be contrary to the intent of the [Rape Shield S]tatute." *Id.*

We also discern no abuse of discretion in the trial court's ruling sustaining the State's objection to defense counsel's statement during closing argument: "we found out that [V.] stated that somebody else also had non-consensual sex[.]" V.'s report to Morgan "that there was two different people" did not necessarily mean two different people had sex with the victim, as Evans's statement insinuates.[10]

B. Doctrine of Completeness

Maryland Rule 5-106 states:

> When part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Md. Rule 5-106. This rule "partially codifies the common law doctrine of verbal completeness." *Otto v. State*, 459 Md. 423, 447 (2018). The committee note advises that:

> The change that this Rule effects in the common law is one of timing, rather than of admissibility. The Rule does not provide for the admission of otherwise inadmissible evidence, except to the extent that it is necessary, in fairness, to explain what the opposing party has elicited. In that event, a limiting instruction that the evidence was admitted not as substantive proof but as explanatory of the other evidence would be appropriate. *See Richardson v. State*, 324 Md. 611 (1991).

Md. Rule 5-106, Committee Note.

[10] Earlier in his closing argument, defense counsel stated, "[V.] said that there were two gentlemen that assaulted her" and the State did not object. The State only objected when defense counsel made the assertion that the assault was non-consensual sex.

Inadmissible evidence "does not become admissible purely because it completes the thought or statement" but will only be admitted "if it is particularly helpful" in explaining the statement and that explanatory value is not substantially outweighed by the danger of unfair prejudice, waste of time, or confusion." *Otto*, 459 Md. at 452. Put another way, "the remainder must not only relate to the subject matter, but must also tend to explain and shed light on the meaning of the part already received . . . or [] correct a prejudicially misleading impression left by the introduction of the misleading evidence." *Newman v. State*, 65 Md. App. 85, 96 (1985) (citations and quotations omitted).

Evans argues the exclusion of the unredacted portions of the SAFE report violated the doctrine of completeness because the redacted report was misleading as it created the impression that V.'s narrative to Morgan was consistent with her trial testimony and eliminated evidence of the prior assailant. It is not clear what Evans means by this, given that the jury heard V.'s affirmative response when she was asked whether there was "a black man that was between [her] legs," and Morgan's response that on page 2 of the SAFE report "[s]he has …that there was two different people." It is also unclear what evidence in the SAFE report should have been admitted to correct the alleged "misleading" redacted report. Determining "whether separate statements are admissible under the doctrine of verbal completeness is [] a discretionary act, to be reviewed for an abuse of discretion." *Otto*, 459 Md. at 446 (citing *Conyers v. State*, 345 Md. 525, 543 (1997)). We conclude that the trial court did not abuse its discretion in denying defense counsel's request to admit the unredacted SAFE report under the doctrine of completeness.

III. The State's Closing Argument

Additional Facts

During closing argument, defense counsel argued that drug addicts are desperate people, not to be believed, and noted that "[V.'s] own mother did not believe her story . . . [V's] ow[n] mother said she was acting strange for the last couple of days." Defense counsel played some of the body-camera footage of Sgt. Testa's interview of V.'s mother before continuing:

> [DEFENSE COUNSEL]: So she sees people eating snowballs she then consumes the snowballs that they're eating and . . . somehow they're not unconscious but somehow she's unconscious, and she said Trisha and some children . . . Now, I'm just trying to picture someone who's unconscious and Trisha . . . and two children, what, did they carry her on a back to an unknown house?

