Circuit Court for Worcester County
C-23-CR-21-000168

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 492

September Term, 2022

GREGORY DOMINO

v.

STATE OF MARYLAND

Leahy,
Albright,
Raker, Irma S.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: June 14, 2023

* This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Gregory Domino, Appellant, was convicted by a jury in the Circuit Court for Worcester County of one count each of child sexual abuse, third-degree sexual offense, fourth-degree sexual offense, and second-degree assault.[1] The court sentenced Mr. Domino to serve 25 years for child sexual abuse, with all but 18 years suspended, followed by three years supervised probation. The remaining charges merged for purposes of sentencing. Mr. Domino appeals, presenting one question:

> Did the trial court err in admitting allegations of other bad acts?

We hold that the bad acts evidence was properly admitted and affirm the judgments of the circuit court.

BACKGROUND

1. The Alleged Abuse in Ocean City, Maryland

For seven months between February and September 2020, K.S.,[2] then age 9, lived in a three-bedroom house in Cambridge with her mother, M.S., her mother's friend, Mr. Domino, who she knew as "Dom," and Mr. Domino's three-year old son, I.[3] Over

[1] Mr. Domino was acquitted of second-degree rape.

[2] Under Rule 8-125, this Court shall not identify the victim of a crime, except by his or her initials, if the victim was a minor at the time of the crime or is the victim of a sex crime. Md. Rule 8-125(a)-(b)(1). The Rule further provides that this Court shall not include other information from which the victim could be identified. Md. Rule 8-125(b)(2). Consistent with this Rule, we identify the victim and related individuals by their initials.

Memorial Day weekend that spring, Mr. Domino took K and I to Ocean City for I's fourth birthday. They stayed in a hotel room with two beds. K slept in one bed with I, and Mr. Domino slept in the other bed. On the last morning in Ocean City, K woke to find Mr. Domino on top of her in the hotel bed. His "hand was touching [her] private part" beneath her underwear. I was awake but was playing on the floor near the television facing away from them. K jumped out of the bed. She did not say anything to Mr. Domino about what happened, and the day "went on like it was normal." They drove home to Cambridge that same day.

2. K's Disclosure of the Abuse and the Investigations

Over four months later, on September 16, 2020, K called her mother and told her about waking up "to Dom touching her." Ms. S came home, and K "started telling [her] more things." Ms. S contacted the police and obtained a protective order, so that Mr. Domino would not be permitted to return to the house.

K's allegations were investigated by the Cambridge Police Department and the Ocean City Police Department. Detective Carl Perry with the Ocean City Major Crimes Unit investigated the abuse alleged to have occurred in that jurisdiction. He reviewed an interview of K conducted by the Dorchester County Department of Social Services in which she disclosed that "Mr. Domino had touched her private area while in Ocean City, Maryland." K could not remember the name of the hotel where she stayed with Mr.

[3] For a few weeks beginning in August 2020, K's 21-year-old brother, D.S., also lived with them.

Domino, but she was able to provide a description of the hotel and the surrounding area, including the name of a nearby pizzeria. Detective Perry traveled to the boardwalk area with K and Ms. S on April 1, 2021 and K was able to identify the Ocean Beach Plaza as the hotel where they had stayed. Detective Perry confirmed with that hotel that Mr. Domino was a registered guest from Friday May 29 to Sunday May 31, 2020. The room they stayed in was consistent with K's description.[4]

In June 2021, Mr. Domino was indicted in the Circuit Court for Worcester County on five counts, including sex abuse of a minor. At that time, Mr. Domino was awaiting trial on charges filed against him in the Circuit Court for Dorchester County arising from alleged sexual abuse of K that occurred in Cambridge. In July 2021, the Dorchester County charges were placed on the stet docket.

3. K's Recorded Statement

On July 28, 2021, K was interviewed by Althenia Jolly, a social worker assigned to the Child Advocacy Center for the Child Protective Services division of the Worcester County Department of Social Services. The interview was video recorded. K told Ms. Jolly that Mr. Domino touched her on "maybe four or five" separate occasions, including the incident in Ocean City. The other incidents all happened in Cambridge.

