Circuit Court for Worcester County
Case No. C-23-CR-20-000188

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 484

September Term, 2023

ALEXANDER WU

v.

STATE OF MARYLAND

Berger,
Beachley,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: March 3, 2025

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

On January 19, 2023, a jury in the Circuit Court for Worcester County convicted Alexander Wu of one count of sexual abuse of a minor by a household member and one count of committing a sex offense in the third degree.[1] He was sentenced to fifteen years' imprisonment, with all but five years suspended, for sexual abuse of a minor by a household member, and ten years, five suspended, for third-degree sex offense. Because the court imposed consecutive sentences, Mr. Wu received an aggregate executed sentence of ten years. Mr. Wu was also directed to complete five years of supervised probation under the Collaborative Offender Management/Enforced Treatment (COMET) program and is required to register as a tier-3 sex offender for the remainder of his life. Mr. Wu timely noted this appeal, and presents two questions for our review, rephrased for clarity:

1. Did the trial court err as a matter of law in denying the motion for judgment of acquittal on the charge of sexual abuse by a household member?

2. Did the trial court err in refusing to admit additional portions of a recorded statement pursuant to the rule of verbal completeness?

Perceiving no error, we answer both questions in the negative and affirm.

FACTS

In 2014, when she was twelve years old, E.[2] began cheerleading at the Dynamite

[1] Mr. Wu was originally charged with four counts: the two convicted charges in this case, plus sexual abuse of a minor where the defendant has temporary responsibility for supervision of the child and second-degree sex offense. The State entered nolle prosequi on those two charges during Mr. Wu's first trial in July 2022. That proceeding ended in a mistrial.

[2] To protect her anonymity, we adopt the State's convention of referring to the victim by a random letter, without referencing her actual name.

All Stars gym. There, E. met Mr. Wu, a cheerleading coach who was brought in to teach a stunt clinic. E. began taking private lessons from Mr. Wu to improve her tumbling and stunting skills. E. spent two seasons cheering at Dynamite, during which she continued taking private lessons both from Mr. Wu and another coach, Chris Nowell, who was a close friend of Mr. Wu's. E. testified that she "became really close with" Mr. Wu and Mr. Nowell during this period. E.'s mother, "X.",[3] also became friends with Mr. Nowell and Mr. Wu, with the three adults socializing together and visiting each other's homes.

In 2016, Mr. Wu and Mr. Nowell left Dynamite to become coaches at another cheerleading gym, Shockwave.[4] E. followed. Despite Shockwave's official policy that coaches and athletes not socialize or form social relationships outside the gym, E. remained close with Mr. Wu and Mr. Nowell, and her mother began a romantic relationship with Mr. Nowell in April 2016. Mr. Nowell testified that he was at the home of X. and E. "every day" and "every night." Mr. Nowell confirmed that due to the closeness of the relationships, Mr. Wu "frequently" visited E.'s home, coming by at least once a week. Mr. Nowell testified that although he would normally text before he arrived at X.'s home, and would knock at the door before entering, Mr. Wu would show up unannounced and let himself in. Both X. and E. testified that their relationship with Mr. Wu was more than that of a parent or athlete and coach.

[3] Again, we use the State's convention in referring to E.'s mother by a random letter.

[4] Shockwave has since been renamed Cheer Extreme.

X. indicated that Mr. Wu accompanied her and E. on "at least three" weekend cheerleading competition trips or personal vacations, during which they stayed in the same hotel room. During the weekend of July 7-9, 2017, Mr. Wu, then twenty-six years old, traveled with X., E. (then fourteen years old), Mr. Nowell, and K.R. (a friend of E.'s), to Ocean City, again staying in the same room as X. and E. The hotel room was equipped with two beds and a pull-out couch. Mr. Nowell and X. shared one bed, Mr. Wu shared with K.R., and E. slept on the pull-out couch.

E. recounted that at some point during the weekend trip, she was using the bathroom when Mr. Wu walked in on her. According to E., "he walked in and he looked at me and he stood there and sort of just smirked at me." E. slouched to try to cover up and Mr. Wu left the room. After he left the bathroom, E. took a shower. While she was showering, Mr. Wu again entered the bathroom, "opened the shower curtain and he just looked at [her] and he asked [her] to shake." E. complied, and Mr. Wu again left the bathroom.

Later the same evening, Mr. Wu and E. found themselves alone together in the hotel room. X. was on the balcony with Mr. Nowell, and K.R. had gone for a walk by himself. As E. sat on the pull-out couch, Mr. Wu sat next to her and began rubbing her leg. She testified that he then "put his fingers under [her] shorts and under [her] underwear, and he put his fingers into [her] vagina." E. testified that Mr. Wu told her "that if I didn't bring my friend [K.R.] that we would have a lot more alone time on the trip."

E. testified that she did not scream or attempt to call out to her mother on the balcony because she was afraid she would get into trouble. At the conclusion of the weekend, Mr.

Wu drove E. and K.R. back to their homes in Montgomery County.

Mr. Wu remained close with Mr. Nowell, X. and E. throughout 2017 and 2018. In November 2018, E. started dating "Scottie," who began regularly attending E.'s practices and competitions.

