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IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY MATTA,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 514, 2024
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF PROCEEDINGS

On April 20, 2023, New Castle County police arrested Gary Matta for multiple sexual offenses against D.M., who was a minor when the offenses took place.[1] (DI 1 at A1).[2] In June 2023, a New Castle County grand jury indicted Matta on five counts of First-Degree Unlawful Sexual Intercourse and one count each of Second-Degree Unlawful Sexual Contact and Indecent Exposure. (A7-10). The charges concerned offenses committed in Delaware between May 1, 1989 and September 1, 1993, when D.M. was between 11 and 15 years old. (A7-10, A20). Prior to trial, the State moved to amend the indictment to change the date range in all the counts to a range between May 1, 1988 and September 1, 1992 due to "a miscalculation of [D.M.'s] … age." (A11-14, A16-27, A401-03). The Superior Court granted the motion over Matta's objection, finding the amendments did not change the crimes charged and Matta was not prejudiced in asserting his defense. (A11-26, A401-03).

The Superior Court held a three-day jury trial from March 25 to March 27, 2024. (DI 36 at A5). Prior to the conclusion of trial, the State entered a *nolle prosequi* on the Indecent Exposure charge, because the charge was not covered by the extended statute of limitation for certain sexual offenses against minors. (A402-

[1] Because the complaining witness and his cousins were minors at the time of the offenses, the State refers to them by their initials.

[2] "DI" refers to the Superior Court docket items in *State v. Matta*, ID No. 2303016736 (A1-A6).

03). Prior to the jury verdict, Matta moved for judgment of acquittal on four of the five counts of Unlawful Sexual Intercourse and the one count of Unlawful Sexual Contact, which the Superior Court denied. (A455-60). The jury found Matta guilty of five counts of First-Degree Unlawful Sexual Intercourse and one count of Second-Degree Unlawful Sexual Contact. (A519-21). In November 2024, the Superior Court sentenced Matta to 127 years at Level V, suspended after 85 years, followed by decreasing levels of supervision. (Opening Br. Ex. A).

Matta filed a timely notice of appeal and an Opening Brief and Appendix. This is the State's Answering Brief.

SUMMARY OF THE ARGUMENT

I. **DENIED.** The Superior Court did not commit plain error by admitting D.M.'s testimony that Matta was "kicked out" of the Boy Scouts for reasons unknown to D.M. without analyzing Rule 404(b) of the Delaware Rules of Evidence or the factors identified in *Getz v. State*.[3] When defense counsel objected to D.M.'s testimony, he did not mention D.R.E. 404(b) or the guidelines set forth in *Getz*. Because of that silence, Matta cannot criticize the trial court for not making findings under Rule 404(b) or conducting an analysis under *Getz*. Rule 404(b) and *Getz* have no application here, but even if they did, Matta has not demonstrated plain error in the Superior Court's failure to analyze the testimony under Rule 404(b) and *Getz*. The testimony was not offered to show Matta's character. Rather, it was aimed at establishing context and a timeline for Matta's continued relationship with D.M. outside of the Boy Scouts and the sexual abuse. Furthermore, the court's failure to give limiting instructions about this testimony is not plain error. Nor did the court abuse its discretion in overruling Matta's motion to strike D.M.'s testimony under D.R.E. 403; the probative value of the evidence was not substantially outweighed by any prejudice therefrom under Rule 403. Furthermore, any error in admitting the testimony was harmless.

[3] 538 A.2d 726 (Del. 1988).

II. **DENIED.** The Superior Court did not abuse its discretion or commit plain error in admitting out-of-court statements made by D.M.'s grandmother and uncle, which were not admitted to prove the "truth of the matter asserted" and were also admissible under the state of mind exception found in D.R.E. 803(3). Although Matta now argues that the trial court erred by not conducting a balancing test under Rule 403, he has waived that claim by not raising it below. Matta has also not demonstrated plain error by the court's failure to analyze the statements under Rule 403 or to provide a limiting instruction. Furthermore, any error in admitting the statements was harmless.

STATEMENT OF FACTS

In the spring of 1988, D.M., who was then 11 years old and in the fifth grade, joined the Boy Scouts of America ("Boy Scouts"). (A146-47, A160, A342). At the time, D.M. lived in Elkton, Maryland with his parents and sister. (A140, A216). D.M.'s life at home with his family was "very chaotic." (A140, A166-67). D.M.'s father got "drunk every night," and he would "become very mean, very nasty" and was "verbally abusive." (A140, A166-67). His mother was "very" "physically abusive." (A140, A166-67). D.M. recalled there were "[a] lot of fights late at night, running to the neighbors to call the cops." (A140). It was also "normal" for D.M.'s mother to drag him and his sister "through the streets of Elkton back over to [his] grandmother's house on the other side of Elkton." (A166). Although D.M. often stayed at his grandmother's house, life there "wasn't much better." (A166-67, A216-17).

While in Boy Scouts, D.M. met Matta, who was then in his late 20s or early 30s. (A148-49). Unlike other adults, Matta was "very attentive" to D.M., talking to him "a lot more than the other adults would," and "being patient" with him, and "showing [him] how to do things." (A148-49). D.M. was "eager to learn" and "latched on to the attention." (A149). D.M. came to view Matta, who was "much older" than him, as a "father figure." (A149).