With respect to those incidents, K explained that on one occasion, she was "messing around" with Mr. Domino on the couch in the living room when he "started to

[4] Detective Perry did not see the rocking chairs that K described but explained that because he visited the hotel during the off season, the rocking chairs (and other furniture) would not have been on the porch.

touch [her] down there with his hands." His hands were beneath her underwear. Her mother was home at the time but was outside smoking. I also was home but was not in the room. On another occasion, K was wrestling with Mr. Domino when he pinned her to the floor and was "touching [her] with something down there." She clarified in response to questioning that Mr. Domino was touching her "private part" with his "private part" over her clothing. On a third occasion, K was playing with I on Mr. Domino's bed and Mr. Domino joined them. After I left the room, Mr. Domino told K he was "a vampire" and began "biting [her] ear and [her] neck."

4. The Pretrial Proceedings

On September 23, 2021, the State gave notice of its intent to introduce K's out-of-court, recorded statement under Md. Code, Crim. Proc. ("CP") § 11-304, attaching a transcript of the interview. As pertinent, that statute permits the introduction of an out-of-court statement of a child victim in a criminal proceeding as an exception to the rule against hearsay if he or she is under the age of 13, is an alleged victim of rape or a sexual offense, and the statement was made to and will be offered by certain professionals, including a social worker. CP § 11-304(b)-(c). Such a statement is admissible only if the court finds that it has "particularized guarantees of trustworthiness" based upon consideration of 13 nonexclusive factors.[5] CP § 11-304(e).

[5] The factors are:

> (i) the child victim's or witness's personal knowledge of the event;

On October 12, 2021, the circuit court held a hearing and determined that K's out-of-court statement was admissible under § 11-304. After hearing testimony from Ms. Jolly and Detective Perry and viewing the 38-minute video recorded statement, the court made the following pertinent findings.[6] K was "intelligent, emotionally mature and

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

CP § 11-304(e)(2) (eff. Oct. 1, 2017).

[6] The court's findings were tailored to the § 11-304(e)(2) factors. Because Mr. Domino does not challenge the court's determination that the out-of-court statement bore particularized guarantees of trustworthiness sufficient to permit its admission under § 11-

articulate for her age." She was "conscious of the duty and importance to speak the truth." The court did not observe any indicators that K was fabricating, such as over embellishment. Her responses to Ms. Jolly's questions did not "appear rehearsed" and seemed "authentic." Her vocabulary was age appropriate, and her narrative was internally consistent.

On February 23, 2022, two weeks before trial was scheduled to commence, the State moved *in limine* to admit bad acts evidence under Rule 5-404(b), specifically the portions of K's recorded statement that alleged sexual abuse occurring in Dorchester County. Mr. Domino opposed the motion, arguing that the State's notice of its intent to introduce this evidence was untimely under Md. Code, Cts. & Jud. Proc. ("CJP") § 10-923,[7] which required at least 90 days' advance notice. He further argued that the motion

304, we only set out those findings relevant to the court's subsequent determination that portions of the statement were admissible under Rule 5-404(b).

[7] Section 10-923, enacted in 2018, provides, in pertinent part:

> (b) In a criminal trial for a sexual offense listed in subsection (a)(1), (2), or (3) of this section, evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admissible, in accordance with this section.
>
> (c)(1) The State shall file a motion of intent to introduce evidence of sexually assaultive behavior at least 90 days
>
> before trial or at a later time if authorized by the court for good cause.
>
> * * *

was deficient because the State failed to identify the purpose for which the evidence was being offered and to prove the other acts by clear and convincing evidence.