Defense counsel then drew an objection when he told the jury:

> [DEFENSE COUNSEL]: [A]s Officer Testa testified . . . drugs for addicts is a commodity, it's valuable. Addicts just don't give people their drugs for nothing, just to shoot them up for nothing. They don't do that. **It's the addicts as everybody knows,** people who are addicted and suffer from addiction, **they are desperate. They will** break into your window on the street to take whatever out to get a little bit of change for it, steal, lie, **prostitute**, whatever **to get their money**.
>
> [THE STATE]: Objection.
>
> THE COURT: Please continue your argument, get to your point. Overruled.
>
> [DEFENSE COUNSEL]: **And we all know this, ladies and gentlemen**. And so they're going to just shoot themselves with drugs if they can be using themselves. It's too much money, they're not going to do that, unless they are shooting drugs together and they're putting in the money and they're doing this together, but that –

(Emphasis added). The trial court judge interrupted and said, "Counsel, please avoid

general speculations about groups of people and focus on arguing what the evidence has shown, which is the purpose of closing argument. Thank you." Defense counsel continued his argument and once he concluded, the State elected to make a rebuttal closing argument, during which the State said:

> [THE STATE]: . . . you hear this sort of statement from defense attorneys, where the victim's story doesn't make sense . . . [Defense counsel] talked to you a lot about reasonable doubt but remember what the Judge told you. A reasonable doubt is a doubt based on reason. [Defense counsel] is trying to get you to have a doubt based on feeling. And [defense counsel] is trying to give you without (*sic*) a doubt based on feelings, you might have about "addicts". Addicts are desperate, addicts will steal from you, you can't believe an addict . . .

Defense counsel did not object to this statement, but objected when the State argued:

> [THE STATE]: Now, it's easy from a position of privilege, and (*sic*) educated person in the safety of a courtroom can second guess a person who's had difficulties – a person who's had some substance abuse problems. It's easy for that privileged person to say you can't trust those people, you can't – those people are desperate, those people would do anything. That's one of the reasons that rapes don't get reported because people –"
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [THE STATE]: Because people like [V.] who get raped know that if they report the rape, they're liable to end up in court being cross-examined about every piece of baggage in their lives and as adults we –"
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> THE COURT: You opened the door, overruled.

After the conclusion of the State's re-closing, the jury was sent to deliberate.

Parties' Contentions

According to Evans, the trial court abused its discretion by allowing the prosecutor to argue that "rapes don't get reported because people like [V.] who get raped know that if they report the rape, they're liable to end up in court being cross-examined about every piece of baggage in their lives." Evans compares the prosecutor's remarks to those in *Whaley v. State*, 186 Md. App. 429 (2009), claiming they were "as bad or worse" because they invite the jury to blame and punish Evans for the underreporting of rapes by underprivileged people. Evans claims the remarks also invoked class prejudice to disparage defense counsel by referring to him as "that privileged person" and casting him in opposition to "people like [V.]" According to Evans, the remarks were not based on facts in evidence, and nothing in defense counsel's closing argument "opened the door" to these remarks. However, even if defense counsel did open the door, the commentary should not have been permitted because the prosecutor's response was "tantamount to killing an ant with a pile driver[.]" (quoting *Terry v. State*, 332 Md. 329, 339 (1993). Therefore, Evans argues, the remarks deprived Evans of a fair trial and reversal is required.

The State responds that the trial court properly exercised its discretion because "the prosecutor's argument was a fair response to defense counsel's closing based on the facts of the case and the jury's common sense understanding of the realities confronting sexual assault victims." More specifically, the State claims it was entitled to urge the jury not to accept the defense's portrayal of V. as someone "unworthy of belief" and see her as someone "who came forward in spite of" a general reluctance to do so. The State

distinguishes this case from *Whaley*, in which there was no evidence linking Whaley to the crime scene and the prosecutor's remarks appealing to class prejudice were delivered during initial closing argument, whereas here, "the remarks were made in response to defense counsel's argument characterizing the behavior of *all* 'drug addicts,' and identity was not an issue." The State posits that even if the closing argument was improper, it was harmless.

Evans rejects the State's "invited response" argument because Evans claims that defense counsel never argued V. was unworthy of belief because of her substance disorder, but rather, that her addiction made her desperate, motivating her to trade sex with Evans for money for drugs. Evans presses that the prosecution did not simply ask the jury to infer V. was truthful because she came forward in spite of a general reluctance to do so, but implied that a not guilty verdict would dissuade people from reporting rapes.