D.M.'s relationship with Matta continued outside of Scouts.[4] (A152). D.M. soon began accompanying his cousin, J.P., who was then about 14 or 15-years old and who had also met Matta through Scouts, to Matta's residence in Newark.[5] (A152-53, A160, A208-09, A269, A276, A283-84). Matta lived in the basement of the house, while Matta's grandmother lived upstairs, and there was a separate set of stairs that went directly into the basement. (A155-56). The basement contained one bedroom, with a single bed, and a living room with a couch. (A157-59, A277-78). Matta's residence was "very quiet" and "calm," which D.M. found to be "a very stark contrast" from the "very chaotic" atmosphere at his own home. (A153-54, A166). D.M. was "fascinated" by a bowling machine and Apple computer that Matta owned. (A153-59). Matta also gave D.M. "delicious" food, which D.M. thought was "great" because it was in "complete contrast to what [he] was used to" getting at home. (A153-55).

[4] D.M. stayed in the Boy Scouts until he was about 13 or 14 years old — when Matta was "kicked out." (A150, A209). D.M. explained that he was never told "the specifics of that," or "exactly what the reasons were" for Matta's removal. (A150, A209-12; *see* A276).

[5] J.P. viewed Matta "like an uncle." (A283). J.P. initially met Matta through scouting when he was about 12 or 13 years old and spent a lot of time on the weekends at Matta's house "tinker[ing]" with Matta's van and camping. (A275-83). J.P. would often sleep over at Matta's house, first sleeping on the bed in Matta's bedroom and later on the couch. (A277-78).

During his first visit in the spring of 1988, 11-year-old D.M. stayed at Matta's home in the basement all weekend with J.P. (A160-61, A208). J.P. slept on the couch, and D.M. slept on a cot that Matta set up in his bedroom. (A162). The cot fell apart, so Matta told D.M. he "could just come up into bed with him." (A162). While in bed, Matta started tickling and touching D.M. (A162).

After that first visit, D.M. went to Matta's house every weekend that summer. (A163). His cousin, J.P., who eventually lived at Matta's home, was there a lot with him. (A209, A213-14, A284-85). "Gradually, as [D.M.] went over [to Matta's home], it was normalized that [he] would go into [Matta's] room to sleep,", [and] [t]he cot just wasn't an option anymore." (A163-64, A284, A288). Matta's "tickling turned into touching, and then turned into rubbing, and then … it just escalated" "quickly" into sexual encounters. (A163-65). The sexual incidents "happened a lot." (A164).

D.M. recalled a particular "traumatizing" event that occurred that spring or summer of 1988. (A164-65). Matta, who was naked, "straddled" D.M. and "was masturbating himself and he ejaculated into [D.M.'s] face." (A164). "[I]t got into [D.M.'s] eye and it stung really bad." (A164). That summer, Matta "performed oral [sex] on [D.M.] all the time" while they were in Matta's bedroom. (A165). At the time, D.M. did not tell J.P., who was sleeping on Matta's couch, his family, or anyone else about the incidents. (A166, A213-18, A292).

Despite the incidents, D.M. continued to go over to Matta's house to escape his "very toxic family atmosphere environment." (A166-67, A171). D.M. explained that at the time, the "sexual stuff … didn't feel like abuse, [but rather] [i]t just felt like someone showing love or whatever to me." (A167). "And so, [D.M.] gravitated towards it." (A167). D.M. "wanted to stay at [Matta's] and be at [Matta's] where things made more sense to [him] than being at home did." (A167, A218). D.M. explained that Matta "never yelled at [him] [or] … screamed," he "understood him pretty good," and Matta "was teaching [him] things about the computer and about working on his van and camping and things." (A167). As a result, D.M. thought "it was definitely a lot better than [his] house was." (A167).

Between the time that D.M. was 11 until he was approximately 16 years old, D.M. would go over to Matta's house during the school year every weekend. (A168, A175). During the summer, D.M. would stay longer at Matta's house, usually staying for one or two weeks or longer. (A168). Matta would perform oral sex on D.M. "[a]nytime that [they] were alone and had a chance for something to happen, … whether it was oral or rubbing or touching or holding hands." (A168). Between the time he was 11 and 16 years old, Matta performed oral sex on D.M. hundreds of times each year. (A169). During that time, D.M. was given the impression that people in his family knew "something was wrong with the situation, but they were

taking out on [him]." (A170-75). D.M.'s family also excluded him from a Disney cruise that they took. (A180-81).

When D.M. was around 16 years old, Matta became D.M.'s legal guardian so that he could go to high school in Newark, and D.M. moved into Matta's home. (A169-70, A175, A218). Between the time D.M. was 16 and 18 years old, Matta continued to perform oral sex on him hundreds of times each year. (A169). D.M. did not report the sexual abuse to any of his teachers or guidance counselors. (A236-37). When he turned 18, Matta got D.M. a job installing high-speed internet. (A227-28).

After D.M. had saved enough money to move out of Matta's home, he moved to Colorado between 1997 and 1999. (A175-76, A227-31). Approximately nine months to a year later, D.M. returned to Delaware. (A228-31). D.M. moved back into Matta's home because "it was the only place [he] had to go." (A176). D.M. explained that he had "no other options," because his "grandmother's [home] was just a chaotic mess," his mother, who had filled up his entire bedroom with household stuff within days of him moving out when he was 14, had "made it very clear [he] wasn't coming back, and she never invited [him] back," and his father "never invited [him] to live with him." (A176-77). After D.M. moved back, Matta continued to perform oral sex on D.M. until D.M. was about 20 years old. (A176, A218-19, A230).