On March 2, 2022, the court held a hearing on the State's motion. The prosecutor maintained that the evidence of Mr. Domino's other bad acts occurring in Dorchester County were admissible, arguing:

> [T]here were at least five or six more incidents involving [Mr. Domino], with whom she resided, and that that -- that nature of that relationship, Your Honor, the fact that he resided in the home and the nature of that ongoing abuse is what caused that delay in disclosure. And so, Your Honor, I think that the State has the – not just the right, but the obligation to notify the jury or to explain to the jury why that disclosure happened. Because if we're really talking about a disclosure for a single event that would have just occurred back in June 1 of 2020, and the disclosure occurring on September 16, 2020, is that a prompt disclosure? But it is a prompt disclosure because it's also a disclosure that includes sexual abuse that occurred in Dorchester County. These cases, Your

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> (e) The court may admit evidence of sexually assaultive behavior if the court finds and states on the record that:
> (1) The evidence is being offered to:
> (i) Prove lack of consent; or
> (ii) Rebut an express or implied allegation that a minor victim fabricated the sexual offense[.]

See generally Woodlin v. State, 254 Md. App. 691, 698 -701, *cert. granted*, 482 Md. 31 (2022).

Rule 5-413, adopted in 2019, clarifies that in a "prosecution[] for sexually assaultive behavior as defined in Code, Courts Article, § 10-923(a), evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admitted in accordance with § 10-923."

> Honor, while perhaps in different jurisdictions are, I think, intertwined and impossible to separate.

Defense counsel responded by arguing that § 10-923 governed admission of *any* evidence of other sexually assaultive behavior by a criminal defendant and the State concededly had not complied with the strictures of that statute. Alternatively, he argued that the State had not proved the other acts by clear and convincing evidence and that any probative value of that evidence was outweighed by the prejudice to Mr. Domino. At the conclusion of the hearing, the court took the matter under advisement.[8]

5. The Trial

On the first day of trial, March 7, 2022, the court ruled that § 10-923 "did not apply to the situation at hand" and that it was not the intent of the legislature in enacting that statute to "limit the ability of the State in sex abuse cases where you've got the same defendant and the same victim . . . in any way further than the 5-404(b) analysis[.]" The court asked the State to make a proffer as to the precise evidence it intended to introduce and the purpose for which it intended to introduce it. The State proffered that it sought to introduce K's statements during her recorded interview about incidents when Mr. Domino touched her in the house in Cambridge after they returned from Ocean City for the purpose of "address[ing] [the] time frame [between the events in Ocean City and K's disclosure to her mother] and to let the jury know that this was a common scheme or an

[8] Mr. Domino does not advance the argument on appeal that he made before the trial court – that the State was required to comply with § 10-923 – and, consequently, he has waived it.

ongoing scheme and that's what caused the delay in disclosure." Defense counsel objected to those statements being admitted generally based on his earlier arguments at the pretrial hearing, but also argued that the court should limit the admission of the statements to two incidents that K specifically described – the touching that occurred on the couch and the touching that occurred when K and Mr. Domino were wrestling – because only those acts were established by clear and convincing evidence. He argued that the court should not admit K's statement that Mr. Domino had touched her on "four or five" occasions.

The court noted that it had previously watched the video recording of K's interview and found that it had "particularized guarantees of trustworthiness" under § 11-304. It incorporated its findings from the October 12, 2021 hearing into its ruling. The court ruled that K's statements about Mr. Domino's bad acts in Cambridge were admissible under the exception to the prohibition on propensity evidence enunciated in the "*Vogel*[9] line of cases," which applied when the other "[p]rior illicit sexual acts are similar" to the charged crimes and "it's the same accused and victim involved." Alternatively, "under a more typical 5-404(b) analysis," the court ruled that the State had demonstrated that the evidence had a "special relevance in that it's substantially relevant to some contested issue in the case and not offered simply to prove criminal character." Specifically, it was relevant to show a "common scheme" and to explain the delayed

[9] *Vogel v. State*, 315 Md. 458 (1989). We will discuss the holding in *Vogel* in our analysis.

disclosure of the sexual abuse. The court further found that the bad acts were established by clear and convincing evidence based upon its review of K's recorded statement. The court reasoned that the probative value of the evidence outweighed any prejudice to Mr. Domino and granted defense counsel a continuing objection to the admission of the evidence.