In May 2019, E. auditioned for and was placed on a highly competitive cheer team that was preparing to compete at the Cheerleading World Championships the following spring. There was no upper age limit for team members, and Mr. Wu was selected for the team as well, eventually being assigned E.'s stunting partner. Now teammates, the dynamic between E. and Mr. Wu began to change. E. testified that she and Mr. Wu had more frequent, prolonged physical contact as stunt partners, and that his behavior toward her became "a lot more aggressive and critical." She further testified that being in such close physical proximity to Mr. Wu "made it a lot harder for [her], like, mentally."

Scottie and E. each testified that after they began dating, E. started to slowly confide in him. Scottie noticed that Mr. Wu treated E. differently from the other cheerleaders in the gym, and that he seemed to frequently "want some sort of physical contact with [E.], whether it would be – like, they would be sitting on the floor of the gym, and he would just have his foot or leg, you know, brushed up against her, or he would prop his hand on her shoulder. He would have some sort of physical touching with her when it wasn't necessary to do so because she would just be taking a break."

The situation came to a head in January 2020. According to E., after Mr. Wu yelled at her in front of several other athletes, she went home, crying. Either that same day or

shortly thereafter, E. finally told her mother what happened in Ocean City in 2017. After E.'s disclosure of Mr. Wu's abuse, X. called the owner of Cheer Extreme. X. called the police the following morning.

In February 2020, under police direction and supervision, X. placed a "controlled call" to Mr. Wu, which was recorded by the police. At trial, excerpts from that call were played for the jury and a redacted transcript of the call was admitted into evidence. Though Mr. Wu did not object to the playing of the excerpted call or the admission of the redacted transcript, he moved to admit other portions of the call under the rule of completeness. The court denied Mr. Wu's motion.

As noted, the jury convicted Mr. Wu of sexual abuse of a minor by a household member and third-degree sex offense. This appeal ensued.

DISCUSSION

I.

Section 3-602 of the Maryland Criminal Law Article states that "[a] household member or family member may not cause sexual abuse of a minor." Md. Code Ann. (2002, 2021 Repl. Vol.), § 3-602(b)(2) of the Criminal Law Article ("CR"). A "household member" is defined as a person "who lives with or is a regular presence in a home of a minor at the time of the alleged abuse." CR § 3-601(a)(4). Mr. Wu contends that his conviction under CR § 3-602 cannot be sustained because the State "failed to present any evidence from which the jury could reasonably infer that Wu was a 'household member' under the statute, or that he was a 'household member' at the time of the accusation of

abuse."[5] Noting that Mr. Wu only challenges "the legal sufficiency of the evidence on one element—his status as a household member"—the State argues that the evidence presented at trial was sufficient for a factfinder to conclude that Mr. Wu was a "household member" as contemplated by the statute, and therefore the circuit court did not err in denying Mr. Wu's motion for judgment of acquittal.

A. Standard of Review

In his sufficiency of the evidence challenge, Mr. Wu asserts that the evidence was legally insufficient to establish that he was a "household member" as defined in the statute. We generally review sufficiency of evidence claims by determining "whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Howling v. State*, 478 Md. 472, 493 (2022) (quoting *State v. McGagh*, 472 Md. 168, 194 (2021)). We must view the evidence "in a light most favorable to the State," and "give due deference to the jury's finding of facts, its resolution of conflicting evidence, and significantly, its opportunity to observe and assess the credibility of witnesses." *Vanderpool v. State*, 261 Md. App. 163, 180 (2024) (internal quotations omitted) (quoting *White v. State*, 363 Md. 150, 162 (2001)). However, "[w]hen an evaluation of the 'sufficiency of the evidence involves an interpretation and application of Maryland statutory and case law' we must preliminarily 'determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Id.* (quoting

[5] Mr. Wu does not challenge the legal sufficiency of the evidence as to the conviction for third-degree sex offense.

Rodriguez v. State, 221 Md. App. 26, 35 (2015)).

B. Statutory Interpretation

"The cardinal rule of statutory construction is to ascertain and effectuate the General Assembly's intent." *Kranz v. State*, 459 Md. 456, 474 (2018). The primary goal is "to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision." *Noble v. State*, 238 Md. App. 153, 161 (2018) (internal quotations omitted) (quoting *Bd. of Cnty. Comm'rs v. Marcas, L.L.C.*, 415 Md. 676, 685 (2010)). Any statutory analysis must begin by assessing "the normal, plain meaning of the language of the statute." *Id.* (quoting *Espina v. Jackson*, 442 Md. 311, 321 (2015)). "When the statutory language is clear, we need not look beyond [it] to determine the General Assembly's intent" and we "will give effect to the statute as written." *Rogers v. State*, 468 Md. 1, 14 (2020). "Even in instances 'when the language is unambiguous, it is useful to review legislative history of the statute to confirm that interpretation and to eliminate another version of legislative intent alleged to be latent in the language.'" *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (quoting *State v. Roshchin*, 446 Md. 128, 140 (2016)). "In every case, the statute must be given reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense." *Noble*, 238 Md. App. at 162 (quoting *Espina v. Jackson*, 442 Md. 311, 322 (2015)).