When D.M. was in his early 20s, D.M.'s second cousin, M.S., who was about ten years younger than D.M., started living at Matta's house too, which caused some tension at times. (A145, A220-21, A254-55, A286-87). While in his 20s, D.M. worked alongside Matta for various employers. (A222-27). D.M. temporarily moved to Ohio when he was about 25 or 26 but soon returned to Matta's house. (A232-34).

D.M. finally left "for good" between 2010 and 2012 – when he was about 32 or 33 years old — after a disagreement or fight over marijuana plants that Matta was growing in the basement that M.S. was selling to people who would come over. (A176-78, A220, A250). D.M., who had previously expressed his concern that M.S. would get them in trouble because he was being too open with it, bagged up the plants in garbage bags and took them outside to throw out. (A178-80, A250-51). When Matta returned home that day, he was "angry" and threw out D.M.'s juicer. (A178-80). D.M. got very emotional about it, and he and Matta got in a shoving match. (A178, A248-49). D.M., who was shaking and very upset, immediately called his friend Dave Witwer ("Witwer") and another friend and asked them to come over. (A178-79, A305-06). After speaking with Witwer about the situation, D.M. decided to move into Witwer's house in Elkton, and he moved out immediately with a friend's help. (A178-79, A249-50, A306-07).

In approximately 2014 or 2015, D.M. revealed to his friend, Carla Lavelle ("Lavelle"), that Matta had sexually abused him. (A183-84, A193, A196, A262). Without his permission, Lavelle contacted the Boy Scouts and made them aware that it had happened. (A184, A262). After Lavelle reported the sexual abuse to the Boy Scouts, D.M. spoke to civil attorneys "to have some sort of representation because [he] didn't know what [he] was getting [himself] into, and [he] was both scared of the process and not really knowing what the process was or how it would go." (A184-85, A196-97). D.M. was told, however, that they would not be able to assist because the statute of limitations had passed. (A262-63). Subsequently, in 2017, D.M. joined a class action lawsuit against the Boy Scouts. (A196-200). D.M. did not contact police because he "didn't really understand what the distinction was between civil and criminal," and "didn't want to do that ["alone"] without representation." (A198-99, A263).

About three years later – in February 2020 – Newark Police Detective Micolucci ("Micolucci") contacted Lavelle after he received a letter from the Boys Scouts concerning D.M.'s allegations that Matta had sexually abused him. (A322, A340). Micolucci reached out to the Boys Scouts and Maryland State Police to get additional information and also asked Lavelle to have D.M. contact him. (A184, A322-33, A340).

In November 2021, D.M. contacted Micolucci. (A333). At that time, D.M. was hesitant about providing information to aid in the investigation. (A332-33). As a result, Micolucci ceased his investigation, but he told D.M. that "if he reached the point where he wanted to continue to move forward, that he was welcome to reach back out." (A333). Micolucci subsequently spoke with the Attorney General's Office and changed the designation of the case to a "prosecution declined, which means that the Attorney General's Office is in agreeance at this time that there would not be sufficient evidence to move forward with criminal prosecution." (A333-35). Micolucci then closed the case because he was no longer doing work on it. (A333-34).

In June 2022, D.M. contacted Micolucci and "expressed to [him] that he felt that he was at a point where he was prepared to move forward with the investigation," and thus the investigation was reopened. (A334). D.M. felt "[a]nxious and nervous and just exposed," and found it "terrifying" to talk about. (A185). But D.M. explained that he "had resigned [him]self once the police had reached out to [him] that [he] just was not going … to lie to them and [he] wasn't going to hold back, [and] … was just going to tell them what happened, how it happened, and just let the process unfold." (A184-85, A194-95, A322-24). D.M. "just wanted to be truthful about it, so [he] was," and he "told everybody everything that had occurred and how it had occurred." (A185).

Matta did not testify and did not call any defense witnesses at trial. (A389, A449-52).

ARGUMENT

I. THE SUPERIOR COURT DID NOT COMMIT PLAIN ERROR OR ABUSE ITS DISCRETION BY ALLOWING D.M. TO TESTIFY REGARDING MATTA BEING "KICKED OUT" OF THE BOY SCOUTS.

QUESTION PRESENTED

Whether the Superior Court committed plain error by permitting D.M. to testify that Matta was "kicked out" of the Boy Scouts without conducting a *Getz* analysis under Rule 404.

Whether the Superior Court abused its discretion by overruling Matta's motion to strike D.M.'s testimony as "more prejudicial than probative."

STANDARD OF REVIEW

A trial judge's evidentiary rulings are reviewed on appeal for an abuse of discretion.[6] However, "[this Court] generally decline[s] to review contentions not raised below and not fairly presented to the trial court for decision unless [the Court] … finds that the trial court committed plain error requiring review in the interests of justice."[7] "Under the plain error standard of review, the error complained of must

[6] *Vanderhoff v. State*, 684 A.2d 1232, 1233 (Del. 1996).