At trial, the State called four witnesses: K, Ms. S, Ms. Jolly, and Detective Perry, who testified consistently with the above-stated facts. K testified about the Ocean City incident but was not asked about any other incidents that occurred in Cambridge. She explained that she did not call her mother after Mr. Domino touched her because her phone battery had died, and Mr. Domino would not allow her to get her charger from his car. During Ms. Jolly's testimony, the recorded interview, with some redactions not pertinent to our analysis, was admitted into evidence and played for the jury.

In his case, Mr. Domino testified that he met Ms. S in 2018 through a mutual friend, and she began purchasing prescription pills from him. In 2019, they began a sexual relationship, which ended later that year. In February 2020, he began renting a room in Ms. S's house.

Mr. Domino testified about several disagreements between him and Ms. S that he believed led to her encouraging K to make a false accusation against him. First, he told Ms. S that K was lazy because she refused to clean up after herself. Second, he had confronted Ms. S about her accepting cash from him for the utilities but not paying the

utility bill. Third, shortly before K disclosed the sexual abuse, Ms. S became angry with Mr. Domino after she observed that he had a female friend staying at the house with him.

With respect to the trip to Ocean City, Mr. Domino testified that he invited K to come, so that I would have a playmate. He rented a single hotel room with two beds. He was not asked directly about K's allegations but described their activities that weekend, all of which were innocent in his telling. He refuted K's claim that she did not have access to her phone that weekend, testifying that she was using her phone in the hotel room.

The jury was instructed as follows with respect to K's statement about the uncharged conduct occurring in Dorchester County:

> You've also heard evidence that the defendant allegedly committed crimes of sex abuse of a minor and related sexual offenses which are not charges in this case; specifically, conduct that allegedly occurred in Dorchester County.
>
> You may consider this evidence only on the question of common scheme or plan. However, you may not consider this evidence for any other purpose. Specifically you may not consider it as evidence that the defendant is a bad character or has a tendency to commit crime.

In closing, the prosecutor argued that K did not immediately disclose the abuse that occurred in Ocean City because "she was actually living with her abuser . . . [a]nd that there were other events that happened in Cambridge." Defense counsel argued that the 108-day delay in disclosure was a factor the jury should consider in assessing K's credibility.

The jury convicted Mr. Domino of child sexual abuse, third-degree sexual offense, fourth-degree sexual offense, and second-degree assault. It acquitted him of second-degree rape. This timely appeal followed sentencing.

DISCUSSION

A. Standard of Review

Rule 5-402 governs the admissibility of evidence, stating that "except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible." If evidence is relevant, the trial court's decision to admit it is reviewed for abuse of discretion. *Williams v. State*, 457 Md. 551, 563 (2018).

Though often relevant, evidence of other crimes generally is inadmissible in a criminal trial "to prove the character of a person in order to show action in the conformity therewith." Md. Rule 5-404(b). "The primary concern underlying the Rule is a 'fear that jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking.'" *Hurst v. State*, 400 Md. 397, 407 (2007) (quoting *Harris v. State*, 324 Md. 490, 496 (1991)). Evidence of other crimes is admissible, however, in some circumstances where the evidence is "'specially relevant' to a contested issue" other than criminal propensity, "such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident." *Burris v. State*, 435 Md. 370, 386 (2013) (quoting Md. Rule 5-

404(b)). The exceptions listed in the Rule are illustrative but "not exhaustive." *Allen v. State*, 192 Md. App. 625, 652 (2010) (citation omitted), *aff'd*, 423 Md. 208 (2011).