We begin our analysis with the plain language of CR § 3-601(a)(4). "Household member" is defined as a person who either (1) lives with a minor, or (2) is a regular presence in a home of a minor. Because the State did not contend that Mr. Wu lived with

E., our analysis is confined to the phrase "or is a regular presence in a home of a minor," which obviously means something less than living in the same residence or dwelling as the minor. The phrase "a regular presence in a home" is not defined in the statute, and Mr. Wu asserts that it does not apply under the facts of this case.

Before we examine accepted definitions of "regular" and "presence," it is helpful to consider *Wright v. State*, 349 Md. 334 (1998), where the Supreme Court of Maryland was tasked with construing the term "household member" as used in this statute. The Court observed:

> The issue is one of statutory construction, and we are thus required to ascertain and effectuate the legislative intent. As noted, the relevant statutory provision—§ 35C(a)(5)—defines "household member" as a person who lives with or is a regular presence in "*a* home of a child at the time of the alleged abuse." (Emphasis added.) Use of the indefinite article "a," as opposed to the definite article "the," itself indicates a legislative recognition that, for purposes of the child abuse statute, a child may have more than one home. Given the context, that is not an unreasonable recognition.
>
> Words like "home," "resident," and "household" are not capable of singular, absolute, generic definition in the law, because they are used in so many different ways and for so many different purposes. They may mean one thing to the census taker, another to an automobile insurer, one thing for voting purposes or for establishing venue in litigation, another for determining where to mail a letter. When the law uses such a word as a substitute for domicile, it may encompass only one, permanent, fixed abode, without regard to where the individual may be actually residing at a given moment. In other contexts, it may instead mean where the person is staying at the moment. The flexibility in these terms is especially important with respect to children, who are more frequently part of several homes and households. If their parents are separated or divorced, they likely will spend time and have clothes and belongings in the homes of both parents; they may visit grandparents or other relatives for varying periods of time; they may be off to camp during the summer. Where their "home" is at any given time may well depend on what is at stake in ascertaining where their home is.

> The term "household member," and with it the term "home," was added to § 35C in 1991.[6] The clear purpose of the addition was to extend the reach of the statute for the greater protection of children, to declare as criminal violations acts of abuse committed against children by a class of persons not then subject to the law. The Legislature obviously recognized that there were people other than parents, custodians, and persons directly charged with the care and supervision of a child who were in a position to commit abuse within the child's home setting, where, because of the status of both the abuser and the child in that setting, the child might be helpless against the predation. We cannot subscribe to Wright's view that the Legislature intended to restrict that protection to only one residential setting, and thus to ignore the reality actually faced by children.

Id. at 355-56. We note that the Court expressly held that the term "home" in the statute requires "flexibility" in its construction because children are "more frequently part of several homes and households." *Id.* at 356. Thus, the *Wright* Court determined that the General Assembly intended that the statute be construed to promote the declared policy of protecting the safety and security of children.

Returning to the statutory language, we note that the word "regular" is commonly defined as "recurring, attending, or functioning at fixed, uniform, or normal intervals." *Regular*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/regular [https://perma.cc/7TF3-UL9D]. Similarly, Black's Law Dictionary defines "regularly" as "at fixed and certain intervals, regular in point of time," or "in accordance with some consistent or periodical rule or practice." *Regularly*, BLACK'S LAW DICTIONARY (4th ed.

[6] The term "household member" was added to the statute, effective July 1, 1991. In 2002, much of the Maryland criminal code was repealed and recodified as part of a title-by-title recodification project, which began in 1973. The 1957 article was replaced with the current statute, Md. Code Ann. Crim. Law § 3-602(b)(2), which includes the term "household member."

1968). These definitions of "regular" contemplate a recurrence of an event or action consistently over some period of time. Black's Law Dictionary defines "presence" as the "quality, state, or condition of being in a particular time and place, particularly with reference to some act that was done then and there." *Presence*, BLACK'S LAW DICTIONARY (12th ed. 2024). Combining these definitions, "presence" in this statute means "being in a home of a minor" and "regular" means to be in such a home on a "recurring" or "consistent" basis. In our view, CR § 3-601(a)(4)'s requirement that the person charged have "a regular presence" in a minor's home is unambiguous.

C. Application and Sufficiency of the Evidence

At trial, Mr. Nowell testified that after he became romantically involved with X. in 2016, Mr. Wu regularly visited E.'s Montgomery County home. According to Mr. Nowell, Mr. Wu was present at E.'s residence at least once per week. X. similarly testified that Mr. Wu was "frequently" in her Montgomery County home. Without specifying how often it occurred, E. testified that Mr. Wu would come to her house to visit with "sometimes [her] mom, sometimes just [her]." Mr. Nowell indicated that Mr. Wu commonly entered the home unannounced and without ringing the doorbell or knocking. In addition, E.'s mother testified that Mr. Wu traveled with her and E. at least three separate times, each time sharing a hotel room with them.[7]

[7] X. specifically stated that Mr. Wu traveled with X. and E. for one cheer competition and "a couple of family trips." Each trip was for a weekend.