[7] *Turner v. State*, 5 A.3d 612, 615 (Del. 2010); *see Rivera v. State*, 2023 WL 1978878, at *6 (Del. Feb. 13, 2023) (reviewing *Getz* claim not raised below for plain error); *Ward v. State*, 2020 WL 5785338, at *6 (Del. Sept. 28, 2020) (same); *Williams v. State*, 796 A.2d 1281, 1288-90 (Del. 2002) (same); *Washington v. State*, 2000 WL 275638, at *1-2 (Del. Mar. 3, 2000) (same); *Ashley v. State*, 1993 WL

be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[8]

MERITS

During direct examination, the prosecutor asked D.M., "do you remember how long you went to the Scouts total?" (A150). D.M. responded:

> I think it was a couple years. Two, three years I think I went to the Scouts before he was kicked out. Or at least that's what I heard, he was kicked out.
>
> I don't know the specifics of that, so I want to be clear about that. Just I heard that he was kicked out. I knew he was out of the Scouts. But it was about two/three years before that happened.

(A150). Matta objected and moved "to strike that testimony as prejudicial." (A150-51). Matta explained:

> I don't think – from my reading of the discovery, him being kicked out of Scouts was political. It had nothing to do with molesting minors. It is more prejudicial than probative.

(A151). The State responded that it was trying to establish a timeline and that Matta's relationship with D.M. continued outside of the Scouts:

> The State's next question was going to be about the continuing of the relationship outside of the Scouts. That had nothing to do with that. That was a timeline thing.

397604, at *2 (Del. Sept. 30, 1993) (same); *Wittrock v. State*, 1993 WL 307616, at *1 (Del. July 27, 1993) (same); Supr. Ct. R. 8.

[8] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

> That's when [D.M.] knows he left the Boy Scouts. We instructed him not to talk about the circumstances of that, which is why he said, this is what I know, I don't know what happened other than that.

(A151). The court then overruled the objection:

> Yeah. The testimony wasn't for the truth of the matter asserted. He was kicked out for a certain reason. The witness did say he doesn't know why he was kicked out. So I'm going to overrule the objection.

(A151). Upon resuming questioning, the State asked D.M.:

> So, [D.M.], we were talking about you being in the Scouts with [Matta]. Did your relationship with [Matta] continue outside of the Scouts?

(A151-52). D.M. responded, "Yes." (A152). The State then asked D.M. to "give me a little bit of a narrative on how your relationship with [Matta] transitioned from a purely Scouts kind of relationship to something outside of that." (A152).

On appeal, Matta now argues for the first time that D.M.'s testimony that Matta was "kicked out" of the Boy Scouts for an unknown reason constituted "uncharged misconduct" under Rule 404(b). (Opening Br. 16-28). Matta contends that the Superior Court abused its discretion by admitting this "unfairly prejudicial evidence of uncharged misconduct with minimal probative value" without conducting an analysis pursuant to *Getz* to determine the admissibility of such evidence and providing a limiting instruction concerning the purpose of its introduction. (*Id.*). Matta also contends that the court erred when it failed to recognize the testimony's unfair prejudice against Matta substantially outweighed its minimal probative value under Rule 403. (*Id.* 21-23). Because Matta failed to

raise his claims regarding Rule 404(b) and *Getz* below, Matta's belated appellate claims are waived and may now only be reviewed on appeal for plain error.[9] Matta has not carried his burden of establishing plain error. Moreover, Matta's contention that the court abused its discretion by overruling his objection under Rule 403 is unavailing.

A. The Superior Court Did Not Commit Plain Error By Permitting D.M. To Testify That Matta Was "Kicked Out" Of The Boy Scouts Without Conducting A *Getz* Analysis Under Rule 404.

Under Rule 404(b), evidence of other crimes or wrongs "is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," but may be admissible for other purposes, such as proof of motive or intent.[10] Rule 404(b) "forbids the admission of evidence of the 'defendant's uncharged misconduct to support a general inference of bad character.'"[11] However, uncharged misconduct evidence is admissible, so long as such evidence is relevant and material for any purpose other than to prove that the defendant possessed a particular character, propensity or disposition to commit the

[9] Supr. Ct. R. 8; *Rivera*, 2023 WL 1978878, at *6; *Ward*, 2020 WL 5785338, at *6.
[10] D.R.E. 404(b).
[11] *Bright v. State*, 740 A.2d 927, 932 (Del. 1999) (quoting *Getz*, 538 A.2d at 730).

charged offense, and where the evidence's "probative value is not substantially outweighed by the danger of unfair prejudice."[12]

In *Getz*, this Court set forth six factors for the trial court to consider in determining the admissibility of evidence under Rule 404(b).[13] The evidence must be: (1) material to an issue or ultimate fact in dispute; (2) introduced "for a purpose sanctioned by Rule 404(b) or any other purpose not inconsistent with the basic prohibition against evidence of bad character or criminal disposition;" (3) proved by "plain, clear and conclusive" evidence; (4) not too remote in time from the charged offense; (5) not unfairly prejudicial as required by D.R.E. 403; and (6) admitted for a limited purpose with instruction.[14]

Although Matta now criticizes the trial court for not excluding the evidence under Rule 404(b) and conducting a *Getz* analysis, the record reveals that defense counsel never asserted any objection to D.M.'s testimony under Rule 404(b). (*See* A150-51). Nor did Matta mention the *Getz* guidelines or request a cautionary instruction. (*Id.*). Because Matta made no objection to the evidence under Rule

[12] *Getz*, 538 A.2d at 730.

[13] *Id.* at 734.

[14] *Id.*

404(b), his claim is waived and may now be reviewed on appeal only for plain error.[15] Matta has failed to establish plain error.