A trial court faced with the decision whether to admit "bad acts" evidence must apply a three-part test first enunciated in *State v. Faulkner*, 314 Md. 630 (1989), to: (1) "determine whether the evidence fits within one or more of the [] exceptions" enumerated in Rule 5-404(b) and our case law; (2) "decide whether the accused's involvement in the other crimes is established by clear and convincing evidence"; and (3) weigh "the necessity for and probative value of the 'other crimes' evidence . . . against any undue prejudice likely to result from its admission." *Id.* at 634-35 (cleaned up). On appeal from of a decision to admit such evidence, we review the first step of that test – whether there is an exception to Rule 5-404(b)'s presumptive exclusion of bad acts evidence – without deference. *Stevenson v. State*, 222 Md. App. 118, 149 (2015). We review a ruling on the second step for "'whether the evidence was sufficient to support the trial judge's finding.'" *Thomas v. State*, 213 Md. App. 388, 411 (2013) (quoting *Faulkner*, 314 Md. at 635). We review a trial court's ruling on the third step for abuse of discretion. *Id*.

B. Contentions of the Parties

Mr. Domino contends that the trial court erred in its application of all three prongs of the test. First, he argues that the evidence that he committed subsequent sexual offenses against K was inadmissible propensity evidence because it was not specially relevant to show a "common scheme" and did not fall within the *Vogel* exception. Second, he maintains that the court erred by finding that K's "vague allegations" about

the sexual abuse in Cambridge were proved by clear and convincing evidence. Finally, he asserts that even if the evidence was otherwise admissible, the court abused its discretion by not excluding the evidence because the danger of unfair prejudice outweighed any probative value.

The State responds that the evidence of Mr. Domino's continued sexual abuse of K was not bad acts evidence and was not subject to heightened scrutiny because the sexual abuse in Worcester County and Dorchester County all was part of a single continuing transaction. Alternatively, it maintains that the evidence was admissible as propensity evidence under the long-established common-law exception enunciated in *Vogel v. State*, 315 Md. 458 (1989), *and* under Md. Rule 5-404(b), for the purpose of explaining the reason for the delay in K's disclosure. Even if the court erred by admitting the evidence, the State asserts that any error was harmless beyond a reasonable doubt.

C. Analysis

The court ruled that the evidence of Mr. Domino's subsequent bad acts was admissible for two alternative reasons. First, it ruled that the evidence was admissible under the sexual propensity exception identified in "the *Vogel* line of cases." Alternatively, the court ruled that the evidence was admissible under a "more typical Rule 5-404(b) analysis" because it was substantially relevant to show a "common scheme," to explain the delayed reporting, to show "a continuing course of conduct," and

"to provide the full context." We conclude that the evidence was not admissible under the "sexual propensity" exception but was admissible under Rule 5-404(b).

In *Vogel*, a case that predates Maryland's adoption of Rule 5-404, the Court of Appeals held that when (1) the prosecution is for sexual crimes, (2) the *prior* illicit sexual acts are similar to that for which the accused is on trial, and (3) the victim in the earlier incident and the victim in the crime on trial are one and the same, the evidence of the earlier bad act is admissible. Unlike traditional bad acts evidence, "where the other acts evidence is admissible only because it has special relevance to prove intent, motive, absence of mistake, identity, or common scheme, sexual propensity evidence is admissible to prove conformity with past conduct." *State v. Westpoint*, 404 Md. 455, 492 (2008) (emphasis omitted). In the instant case, the alleged sexual abuse in Cambridge occurred *after* the alleged sexual acts in Ocean City. When the trial court ruled, it recognized that *Vogel* refers to "*prior* illicit sexual acts," but stated that subsequent caselaw had expanded the exception to encompass *subsequent* illicit sexual acts. Our review of the case law does not bear that out. *See Acuna v. State*, 332 Md. 65, 75 (1993) (quoting 5 L. McLain, *Maryland Practice: Maryland Evidence, State & Federal* § 404.1, at 344 (1987) (explaining that the exception identified in *Vogel* allows "courts . . . to admit proof of prior acts to show a party's conformity with past conduct")); *Hurst*, 400 Md. at 415-16 (emphasizing that the exception recognized in *Vogel* "is strictly limited to those situations in which the prior sexual acts are similar to the offense for which the defendant is on trial and involve the same victim" (emphasis omitted)). Consequently, the

evidence that Mr. Domino subsequently sexually abused K was inadmissible under *Vogel* and its progeny.