Analysis

Although parties are accorded "liberal freedom of speech" during closing argument, they are still "confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel[.]" *Donaldson v. State*, 416 Md. 467, 488 (2010) (citing *Spain v. State*, 386 Md. 145, 159 (2005)). "Great leeway notwithstanding, not all statements are permissible during closing arguments." *Id.* at 489. For example, counsel may not "appeal[] to jurors to convict a defendant in order to preserve the safety or quality of their communities[.]" *Hill v. State*, 355 Md. 206, 209 (1999). Counsel also cannot comment upon facts not in evidence, state what they would

have proven, "appeal to the prejudices or passions of the jurors, or invite the jurors to abandon the objectivity that their oaths require." *Donaldson*, 416 Md. at 489 (citing *Mitchell v. State*, 408 Md. 368, 381 (2009)).

When an improper statement is made during closing argument, we determine whether there was an abuse of discretion "by the trial judge of a character likely to have injured the complaining party." *Henry v. State*, 324 Md. 204, 231 (1991). "[U]nless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated." *Lee v. State*, 405 Md. 148, 164 (2008) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). When analyzing whether reversal is mandated, we consider 1) "the severity of the remarks," 2) "the measures taken to cure any potential prejudice," and 3) "the weight of the evidence against the accused." *Spain*, 386 Md. at 159.

However, a statement that would normally be inadmissible could be introduced in response to an improper argument made by defense counsel under the 'opened door' doctrine. *Mitchell*, 408 Md. at 388. If the "prosecutorial argument has been made in reasonable response to improper attacks by defense counsel, the unfair prejudice flowing from the two arguments may balance each other out, thus obviating the need for a new trial." *Id.* at 381. However, the "explanatory or curative evidence" must be "proportionate to the malady" for it to be admissible. *Terry*, 332 Md. at 338.

Defense counsel's statement during his closing argument that "everybody knows" addicts are desperate and will prostitute for money for drugs was arguably improper because it appealed to the prejudices of the jurors. *Lee*, 405 Md. at 167. Throughout this statement, defense counsel generalized "addicts" and what they will do to get drugs, for example, "prostitute." As the State notes, these comments aimed to portray V., who struggled with addiction, as someone who was not trustworthy because of her substance abuse. This is evident from defense counsel's statement that, "people who are addicted . . . will . . . lie[.]" However, at trial, Sgt. Testa testified that it "depends on the individual" whether these individuals can become desperate in trying to acquire drugs. Further, when defense counsel asked Sgt. Testa whether it is common for those who suffer from addiction "to be so desperate that they would become prostitutes[,]" the State objected and the jury was told to disregard the question.

The transcript reflects that the State's comments were prompted by defense counsel's forceful argument that addicts are desperate, untrustworthy, and willing to "prostitute" themselves. We agree the State toed the line when it noted that it's easy "from a position of privilege" to make these assumptions and that is one of the reasons why rapes go unreported. However, we cannot say the trial court abused its discretion in overruling counsel's objection to these statements on the ground that defense counsel "opened the door." These statements were proportionate to the malady made by counsel and not akin to "killing an ant with a pile driver" as Evans claims. *Terry*, 332 Md. at 338-39 (holding

introduction of evidence of a defendant's past criminal conviction in a crime similar to the one for which he is charged is "tantamount to killing an ant with a pile driver.").