The Superior Court did not commit plain error because Rule 404(b) is not applicable to the evidence that Matta was "kicked out" of the Boy Scouts. Matta's removal from the Boy Scouts was not an "other crime, wrong or act" or evidence of "uncharged conduct" that the State was attempting to demonstrate.[16] Nor was such evidence introduced to show Matta's bad character. Instead, the record reveals that the State was attempting to establish a factual "timeline" of the crimes charged here and "the continuing of the relationship [between Matta and D.M.] outside of the Scouts" when D.M. mentioned that Matta was "kicked out" of the Boy Scouts a few years after he joined. (A151). Specifically, during direct examination, D.M. testified that he had met Matta when he joined the Scouts when he was 11 years old. (A148). Shortly thereafter, the prosecutor asked D.M. how long D.M. went to Scouts. (A150). D.M. responded that he thought he went for two or three years before Matta was "kicked out." (A150). D.M. did not explain the circumstances

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[15] D.R.E. 103; Supr. Ct. R. 8; *Rivera*, 2023 WL 1978878, at *6; *Ward*, 2020 WL 5785338, at *6; *Williams*, 796 A.2d at 1288-90; *Washington*, 2000 WL 275638, at *1-2; *McDade v. State*, 693 A.2d 1062, 1064 (Del. 1997); *Chance v. State*, 685 A.2d 351, 354 (Del. 1996); *Ashley*, 1993 WL 397604, at *2; *Wittrock*, 1993 WL 307616, at *1.

[16] *Cf. Washington*, 2000 WL 275638, at *2 (holding "lack of employment is not, in itself, evidence of bad acts or negative character").

under which Matta was "kicked out", nor was he asked to provide any further details about it. (A150). Indeed, D.M. specifically testified that he did not know "the specifics of that," which he "want[ed] to be clear about." (A150). Although D.M.'s testimony on direct does not provide whether Matta was "kicked out" for a benign reason or an illicit one, Matta suggested during cross-examination of D.M. that the reason was political, not illicit. (*See* A209-12). In any event, being "kicked out" of the Boy Scouts, while relevant to setting the timeline and the continuing nature of Matta's contact with D.M. outside of the Scouts, does not implicate Rule 404(b) or constitute "uncharged misconduct," or a bad act, within the *Getz* proscription. Indeed, getting "kicked out" of the Boy Scouts, in and of itself, is neither a crime nor a prior bad act. (*See* A439, A486). As a result, the admission of D.M.'s testimony cannot be considered plain error.

While no *Getz* analysis was undertaken by the trial court, the reason for the absence of such action by the trial court was the lack of any specific defense objection to the evidence under Rule 404(b). Matta cannot show plain error because Rule 404(b) was not implicated for the reasons discussed above. Furthermore, even assuming, *arguendo*, that Matta being "kicked out" of the Boy Scouts constituted uncharged misconduct and thus a *Getz* analysis would have been appropriate, Matta has not established plain error. D.M.'s testimony was relevant or material to an issue

or ultimate fact in dispute in the case.[17] Specifically, D.M.'s testimony was relevant to establish when the sexual abuse occurred and to show the continuing nature of Matta's and D.M.'s relationship, which continued for years outside of Scouts. (A148-52). Furthermore, the evidence was not admitted to show Matta's bad character, but rather to set the context of Matta's and D.M.'s relationship and the timeline of the abuse. The purpose was not inconsistent with Rule 404(b)'s core prohibition against proof of criminal disposition.[18]

Although Matta contends that the State did not prove the misconduct itself that resulted in Matta being forced to leave the Boy Scouts by plain, clear, and conclusive evidence (Opening Br. 23-24), Matta overlooks that D.M. did not testify about Matta's conduct that led to his removal, and thus, there was no requirement to provide plain, clear, and conclusive evidence of any misconduct. D.M. only testified that Matta was "kicked out" for reasons unknown to him. While Matta cross-examined D.M. concerning the reason for his removal, D.M. testified he "was never told exactly what the reasons were," and "did not know" that it was because Matta "called one of [the] other Scouts master's kids a crybaby." (A210-12). Furthermore,

[17] *Getz*, 538 A.2d at 734.

[18] *See United States v. Williams*, 95 F.3d 723, 731 (8th Cir. 1996) ("Rule 404(b) only forbids introduction of extrinsic bad acts whose only relevance is to prove character, not bad acts that form the factual setting of the crime in issue.").

D.M.'s testimony satisfied the requirement that the evidence that Matta was "kicked out" of the Boy Scouts be plain, clear, and conclusive because Matta did not dispute that he was "kicked out." (*See* A151; *see also* A210-12). Furthermore, corroboration of D.M.'s testimony that Matta was "kicked out" of the Boy Scouts was provided by J.P. who testified that Matta was asked to leave. (A276). In addition, the removal occurred during the period of the ongoing sexual abuse, and so it was not too remote in time from the charged offenses. And, as discussed below, the record supports a finding that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice to the defense. (A150-51).