Unlike the sexual propensity exception, the Rule 5-404(b) exceptions apply to other crimes, wrongs, or bad acts occurring before or *after* the charged conduct. *See, e.g.*, *Klauenberg v. State*, 355 Md. 528, 547 n.3 (1999) (noting that although courts frequently refer to this rule as governing the admissibility of "prior bad acts" evidence, "the acts contemplated by the rule" need be neither "prior" nor "bad"). The court ruled that the evidence was probative of a common scheme,[10] to explain K's delay in reporting the abuse, to show "a continuing course of conduct" and was "appropriate to provide the full context." This reasoning was consistent with the prosecutor's argument that Mr. Domino's sexual abuse of K in Cambridge was specially relevant to explain to the jury the "nature of that relationship, . . . the fact that he resided in the home and the nature of that ongoing abuse" both because it explained the "delay in disclosure" and because the abuse occurring in Ocean City and Cambridge was "intertwined and impossible to separate."

[10] The State does not argue on appeal that K's testimony was properly admitted under the traditional common scheme or plan exception. We agree that the evidence was not admissible under this exception. *See Reidnauer v. State*, 133 Md. App. 311, 322 (2000) (quoting *Emory v. State*, 101 Md. App. 585, 613 (1994)) (In order to qualify as a "common scheme," when identity is not an issue, there must be evidence of "one grand plan; the commission of each [wrongful act] is merely a step toward the realization of that goal. The fact that the crimes are similar to each other or occurred close in time to each other is insufficient.").

Our decisional law makes clear that "bad acts" evidence has special relevance and may be admissible when it is necessary to "show the context of the crime" and complete "the story" of the offense. *Merzbacher v. State*, 346 Md. 391 (1997). In *Merzbacher*, the Supreme Court of Maryland, then known as the Court of Appeals, considered whether the trial court erred in a child sexual abuse prosecution of a former school teacher by permitting the State to introduce evidence of other bad acts committed by the defendant against the victim and her classmates. *Id.* at 396, 405-06. The prosecution took place over twenty years after the abuse occurred, though the evidence showed that the victim first reported the abuse seven years after it occurred and then again nine years later. *Id*. at 396. The latter disclosure ultimately led to the charges against the defendant for child sexual abuse, common law rape, and related charges and to his conviction. *Id*.

On appeal, the Court held that the trial court did not err by permitting the State to adduce testimony about the defendant's other conduct with students, including perverted practices he disclosed contemporaneously to a friend involving the victim and other female students in his class. *Id*. at 405-09. The Court reasoned that the evidence was specially relevant to "show[] the jury that [the victim's] rape took place in a larger, more invidious context" and to explain her delay in reporting the abuse. *Id*. at 409. In so holding, the Court was guided by *United States v. Powers*, 59 F.3d 1460 (4th Cir. 1995), which was decided under Federal Rule of Evidence 404(b), the federal counterpart to Rule 5-404(b) from which our rule was derived. There, in a prosecution of a father for sexual abuse of his nine-year-old daughter, the federal district court permitted the

government to adduce evidence that the defendant physically abused his wife and his other children "almost every day," and had, on one occasion, threatened to burn the house down with the family inside. *Id*. at 1464. In affirming that determination, the Fourth Circuit opined:

> [W]e have made clear that prior bad acts evidence is considered necessary and admissible either where it is an essential part of the crimes on trial, or where it furnishes part of the context of the crime. Here, the evidence of the beatings was necessary to place the sexual abuse evidence in context.

Id. at 1466 (cleaned up) (footnote omitted). The Court added that bad acts evidence was admissible "to show the context of the crime . . ., often simply to complete the story of the offense." *Id*. This was so when "bad acts are so intimately connected with and explanatory of the crime charged against the defendant and are so much a part of a setting of the case and its environment that their proof is appropriate in order to complete the story of the crime on trial by proving the immediate context of the *res gestae*." *Id*. (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir.1980) (cleaned up)).