The evidence related to Mr. Wu's presence in X.'s Montgomery County home provides context to the sexual assault E. recounted took place in the Ocean City hotel room over the weekend of July 7-9, 2017. In his brief, Mr. Wu attempts to distinguish *Wright*, in which a minor child was temporarily living in the home of her sister and was sexually abused by Wright, who was also living with the sister. In *Wright*, the minor had planned to live with her sister for a period of two weeks during the summer, although the stay was ultimately extended by another two weeks. 349 Md. at 337. The Court held that, in light of the evidence that the child had been at her sister's home for approximately two weeks and was intending to stay for another two weeks, "it is a fair inference that at least some part of her clothes and other personal belongings" were at her sister's home. *Id.* at 356. "[T]hat is where she slept, bathed, and ate; that is where her friend, Tomika, was staying with her. That was the place where, at the time, she formed part of [her sister's] household, a household of which Wright was a member." *Id.* at 356-57. Mr. Wu argues that "there is no evidence to suggest that [he] had ever slept, bathed, or ate at [E.'s] home," nor did he "have any clothing or personal belongings at [E's] home. . . ."

We initially note that *Wright* held that the victim "was living with [her sister] when the criminal activity occurred." *Id.* at 356. Thus, the Court was construing the phrase "a person who lives with" the child in a home; *Wright* provides no analysis as to the meaning of "a regular presence" in a child's home. On the other hand, *Wright* informs that a child may have more than one "home" and that a child's two-week stay at a family member's

home satisfies the "lives with" element of CR § 3-601(a)(4).[8] *Id.* at 355-56.

Pursuant to *Wright*, E.'s "permanent" home was undoubtedly with her mother in Montgomery County, *see id.* at 356, but her temporary home for the weekend trips, including the July 2017 trip to Ocean City, was a hotel room. Although the minor child in *Wright* had been at her sister's home for approximately two weeks at the time of the abuse, we see nothing in the Supreme Court's opinion that would legally preclude a finding that the Ocean City hotel room was E.'s home for the weekend of July 7-9, 2017. Testimony from X., E., Mr. Nowell, and E.'s friend (K.R.) established that all five people traveled to Ocean City for a weekend getaway. A factfinder could reasonably infer that each party brought with them clothing and personal items sufficient for the weekend. Indeed, the testimony elicited at trial established that all five individuals slept and bathed in the Ocean City hotel room that weekend. Under the teachings of *Wright*, the jury could arguably conclude that Mr. Wu "lived with" E. and her mother in their hotel room during the July 7-9, 2017 weekend. However, we need not decide whether these facts are sufficient to satisfy the more stringent "lived with" element of the statute because we are persuaded that the jury could reasonably conclude, based on the evidence, that Mr. Wu was a "regular presence" in both the Montgomery County residence in 2016-2017 and the hotel room in Ocean City in July 2017.

Our interpretation of "household member" and, within it, the phrase "a regular

[8] We do not intend to suggest that *Wright* requires at least a two-week stay to satisfy the "lives with" element of the statute. Further caselaw will likely expound on this issue.

presence" in the home, conforms to the Supreme Court's interpretation of "household member" in *Wright*:

> The clear purpose of the addition [of the terms "household member" and "home"] was to extend the reach of the statute for the greater protection of children, to declare as criminal violations acts of abuse committed against children by a class of persons not then subject to the law. The Legislature obviously recognized that there were people other than parents, custodians, and persons directly charged with the care and supervision of a child who were in a position to commit abuse within the child's home setting, where, because of the status of both the abuser and the child in that setting, the child might be helpless against the predation.

Id. at 356. In the parlance of *Wright*, Mr. Wu, because of his status as E.'s friend and coach, was "in a position to commit abuse within [E.'s] home setting, where . . . [E.] might be helpless against the predation." *Id.* Accordingly, we conclude that the evidence was legally sufficient to establish that Mr. Wu was a "household member" of E.'s home as contemplated by CR § 3-601(a)(4). The court, therefore, did not err in denying Mr. Wu's motion for judgment of acquittal related to the sexual abuse of a minor charge.

II.

Mr. Wu next argues that the trial court erred in excluding portions of the controlled call he sought to admit under the rule of verbal completeness. To answer this question, both Mr. Wu and the State look to *Otto v. State*, 459 Md. 423 (2018); they disagree as to whether the trial court applied *Otto* appropriately.

Otto points out that the doctrine of verbal completeness "finds its roots from two sources: the common law and Maryland Rule 5-106." *Id.* at 447. "The application of the common law doctrine of verbal completeness requires that '[t]he offer in testimony of a

part of a statement or conversation, upon a well-established rule of evidence, always gives to the opposite party the right to have the whole.'" *Id.* (quoting *Smith v. Wood*, 31 Md. 293, 296-97 (1869)). Rule 5-106 partially codifies the common law doctrine and provides: "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." Although the common law permitted the admission of evidence under the doctrine during the party's case-in-chief, Rule 5-106 "allows writings or recorded statements to be admitted earlier in the proceeding than the common law doctrine." *Otto*, 459 Md. at 447. Thus, "the codification of Rule 5-106 is largely 'one of timing, rather than admissibility.'" *Id.* (citing Md. Rule 5-106, Committee Note).