Matta also argues that the trial court abused its discretion by failing to give a limiting instruction, as mandated in *Getz*, that it could not use the fact that Matta was "kicked out" of the Boy Scouts as evidence that Matta is a bad person. (Opening Br. 24-26). However, Matta did not request such an instruction at trial, and thus his claim is reviewed for plain error.[19] Matta's claim is unavailing; he has failed to establish that the court committed plain error by not, *sua sponte*, giving a limiting

[19] *Ward*, 2020 WL 5785338, at *6 (finding no plain error in not giving contemporaneous limiting instruction under *Getz*); *Williams*, 796 A.2d at 1289-90 ("[A] trial court generally does not commit plain error if it fails to give a limiting instruction, sua sponte, when evidence of prior bad acts is admitted."); *Scott v. State*, 521 A.2d 235, 241-42 (Del. 1987); *Dickerson v. State*, 1998 WL 14999, at *2 (Del. Jan. 7, 1998); *Baker v. State*, 1993 WL 557951, at *4-5 (Del. Dec. 30, 1993); *Wooters v. State*, 1993 WL 169129, at *2 (Del. Apr. 23, 1993).

instruction. A *Getz* instruction was not necessary in this case because Matta being "kicked out" of the Boy Scouts did not constitute a crime or a prior bad act, as discussed above. Nor did the State argue that Matta should be found guilty because he committed "uncharged misconduct" or was "kicked out" of the Boy Scouts. Thus, the failure to give such an instruction did not jeopardize the fairness of Matta's trial.[20] Because the claim is meritless, Matta cannot demonstrate plain error.

Finally, even if D.M.'s testimony that Matta was "kicked out" of the Boy Scouts was not admissible under any of the exceptions to Rule 404(b), his statement was still admissible under the inextricably intertwined doctrine even without any *Getz* analysis.[21] This Court has recognized that "evidence of incidental, uncharged misconduct is directly admissible against a defendant under an exception to Rule 404(b) when such evidence is inextricably intertwined with evidence of the charged offense."[22] Here, D.M.'s challenged testimony was relevant to and "inextricably intertwined" the State's theory of the case and establishing a timeline that the abuse continued to occur after Matta was no longer involved in scouting. (A148-52).

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[20] *See Hainey v. State*, 878 A.2d 430, 433-34 (Del. 2005); *Williams*, 796 A.2d at 1290-91.

[21] *See Morse v. State*, 120 A.3d 1, 11 (Del. 2015); *Ruiz v. State*, 2003 WL 1824840, at *2 (Del. Apr. 1, 2003); *Pope v. State*, 632 A.2d 73, 76-77 (Del. 1993); *State v. Powell*, 2010 WL 5551737, at *4-5 (Del. Super. Ct. July 27, 2010).

[22] *Zickgraf v. State*, 1992 WL 276424, at *2 (Del. Sept. 21, 1992).

B. The Probative Value Of D.M.'s Testimony That Matta Was "Kicked Out" Of The Boy Scouts Was Not Substantially Outweighed By The Risk Of Unfair Prejudice.

During trial, the Superior Court admitted D.M.'s testimony that Matta was "kicked out" of the Boy Scouts over Matta's motion to strike such testimony under Rule 403. (A150-51). Matta contends, however, that the trial court did not balance the probative value of the evidence against the prejudicial impact as required by Rule 403. (Opening Br. 21-23). His claim is unavailing.[23]

Rule 403 permits exclusion of relevant evidence "if its probative value is substantially outweighed by a danger of … unfair prejudice."[24] Here, the record supports a finding that any prejudice to Matta did not substantially outweigh the probative value of the State's evidence. D.M.'s testimony that Matta was "kicked out" of the Boy Scouts was relevant to establishing D.M.'s timeline of events in this case where D.M. was molested by Matta over 30 years prior to trial, both while he was in Scouts and afterwards. It was also significant to the jury's understanding of the context of events surrounding the offenses for which Matta was charged and to establish that Matta's and D.M.'s relationship continued outside of the Scouts.[25] The

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[23] *Thompson v. State*, 399 A.2d 194, 199 (Del. 1979) (trial judge in best position "to observe and determine the effect and possible prejudice of prosecutorial questioning").

[24] D.R.E. 403.

[25] *Cf. Pope*, 632 A.2d at 78 (finding that although potential for prejudice from evidence that defendant had participated in armed robbery and shoot-out with police

probative value of this evidence was not substantially outweighed by a danger of *unfair* prejudice. The State did not attempt to establish that Matta was "kicked out" of the Boy Scouts because of uncharged misconduct and had specifically instructed D.M. not to talk about the circumstances of Matta leaving the Boy Scouts. (*See* A151). During the sidebar conference, the court, after considering the circumstances of the case, overruled Matta's objection. (A151). In doing so, the court took into consideration that the State had instructed D.M. not to not to talk about the circumstances of Matta's removal and also that D.M. had testified that he did not know the reason for it. (A151).

Furthermore, Matta's argument of unfair prejudice is undermined by the fact that Matta was permitted during cross-examination, over the State's objection, to rehabilitate the record and establish an innocuous reason for Matta's removal from the Boy Scouts. Specifically, during Matta's cross-examination of D.M., the following exchange took place:

Q. [Y]ou said '88 you joined the Boy Scouts?

A. Yes.

Q. And then how long did you stay in the Boy Scouts? Until when?

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was "undeniable," trial court did not abuse its discretion in finding prejudice did not substantially outweigh probative value of evidence because it was relevant to defendant's motive, intent, and identity and it was "significant to the jury's understanding of the immediate context of events surrounding the offenses for which [he] was charged").