In *Merzbacher*, the Supreme Court found this reasoning "compelling," emphasizing that the sexual abuse alleged in the case before it was "not an isolated incident devoid of setting" but occurred over three years in the context of a "specific relationship and [a] highly intimidating atmosphere." 346 Md. at 410. Further, "the other crimes or bad acts evidence introduced against Merzbacher were not for conduct 'wholly independent of that for which [Merzbacher was] on trial.'" *Id*. (quoting *Ross v. State*, 276 Md. 664, 669 (1976) (alteration in *Merzbacher*)).

Though the sexual abuse in this case spanned a shorter time period than that in *Merzbacher* and *Powers*, the same rationale for admission of the evidence applies. The evidence showed that Mr. Domino began living with K and her mother in Cambridge in February 2020; that he touched her in her vaginal area in a hotel room in Ocean City on or about May 31, 2020; and that after that incident, he touched K on three or four more occasions at the house in Cambridge. K first reported the sexual abuse to her mother in mid-September 2020, three and a half months after the first incident. She also disclosed the Cambridge abuse at that time.

The acts of sexual abuse that K disclosed to her mother, to the police, and to Ms. Jolly all took place over a short period of time in the context of her relationship with Mr. Domino, who lived with her and was close to her mother. But for the fact that the incidents did not all occur in the same county, they would have been part of the same prosecution and, as the State points out in its brief, all could have been prosecuted under the umbrella crime of child sexual abuse. *See Warren v. State*, 226 Md. App. 596, 615-16 (2016) (recognizing that the crime of child sexual abuse may "embrace dozens, nay hundreds, of constituent criminal acts, charged or uncharged"). Instead, Mr. Domino was charged for the first act of sexual abuse in Worcester County and for the remaining acts in Dorchester County. This unusual procedural posture did not make the evidence of the subsequent acts any less "intimately connected" to the initial act and the evidence was relevant and admissible to "complete the story" and put the criminal conduct in its appropriate context. Significantly, as the State argued in closing, the continuing nature of

the abuse and the fact that it was occurring in the home that K shared with Mr. Domino was relevant to show why she did not immediately disclose the abuse to her mother. For all these reasons, the court did not legally err by determining that the evidence was substantially relevant to a contested issue in the case.

The court likewise did not err by finding that Mr. Domino's involvement in the other bad acts was established by clear and convincing evidence. On appeal from that determination, we look "only at the legal question of whether there was some competent evidence which, if believed, could persuade the fact finder as to the existence of the fact in issue." *Emory v. State*, 101 Md. App. 585, 622 (1994). Here, the trial court viewed the video recording of K's interview with Ms. Jolly and made extensive findings relative to its § 11-304(e)(2) analysis, which it incorporated into its ruling under Rule 5-404(b). Mr. Domino's argument that the "vague nature of the claims," specifically the allegation that Mr. Domino touched her "maybe four or five times," was not proved is without merit. As set out in detail above, K testified that there were between three and four acts that occurred in Cambridge and she provided detail as to three separate acts: (1) Mr. Domino touching her private area beneath her underwear on the couch; (2) Mr. Domino touching her private area with his private area over her clothing while they were wrestling on the floor; and (3) Mr. Domino pretending to be a vampire and biting her ear and neck on his bed. There was sufficient evidence to support the trial court's finding that Mr. Domino committed these acts and her statement about the number of acts was consistent with the detail she provided.

The court also did not abuse its discretion by ruling that the prejudice to Mr. Domino occasioned by the admission of the evidence did not outweigh its probative value. "Because other crimes evidence is quintessentially prejudicial, the court correctly required a showing of '*undue* prejudice likely to result from its admission.'" *Vaise v. State*, 246 Md. App. 188, 214 (2020) (quoting *Faulkner*, 314 Md. at 635) (emphasis in *Vaise*). The court found that the evidence served an "appropriate probative purpose" and was "reasonably necessary to serve that probative purpose." We perceive no error.

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