This case is distinguishable from *Whaley* in two important respects. First, the prosecutor's remarks in *Whaley* that—"we have in our community those who will take advantage of some who [ ] aren't familiar with the system . . . And we find several of the Hispanic community move from place to place"—appealed not only to class prejudice and passion, but also invited the jurors to punish the appellant "for the wrongdoings committed against the Hispanic community." *Whaley*, 186 Md. App. at 442, 451, 453. Second, the prosecutor's statements in *Whaley* were not made in response to defense counsel's statements as in the instant case. By contrast, in this case, the prosecutor's statements that Evans challenges were made in *response* to defense counsel's statements generalizing "addicts" as persons who are "desperate" and who "lie." Moreover, the statements were not aimed at punishing Evans; rather, the State simply illustrated why defense counsel's remarks were prejudicial. *See U.S. v. Young*, 470 U.S. 1, 12-13 (1985) ("[I]f the prosecutor's remarks were 'invited,' and did no more than respond substantially in order to 'right the scale,' such comments would not warrant revers[al]").

For the foregoing reasons, we hold that the trial court did not abuse its discretion in finding the statements in the State's rebuttal closing argument were a permissible response under the opened door doctrine.

IV. Judicial Neutrality

Parties' Contentions

Evans argues the trial judge engaged in a pattern of behavior reflecting personal distaste for Evans, defense counsel, and the theory of defense. According to Evans, the judge's behavior created a pervasive atmosphere of partiality that influenced the jury, and cumulatively functioned to deprive him of a fair trial. Specifically, Evans claims he was denied a fair trial when the trial court:

1. Instructed the courtroom deputy to stand between the victim when she was on the witness stand and the defendant when defendant and counsel approached the bench.
2. Said during a bench conference that it was "offensive" to ask V. whether she had sex with Evans in exchange for money.
3. Interrupted the cross-examination of V. several times to admonish defense counsel for asking certain questions and stating "I am not going to allow you or anybody to beat this witness up emotionally."
4. Refused to admit the video of V.'s mother's July 5, 2020 interview with Sgt. Testa into evidence until Sgt. Testa could authenticate it.
5. Instructed defense counsel to refrain from using the term "drug addicts," and instead say "those who suffer from the health issue of substance abuse."
6. Overruled defense counsel's objection to the forensic nurse testifying about the healing of bruises then sustaining the prosecutor's objection when counsel asked the forensic nurse about the healing of injection sites.
7. Commented in open court that the forensic nurse, who was being cross examined "Probably feels like a victim on the stand here."
8. Corrected defense counsel's definition of reasonable doubt and the burden of proof during closing argument.
9. Instructed defense counsel to not make "general speculations about groups of people."
10. Did not interrupt prosecutor's closing argument when he opened with: "Well, we all know [V.] was raped" because, Evans asserts, "it is well-established that prosecutors cannot 'vouch' for witnesses."

Evans acknowledges that "defense counsel voiced no objections to much of the conduct at issue here" but argues that we should nevertheless reverse and order a new trial. Evans

argues that because the right to a judge who is both impartial and appears impartial is fundamental to our system of justice, and because it is impossible to know how the court's conduct affected the jury, we should treat the judge's actions as structural. Alternatively, Evans contends we could reverse for plain error under the requirements set out in *Diggs v. State*, 409 Md. 260, 271-73 (2003).

The State counters that we should decline to address Evans's claim that the trial court abandoned its neutral role and deprived him of a fair trial because Evans failed to object to any of the conduct he identifies on appeal. The State also maintains that this case does not warrant plain error review because Evans "complains largely about legal rulings on which reasonable minds could disagree" and there is no display of judicial bias. Further, the *Diggs* case does not support Evans's claim of structural error or plain error review, the State argues, because *Diggs* involved a trial in which the judge acted as a "'co-prosecutor[]'" and "'crossed the line of propriety, creating an atmosphere so fundamentally flawed' that Diggs did not receive a fair and impartial trial." (Quoting *Diggs*, 409 Md. at 293). Moreover, the State rejects Evans's contention that he could not object at trial and highlights the instruction in *Diggs* that a failure to object can only be overcome when "'the judge exhibits repeated and egregious behavior of partiality, reflective of bias.'" (Quoting *Diggs*, 409 Md. at 294).