A. Until Gary Matta was removed.

Q. What year do you think you stopped the Boy Scouts for you?

A. I want to say it was after a couple of years or a few years, so 12, 13.

Q. Okay.

A. I want to stay 13, 14-ish area, that's when I remember he was removed from the Boy Scouts.

Q. Okay. But he was removed for political reasons, correct?

A. I was never told exactly what the reasons were. I just knew that from – what people had said was that–

(*See* A209-10). Matta objected to the answer to his own question and moved to strike "what other people said." (A210). The State asked to approach, and the following sidebar discussion took place:

> [Defense counsel]: Your Honor, the problem is he – go ahead.
>
> [Prosecutor]: Are we addressing my objection or your objection to your own question?
>
> The court: Go ahead, [Prosecutor].
>
> [Prosecutor]: Okay. So my objection is he asked the question, he insinuated that he was out for political reasons, which was testimony which hasn't been drawn out.
>
> If he believes – whatever he gets is the answer he gets. The answer, you take the ride, Your Honor. He didn't need to ask the question on why he was out there.

> [Defense counsel]: But he brought it up that [Matta] got kicked out of the Boy Scouts due to some unsavory reason, the jury could speculate. I don't think he can say what other people say. I can ask, did you know that it was a political reason? I think the reason was he insulted another Scouts master's kid.
>
> The court: What was the question? I think you can ask the question, was it for the –
>
> [Defense counsel]: insulting a – yes.
>
> The court: And it's a yes or no answer.
>
> [Defense counsel]: My concern is if he says it's because of sexual abuse, that would be grounds for a mistrial.
>
> The court: That's not going to be his testimony, right?
>
> [Prosecutor]: I don't know. I, quite frankly, told him we weren't going to ask him about this.
>
> The court: I will allow the question to be asked yes or no. If he goes any further, we'll stop the testimony.
>
> [Defense counsel]: Okay.

(A210-12). Matta's questioning of D.M. then continued, as follows:

> Q. Sir, did you know that it was because [Matta] called one of other Scouts master's kids a crybaby?
>
> A. No.
>
> Q. And they got upset.
>
> A. No, I did not know that.

(A212).

Because the probative value of D.M.'s testimony was not substantially outweighed by the risk of unfair prejudice, the court did not abuse its discretion in overruling Matta's motion to strike.

C. Any Error Was Harmless.

Finally, any purported error in the Superior Court's performance of the balancing test under Rule 403 and in admitting D.M.'s testimony that Matta was "kicked out" of the Boy Scouts was at worst harmless error in the context of Matta's sexual abuse prosecution.[26] An error in admitting evidence is "harmless" where "the evidence exclusive of the improperly admitted evidence is sufficient to sustain a conviction."[27] Here, even without the "kicked out" testimony, the evidence was sufficient to convict Matta of the sexual abuse. The jury's guilt determination hinged upon a credibility assessment of D.M. To convict Matta of the sexual abuse, the jury had to accept D.M.'s account of the incidents and reject the defense's argument that D.M. was being untruthful. (*See, e.g.*, A74-94, A192-258, A475-85). D.M.'s testimony that Matta was "kicked out" of the Boy Scouts for reasons unknown to D.M. did not provide conclusive or prejudicial proof that Matta had molested D.M.

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[26] *See Jewell v. State*, 340 A.3d 562, 577-84 (Del. Mar. 31, 2025) (holding trial court abused its discretion by failing to weigh challenged evidence under Rule 403, but finding error harmless); *Flonnory v. State*, 893 A.2d 507, 530-31 (Del. 2006) (same); *Miller v. State*, 1993 WL 445476, at *2-3 (Del. Nov. 1, 1993) (same); *Johnson v. State*, 587 A.2d 444, 447-451 (Del. 1991) (same).

[27] *Id.* (citations omitted).

Indeed, D.M. admitted that he did not know the specifics of why Matta was removed, and D.M. testified that his relationship with Matta continued for years after that event. Furthermore, although D.M. had testified that he did not know the reasons for Matta leaving, Matta suggested to the jury during cross-examination that the reason had nothing to do with the molestation and was instead politically motivated. (A210-12).

In sum, the Superior Court did not commit plain error in admitting D.M.'s testimony that Matta was "kicked out" of the Boy Scouts without analyzing Rule 404(b) or the factors identified in *Getz*. Rule 404(b) and *Getz* have no application in this case, but even if they did, Matta has not demonstrated plain error in the Superior Court's failure to analyze the testimony under Rule 404(b) and *Getz*. Nor did the Superior Court abuse its discretion in overruling Matta's motion to strike D.M.'s testimony under Rule 403; the probative value of the evidence was not substantially outweighed by any prejudice therefrom under Rule 403. Furthermore, any error in admitting the testimony was harmless.

II. THE TRIAL COURT DID NOT COMMIT PLAIN ERROR OR OTHERWISE ERR BY ADMITTING STATEMENTS BY D.M.'S GRANDMOTHER AND UNCLE THAT EXPLAINED WHY D.M. HAD NOT DISCLOSED THE ABUSE.

QUESTION PRESENTED

Whether the trial court committed plain error or otherwise erred in ruling that statements made to D.M. by his grandmother and uncle were admissible.

Whether the Superior Court committed plain error or otherwise erred by not, *sua sponte*, giving a limiting instruction to the jury when it admitted the out-of-court statements.

STANDARD OF REVIEW

The State incorporates the standard of review set forth in Argument I herein.

MERITS

During D.M.'s direct examination, the State asked D.M. if he had the "impression [during the timeframe of the abuse] that people in [his] family knew something was going on with [Matta]." (A171). D.M. responded:

> I remember my uncle one day looking at me and just saying, you know—

(A171). Matta objected on the grounds of hearsay. (A171). The court initially sustained the objection, but the State asked to approach and explained:

> Your Honor, I know he objected to that one and it was sustained.