The requirements of the doctrine of completeness were first established by our Supreme Court in *Feigley v. Baltimore Transit Co.*:

> This right of the opponent to put in the remainder is universally conceded, for every kind of utterance without distinction, and the only question can be as to the scope and limits of the right.
>
> The ensuing controversies are in effect concerned merely with drawing the line so that the opponent shall not, under cloak of this conceded right, put in utterances which do not come within its principle and would be otherwise irrelevant and inadmissible. In the definition of the limits of this right, there may be noted three general corollaries of the principle on which the right rests, namely:
>
> (a) No utterance irrelevant to the issue is receivable;
> (b) No more of the remainder of the utterance than concerns the same subject, and is explanatory of the first part, is receivable;
> (c) The remainder thus received merely aids in the construction of the utterance as a whole, and is not in itself testimony.

Feigley v. Baltimore Transit Co., 211 Md. 1, 10 (1956) (quoting 7 Wigmore, EVIDENCE, § 2113 (1940)).

Otto provided a thorough analysis of how the Supreme Court further limited the doctrine of verbal completeness in *Richardson v. State*, 324 Md. 611 (1991), and *Conyers v. State*, 345 Md. 525 (1997). *Otto*, 459 Md. at 450-51. The Court succinctly summarized the doctrine:

> Therefore, the rules outlined in *Feigley* provide the basis upon which this Court must limit evidence admitted pursuant to the doctrine of verbal completeness. *Richardson* orders that where the remaining evidence, if otherwise inadmissible, is more prejudicial than probative, a trial court may exclude the evidence. A reading of *Conyers* dictates that a statement does not have to be independently admissible. However, evidence that is otherwise inadmissible does not become admissible purely because it completes the thought or statement of the evidence offered pursuant to the doctrine of verbal completeness. *Inadmissible evidence will only be admitted by the rule of completeness if it is particularly helpful in explaining a partial statement and that explanatory value is not substantially outweighed by the danger of unfair prejudice, waste of time, or confusion*.

Id. at 451-52 (emphasis added). We review determinations of admissibility under the doctrine of verbal completeness for an abuse of discretion. *Id.* at 446.

With these principles in mind, we turn to the instant case. To provide context for Mr. Wu's verbal completeness argument, we reprint verbatim the portions of the telephone call between X. and Mr. Wu that were admitted in the State's case-in-chief:

[DET. CONRAD]:	This is Detective Conrad with Detective Ladeau. This is a control call for case 200005157. Victim is [E.]. Suspect is Alexander Wu. We are calling [phone number]. The caller is [X.]. And the time now is February 5, 2020, at 16:32 hours.
[X.]:	Okay.

[MR. WU]: Hello?

[X.]: Hey.

[MR. WU]: Hey.

[X.]: You got a minute to chat?

[MR. WU]: Yes.

[X.]: Dude.

[MR. WU]: What's wrong?

[X.]: So [E.] told me that something happened between you guys in the past. And I kind of just need to hear from you so I can try to take care of her because I'm -- yeah. I need -- I need you to tell me what's going on.

* * *

[X.]: You need to let me know what's going on. I mean, I'm -- I'm afraid for her right now.

[MR. WU]: I mean, I don't know what to say because, like, I've always considered just you guys as, like, my closest friends and family. And, like, I remember -- like, and I would never ever do anything to jeopardize that. Even when -- once upon a time even (inaudible), you're, like, oh, one day it's -- I can see where it's going. And, like, [X.], I don't think that's -- that's before going to be a good idea just because --

[X.]: Listen. If you're -- you --

[MR. WU]: -- I would never ever want to jeopardize any of that friendship, you know.

[X.]: And if that is true, then you need to be honest right now. (Redacted)

[MR. WU]: Well, what's going on? I just don't understand. I don't know what you're talking about because I gave you my -- I even -- you even brought that up to me once, and I'm, like, (inaudible) about that in a spiritual connection. Like, here's the thing. I could never ever do anything that will jeopardize our friendship in our -- in just the little circle that we have, granted that Chris and I are no longer friends.

* * *

[X.]: I mean, why -- why would she lie about this? Why would she make that shit up?

[MR. WU]: I don't -- because everything I --

[X.]: I think --

[MR. WU]: Because every -- because every con-- everything that revolves has been really -- I've been really transparent to you. I've always texted you everything, and I've always been really clear, and I don't know why.

[X.]: So you're telling me that she's lying. You're calling her a liar.

[MR. WU]: No, because when it comes to touching her private parts, yes. However, when it comes to comforting her, just, like, giving her, like, massages and everything, like, that was even something, like, we've always done. Like, carrying her around and everything, she's, like -- that's all, like, just family stuff we've always done.

[X.]: But why would she lie?

[MR. WU]: I don't know.

* * *

[X.]: Why would she say -- why would she make something -- why would she make something up? I don't get it.