Analysis

"Maryland law guarantees litigants the right to a judge who is, and has the appearance of being, unbiased and impartial." *Harford Mem'l Hosp., Inc. v. Jones*, 264

Md. App. 520, 541, *cert. denied*, 490 Md. 6409 (2025) (citing *State v. Payton*, 461 Md. 540, 559 (2018)). Maryland also recognizes a strong presumption that "judges are impartial participants in the legal process," and that "[b]ald allegations and adverse rulings are not sufficient to overcome this presumption of impartiality." *Harford Mem'l Hosp.*, 264 Md. App. at 541-42 (internal quotations and citations omitted). However, if a judge's comments "could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused his or her discretion." *Archer v. State*, 383 Md. 329, 357 (2004) (quoting *Jackson v. State,* 364 Md. 192, 207 (2001)).

Maryland Rule 8-131 states that "[o]rdinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Our decisional law has persistently instructed that when counsel is asking the court to review a pattern of bias or other improper conduct by a trial judge, "it is incumbent" upon trial counsel to preserve the issue for review by objecting and "stat[ing] with clarity the specific objection to the conduct of the proceedings and mak[ing] known the relief sought." *Braxton v. Faber*, 91 Md. App. 391, 407 (1992); *see also Acquah v. State*, 113 Md. App. 29, 61 (1996); *Harford Mem'l Hosp.*, 264 Md. App. at 542-48. Our decisional law imposes the following requirements to preserve a claim of judicial bias for review on appeal:

> (1) facts are set forth in reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the judge who is the subject of the charges; (3) counsel must

> not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be stated with particularity and clarity.

Harford Mem'l Hosp., 264 Md. App. at 543 (quoting *Baltimore Cotton Duck, LLC v. Ins. Comm'r of the State of Md.*, 259 Md. App. 376, 401 (2023)). If a party claims that the trial judge prevented them from probing into a certain area while permitting the opposition to pursue that line of inquiry, the party must disclose what the limitations were and make a claim of partiality during the trial. *Id*. at 545 (citing *Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 544-55 (1999)).

In rare situations in which a party fails to object, we have reviewed allegations of judicial bias by "utilizing structural error review" or the "plain error" doctrine. *Diggs*, 409 Md. at 285-87. Such instances are very rare because structural error is one that fundamentally affects "the framework within which the trial proceeds," *Weaver v. Massachusetts*, 582 U.S. 286, 295-96 (2017), and plain error is one "'which vitally affects a defendant's right to a fair and impartial trial.'" *Diggs*, 409 Md. at 286 (citing *State v. Daughton*, 321 Md. 206, 211 (1990)). Plain error review is limited to those instances that are "'compelling, extraordinary, exceptional, or fundamental to assure the defendant a fair trial.'" *Abeokuto v. State*, 391 Md. 289, 327 (2006) (citing *Richmond v. State*, 330 Md. 223, 236 (1993)).

In *Diggs*, even though trial counsel did not object during "most instances of repeated and egregious behavior" by the trial court, the Supreme Court of Maryland found there was plain error because the judge "acted as a co-prosecutor, and his behavior exceeded 'mere impatience' and crossed the line of propriety." *Diggs*, 409 Md. at 287, 293. The judge in

Diggs, "rehabilitated the prosecutors case" by, among other things, taking over questioning and "laying the foundation for [a] charge during questioning of the lead detective . . . [and] questioning [a witness] regarding the denominations of bills, where she put her keys, and the timing of her telling the police[.]" *Id*. On appeal, Diggs argued that "continuous objections would have been futile and unprofessional and would have created more hostility and tension." *Id*. Although the Supreme Court addressed the merits of Diggs's judicial bias claim, the Court cautioned that "the failure to object will only be countenanced in those instances in which the judge exhibits repeated and egregious behavior of partiality, reflective of bias." *Id*. at 294.