[MR. WU]: I also am -- and I've also gone out of my way to be completely (inaudible) with everything. So I just -- like, was our friendship, like a little cross -- crossing the line for the gym? Yes. But never to what I would consider inappropriate.

[X.]: How did it cross the line then? How do you feel like it did?

[MR. WU]: I mean, honestly just (inaudible) yell. Like, honestly it's, like -- if it was any other (inaudible) in the gym, like, Jesse [the gym owner] would probably not feel comfortable. Honestly, the amount that we all hang out, the amount that we horse around at the house and everything, the amount we horse around in the gym, it's, like, can definitely be visualized as not appropriate and everything.

* * *

[X.]: Was it just something that went too far?

[MR. WU]: Possibly. I don't -- but nothing ever, like, in a -- no. Because why would I ever touch her vagina? Like, that's just -- doesn't make any sense.

[X.]: So what's -- what's the possibly part? You explain that to me.

[MR. WU]: I don't know. If she potentially was hoping, I don't know. But I would -- because even -- because you even brought it up to me once. I'm, like, this could never happen. Like you said, one day when she's (inaudible), I'm -- like, I'm sorry. It just could never happen. Like, you guys are family to me. I literally love you guys as

family. And that would almost be like me touching my own sister.

[X.]: Look, I get it. She's attractive, but this is affecting her now.

[MR. WU]: I just don't understand because our friendship -- I don't under-- yeah. I don't understand it. I don't. I want to help and -- I want to help. I want -- I don't know if she ever thought more of our friendship -- our family friendship.

[X.]: What part is confusing you?

[MR. WU]: All of it because now I feel like I'm, like, a bad guy when I don't -- but there's nothing. There's nothing -- everything I've ever (inaudible) was, like, in our friendship, in our just friendship. Like, I would never like to cross any of our boundaries. Never.

[X.]: I'm just trying to help her.

[MR. WU]: I completely get that. And if I were in your situation, I was being told this, I would, too, 100 percent. And even as --

[X.]: I mean, my focus --

[MR. WU]: -- a close friend.

[X.]: My focus right now is to make sure she is okay. I'm not mad. I -- I need to understand from a standpoint of being her mom. And I need to make sure that I understand so that I can get her the right kind of help. She's having a really hard time. And I need to know what happened to help her move forward, you know, finish school, like, want to live right now.

[MR. WU]: Wait. What do you mean live?

[X.]: She said some pretty harsh things to me recently. She's having a really hard time. I mean, what do I even --

[MR. WU]: I don't know. Has she ever even said thinking about Scotty? Because I know that, like, once upon a time she would cry to me, like, at practices telling me how much she's stressed out and how much her -- how much life is -- how much she's (inaudible) anxiety and depression --

[X.]: No. It's just you, Alex. Just you. You touched her. It went a little too far, but you didn't mean to hurt her, right?

[MR. WU]: Never. I would never -- [X.], I would swear on my life that I would never ever ever do anything to hurt you or her.

[X.]: And you thought -- you thought it was what you both kind of wanted to happen. I know you didn't mean to hurt her.

[MR. WU]: I would never ever, guarantee you never ever do anything to hurt any of us.

[X.]: So you touched her and it went a little too far.

[MR. WU]: I do not believe we -- anything ever went too far.

[X.]: But you're hurting her now. Did you touch her?

[MR. WU]: Inappropriately, no.

[X.]: So you didn't touch her vagina?

[MR. WU]: I've never touched -- I've never touched her inappropriately. I would never ever do anything to jeopardize (inaudible).

[X.]: Define inappropriate, then. Help me out here.

[MR. WU]: Well, considering that she's a minor, like, you know.

* * *

[X.]: Because you're not being honest with me. Tell me about Ocean City. Let's go there for a minute.

[MR. WU]: What about Ocean City? How many times -- well, first of all, how many times have you been to Ocean City, like, all together?

[X.]: I don't know. You tell me.

[MR. WU]: I don't know. I think we went twice.

[X.]: So Ocean City, when we were all together and you walked in on her in the shower.

[MR. WU]: And then I immediately closed the door and walked out.

[X.]: That's not what she told me.

[MR. WU]: Well, I -- well, then what did she tell you?

[X.]: That's not what you did. You didn't immediately walk back out and shut the door.

[MR. WU]: And she was -- and I would like to correct you that she was in the -- she was in the restroom. Like, she was -- she was pooping. I walked in, she pooped, she was pooping, and then I just walked out. Like, oh, God.

[X.]: It would good if you told me what really happened.

[MR. WU]: I don't know what you want -- I literally recall walking in, she was pooping, she (inaudible), and I just, like, walked out. I'm, like, can you lock the door?

[X.]: Tell me about the shower part.

[MR. WU]: What shower part? I don't actually remember seeing her in any shower whatsoever. The only time I ever walked into her on the bathroom was when she was pooping, and then I just said, can you lock the door, and I walked out. I walked out. I said, can you lock the bathroom? I don't ever recall her being in the shower (inaudible). In fact, in any of our times we all ever hung out (inaudible), like, if it was at your house or something, I just was sitting in the living room with you. Never ever just her in the shower. I mean --

[X.]: So you walked in and made her look at you.

[MR. WU]: Made her look at me?

[X.]: Uh-huh.

[MR. WU]: No. That's never something I would ever even say to anyone.

[X.]: You pulled the curtain -- the shower curtain.

[MR. WU]: What? What? I go -- I want to hear this because I've never ever done that. What? I've never -- I walked into her and she was pooping once.

[X.]: And then later on you touched her thigh again.

[MR. WU]: When?

[X.]: In Ocean City.

[MR. WU]: Not -- not -- it was not a venting -- there was no venting or anything in Ocean City.

[X.]: You're going to need to make me understand exactly what happened, Alex.

[MR. WU]: I mean, the only time -- the only thing in Ocean City was when I literally walked into her -- like,

walked into the bathroom when she was pooping once, and then I walked out and then just left. I'm, like, can you lock the door? Like, you know there's a lock, right? And then I don't remember what (inaudible).

[X.]: Yeah. And then Chris and I left to go get whatever we were doing together, and you ended up touching her thigh and then ran your hand up her leg and up to her vagina again.

[MR. WU]: No. I would never -- that's not something I would do. That's not something I would do.

[X.]: So why is she saying it? Why would she make it up? Why would she say these details to me?

[MR. WU]: I don't know if there's something she's wanted, but I just -- wasn't [K.R.] there, too?

[X.]: No.

[MR. WU]: Are you sure because --

[X.]: I'm sure.

[MR. WU]: -- the Ocean City I'm remembering is [K.R.] was there.

[X.]: No. So you're still calling her a liar.

[MR. WU]: I just -- these things didn't happen. Oh, especially this whole shower nonsense, too, and touching her vagina. Like, I walked -- I walked into her in the bathroom and she was pooping once.

Mr. Wu argued for the admission of a second redacted transcript of the telephone call, which, according to him, offered clarifying statements that helped explain the portion of the call that the court had already admitted. He argues that the trial court did not

correctly apply Maryland law governing the doctrine of verbal completeness.

We reject Mr. Wu's contention that Maryland Rule 5-106 and relevant caselaw "required" admission of the second portion of the recorded controlled call. As the Court stated in *Otto*, admission of such redacted evidence can only be "considered in light of what has already been admitted" and is subject to the *Feigley* factors, plus the additional limitations described in *Richardson* and *Conyers*. 459 Md. at 456. Our reading of the trial transcript persuades us that the trial court correctly applied the analysis set forth in *Otto* when it found that the additional parts of the call that Mr. Wu sought to admit yielded little new information, and that the court did not abuse its discretion in determining that the probative value of that information did not outweigh the harm of prejudice. The circuit court ruled as follows:

> [THE COURT]: So I have reviewed what in Black's is referred to as the rule of optional completeness which is the evidentiary rule providing that when a party introduces part of a writing or an utterance at trial, the opposing party may require that the remainder of the passage be read to establish the full context. The rule has limitations. Those limitations have been identified and clarified in case law.
>
> And I'll address first that in *Churchfield v. State*, which is a 2001 case, that's 137 Md. App. 668, Maryland refers to this rule as the doctrine of verbal completeness. And under that doctrine the right of a party to admit the remainder of a writing or conversation in response to an opponent's admission of a part of that writing or conversation is governed by three general conditions.

Condition number one is that the utterance to be admitted may not be irrelevant to the issue.

Condition number two requires that no more of the remainder of the utterance that concerns the same subject and explains part of the utterance already in evidence may be admitted.

And number three -- or condition number three is that the remainder is received as an aid in construction of the utterance as a whole and is not in itself considered to be testimony.

So all three of those conditions must exist which essentially I worked it down to, number one, that it concerned the same subject that has already been introduced. Not the trial subject, but specifically the subject of an earlier admitted statement. That it also explain the part of the utterance that is already in evidence. And that it not in and of itself be considered testimonial.

The case of *Otto v. State*, which is more recent. It's a 2018 case. The opinion was filed June 21st of 2018. That is the Court of Appeals -- well, the Supreme Court of Maryland, and that is 459 Md. 423. And it essentially confirms what I've already expressed as part of the opinion in *Churchfield*.
It reads that -- the third part of the rule -- let me back up. It clarifies, if clarification was necessary, that inadmissible evidence will only be admitted by the rule of completeness if it is particularly helpful in explaining a partial statement, and that explanatory value is not substantially outweighed by the danger of unfair prejudice, waste of time or confusion.

Later in that same opinion it addresses the third part of the rule, that the remaining evidence merely aids in construction of the utterance as a whole, suggests or states that that portion, that

third part of the rule is incorporated into the second rule's requirement that the remaining evidence be explanatory of the first part, meaning, the evidence that's already admitted.

And ultimately it says, the added restriction that the remaining evidence is not in itself testimony dictates that had the remainder of the transcript been admitted, the remainder could only be used to explain the already admitted partial statements.