The record before us stands in stark contrast to circumstances in *Diggs*. The record reflects that the trial court ensured defense counsel had every opportunity possible to raise objections and fully present arguments in defense thereof, as demonstrated by the colloquies reviewed above and throughout this opinion. As Evans admits, defense counsel voiced no objection to much of the trial court's conduct to which he now attributes judicial bias. For example, Evans challenges the trial court's interruptions during closing argument to correct defense counsel's misstatements on the burden of proof and the definition of reasonable doubt. However, Evans never objected or raised any claim of judicial bias until his appeal. *See Harford Mem'l Hosp.*, 264 Md. App. at 563 ("A litigant claiming bias on the part of the trial judge must 'generally' move for relief 'as soon as the basis for it becomes known and relevant.'" *id.* at 542 (citing *Braxton v. Faber*, 91 Md. App. 391, 406 (1992) (quoting *Surratt v. Prince George's Cnty.*, 320 Md. 439, 468-69 (1990))). It may

be that defense counsel concluded at the time, as we do now on appeal, that the judge's intervention was warranted as defense counsel did not accurately state the law.

Evans's allegations of judicial bias in regard to the trial court's evidentiary rulings similarly lack merit. For example, the court's decision not to admit the video from the body worn camera until the operator of the camera authenticated it was well within the trial court's discretion. Where claims of bias arise from a trial court's evidentiary rulings, we avoid speculation about "what might have motivated the judge to rule" in a certain way and review for "legal correctness (or abuse of discretion)[.]" *Id.* at 547. Defense counsel did not raise an issue with the trial court's decision at trial. Indeed, defense counsel stated, "I'm sorry, Your Honor, in that case when Detective Testa testifies, then I can have him authenticate it[.]" And in regard to the court's statement, "I am not going to allow you or anybody to beat this witness up emotionally," Evans fails to point out that the statement was made outside the hearing of the jury during a bench conference, and that the court further explained that its statement was made in response to,

> the obvious toll this testimony was taking on the witness who has recounted, whether truly or untruthfully, an event that she's recounted as having happened to her. *That is in no way meant or intended to be construed as meaning that the defense would in any way be ordered by the Court to curtail the full blown cross-examination.*

Similarly, Evans does not relate the full context for the trial court's "feels like a victim" statement. As the State points out in its briefing, the remark was made when the judge paused questioning during nurse Morgan's testimony because she was coughing. In so doing, the court accidentally referred to Morgan as the "victim." The judge corrected

himself, and then made the comment that nurse Morgan "probably feels like a victim on the stand here." We discern no error, or abuse of discretion, or hint of judicial bias in the judge's comment.

Along with these individual instances, defense counsel also did not object to the overall pattern of conduct of which he finds issue, failing to preserve his claim that the trial court abandoned its neutral role. *Acquah*, 113 Md. App. at 61-62 (explaining that when a party asks the court to review a "pattern of improper conduct" the party must object to that "pattern" to gain review).

In sum, the record does not indicate the trial judge exhibited "repeated and egregious behavior of partiality," or that this is a situation like *Diggs* where objections would have led to a "tense atmosphere" or "unprofessional conduct" in the courtroom. *Diggs*, 409 Md. at 294. Therefore, we find that Evans failed to preserve his claim that judicial bias prevented him from his right to a fair trial. We also conclude that Evan's claims of judicial bias are not supported by the record, and that his "[b]ald allegations. . . are not sufficient to overcome th[e] presumption of impartiality." *Harford Mem'l Hosp.*, 264 Md. App. at 541-42 (internal quotations and citations omitted). Consequently, where, as here, we find no obvious error or abuse of discretion, Evans does not get past the first two prongs under the plain error doctrine.[11]

[11] In *Newton v. State*, the Supreme Court explained:

> Before we can exercise our discretion to find plain error, four conditions must be met: (1) there must be an error or defect—some sort of deviation from a

We affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

> legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings; and (4) the error must seriously affect[ ] the fairness, integrity or public reputation of judicial proceedings.

455 Md. 341, 364 (2017) (internal quotations and citations omitted).