[Defense counsel], I reviewed Defendant's Exhibit 8. I have not identified any statements contained in your redacted transcript of that part two of the call that explains part of an utterance that has already been admitted or that could not be considered testimonial in and of itself. Do you want to address the [c]ourt's concerns? Is there any particular part of your exhibit that you're seeking to introduce that relates directly to statements that are admitted that you believe explain the admitted portion?

[DEFENSE COUNSEL]: Your Honor, I think it goes to -- it explains or it further explains, you know, what Mr. Wu said when he walked in on her when she was pooping. It further explains that he's asked multiple times on the exhibit in evidence, you know, why do you think she's lying, you know, why would she be lying. You know, he says multiple times, I don't know.

There are portions of the second phone call that we're seeking to admit where he explains other reasons or other theories of why she may be lying in response to the questions in the first call.

And I think at one point he says in the call that's admitted, he says, well, considering she's a minor, well, you know. And then there are portions of the call that we're seeking to be

admitted that, you know, further clarify, you know, that, you know, obviously she's a minor. I can't do that. That would never happen. So I think on those three parts, you know, it's explaining things and explaining statements -- further explaining statements that have already been admitted in evidence, you know.

And there's also, you know, a general -- what's also been admitted, you know, is the allegations from [X.]. You know, why would she be lying, you can try to help her, those are all things that have been admitted as well, you know. And in the statement that we're seeking to admit, you know, explains why he can't help her, why he can't explain, you know, why she's making this allegation because he says this didn't happen. I can't explain something that did not happen. And so it's in furtherance of explaining those parts that I believe that it's admissible for those reasons, Your Honor.

[THE COURT]: All right. Well, respectfully, [Defense Counsel], the [c]ourt disagrees. I do not find particular portions of what you're seeking to admit to be directly related to portions of the statement that are already in evidence that would then explain an incomplete response or something along those lines. *The [c]ourt finds that this -- what would be required is that the evidence would only be admitted by the rule of completeness if it is particularly helpful in explaining a partial statement, and that explanatory value is not substantially outweighed by the danger of unfair prejudice, waste of time or confusion. The [c]ourt could not find that what you are seeking -- what you would seek to admit or offer into evidence would be particularly helpful in explaining a partial statement. I reviewed every line of what you are suggesting be received as evidence. I've compared that against every line of what has been already received in evidence,*

> *and I simply cannot reach that conclusion.* So any attempt to introduce any portion of the second part of the controlled call, what has been identified as Defendant's Exhibit No. 8, would be -- any objection would be sustained. So that will help at least the parties understand what the [c]ourt's feelings and thoughts are on that issue.

(Emphasis added).

We initially commend the trial court for its thorough recitation of the law applicable to the rule of completeness. The court indicated that it had reviewed the entire transcript that Mr. Wu sought to admit and concluded that it could not find anything that would be "particularly helpful in explaining" a partial statement. We likewise have reviewed the statements Mr. Wu sought to admit, and we discern no abuse of discretion in the court's ruling that those statements were not required to be admitted under the doctrine of verbal completeness.[9] When asked at oral argument specifically which statements should have been admitted, appellant's counsel identified the following exchange:

> [MR. WU]: I mean, I'm -- I'm -- to why, there is no why. I -- I never touched her in an -- in an inappropriate spot, like. I just I can't give you a why for something I didn't do.
>
> [X.]: So did you touch her vagina?

[9] In his brief, Mr. Wu argues that the redacted portion of the call he moved to admit would have countered a statement made by the State during its closing argument. The State correctly points out that Mr. Wu did not lodge a timely, contemporaneous objection. This argument is, therefore, not preserved for our review. Mr. Wu also raises for the first time on appeal that the redacted portions of the call were "verbal acts" and, accordingly, did not fall under the rule against hearsay. The State argues, and we agree, that Mr. Wu waived this argument by not raising it at trial. As both of these issues were waived, we need not address them here.

[MR. WU]: I did not touch her vagina.

We have no difficulty concluding that the admitted statements specifically included Mr. Wu's denial of touching E.'s vagina (and any inappropriate touching generally), and thus the court did not abuse its discretion in denying Mr. Wu's request to admit this passage. [10] In sum, we cannot say that the trial court's ruling is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Otto*, 453 Md. at 446 (quoting *Evans v. State*, 396 Md. 256, 277 (2006)).

CONCLUSION

We hold that the Circuit Court for Worcester County did not err in denying Mr. Wu's motion for judgment of acquittal pertaining to the charge of sexual abuse of a minor by a household member. We further hold that the court was within its discretion to exclude the redacted portions of the controlled call offered by Mr. Wu. We therefore affirm the convictions.

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

[10] In his brief, Mr. Wu cites another passage—page 54, lines 5-20 of the unredacted telephone transcripts originally filed as a supplemental exhibit to his Motion for Leave to File a Transcript. He argues in his brief that the colloquy on page 54 both clarifies and provides additional context for earlier, admitted statements regarding the inappropriateness of his friendships with X. and E. Mr. Wu claims that the statements made on page 54 of the transcript are more broadly about whether the friendships at issue would be regarded as appropriate within the general cheer community. The analysis is the same—the court did not abuse its discretion in precluding the statement because it was not "particularly helpful in explaining" the admitted statements.