> There's another question. There are two questions, two things he was going to talk about that are things people in his family said to him. It would be the hearsay objection if they were offered for the truth of the matter asserted. They are not.
>
> They are being admitted for the purpose of showing his mindset and why [D.M.] felt like he didn't have anyone else he could go to and everyone in the family knew what was happening to him and tolerating it. Nothing to do with whether those statements are true. It merely goes to his state of mind.

(A171-72). Matta agreed that D.M. could testify "about how he felt." (A172).

The court asked the State for a proffer, and the State explained:

> So the uncle was going to say, he's your daddy, isn't he? And he didn't know what that meant, but now, of course, he realizes it.
>
> And then there's a comment by his grandmother, other grandmother, says Daddy or Gary, makes some comment about him liking to do stuff with him, insinuating that they were having sex.
>
> It might be the uncle that insinuates the sex and the grandmother that calls, that guy is your daddy, just go hang out with your daddy.
>
> These were the two comments to him. And he feels like everyone in my family knows what is going on and no one cares.

(A172-73). Matta argued "[t]hat would go to the truth of the matter asserted."

(A173). The court then reversed its ruling and overruled Matta's objection:

> I'm going to overrule the objection. That does not go to the truth of the matter because it's not being offered that [Matta] was [D.M.'s] daddy or not. It's going to his mindset at the time of what people were saying to him and why he was continuing to go over there. So it's to the witness's mindset, so I'm going to overrule the objection.

(A173-74). The State then asked D.M. what his uncle said to him that "made you think he might have known something was going on." (A174). D.M. responded:

> One day we were sitting in the living room at my grandmother's house, and he just started making lewd remarks to me about, like, feelings in my – his words feelings in my ass and that I liked it and that he was like, oh, you probably like –

(A174). Matta objected again on the grounds that "[t]his goes to the truth of the matter asserted[.]" (A174). The court overruled the objection, and D.M. continued:

> That he liked the buzzing in my ass or something like that. He just made some very lewd remarks to me that, to me, I remember thinking just that he knew things weren't quite right with the situation. And I got very upset, very emotional about it.

(A174). D.M. then continued to detail a comment his grandmother made to him:

> Also, I remember one particular incident with my grandmother. It was at a birthday party. And my grandmother, in front of everybody, just started talking about how Gary was, in her words, my daddy and just kept saying it like that over and over again, he's your daddy.
>
> And, you know, and I would say back to her, no, my dad is my dad, and she was like, no, I didn't say he was your dad. Gary's your daddy. And she would say things like that.
>
> So, as I grew up, I just realized that they all thought something was wrong with the situation, but they were taking it out on me.

(A175). The State did not mention either statement during its closing. (A464-75). However, during Matta's closing, defense counsel argued:

> The other question you need to ask is, was [D.M.'s] conduct consistent with somebody who had been molested? Interestingly, [D.M.] lived there until he was 35 years old approximately. Gary got him jobs. They would go to work together until adulthood. They worked closely

> together. At one point, they laid Gary off at K&D and he didn't want to work there anymore. He was loyal to Gary.
>
> And at some point along the line, he had a pretty big family, why didn't he report it? He didn't report it to parents, grandma, family in the house, cousins, [J.P.], [Witwer] – excuse me. Strike that.
>
> [J.P.], teachers[,] guidance counselors, people in Newark, people in middle school, people in elementary school. Why didn't he report it? Why did it take approximately 30 years?

(A483-84). During its rebuttal, the State responded to Matta's argument and briefly mentioned the comments of D.M.'s grandmother and uncle:

> Further, why wouldn't he have told his family? Well, he talked about how he got cruel sexual jokes from his aunt – from an uncle and a grandmother. His grandmother insisted that Gary was his daddy. And he said, no. My dad is my dad. She says no. He's your daddy. He felt shame. He didn't know what this was.
>
> And his uncle, who made some detailed joke, which he had a hard time even fully articulating, but involving some sort of anal sex. His family went on a Disney cruise without him. His father went and got remarried. Never invited him back to his house. Eventually they made Mr. Matta his guardian. Why would he think anyone in that family -- either they knew and didn't care. Or if he told them, then it would make his life better. It won't be a better life if he goes back to his family he doesn't like.

(A488-89).

On appeal, Matta appears to concede that the trial court properly found that the out-of-court statements by D.M.'s grandmother and uncle do not constitute hearsay or were admissible under the state of mind exception found in D.R.E. 803(3). (*See* Opening Br. 31-32 ("Although the statements were admitted for another

purpose….")). Instead, Matta now contends for the first time that the court erred by admitting the statements without considering "their high degree of unfair prejudice to the accused" and "the likelihood the assertions they made would be taken as true by the jury." (*Id*. 29). Matta argues that the statements "accused [him] of other sexual crimes with which he had not been charged," and thus the court erred by not conducting a balancing test under Rule 403. (*Id.*). Matta further argues that "[e]ven if the Court were now inclined to attempt to recreate a D.R.E. 403 balance based on the record of the trial, the out-of-court statements were not sufficiently probative or material to be admitted. (*Id.* 34-35). Matta also contends that the court erred by not, *sua sponte*, providing a limiting instruction. (*Id.* 36).

Because Matta only objected below on hearsay grounds and failed to base his objection on Rule 403 or request a limiting instruction, Matta's belated appellate claims are waived and may now only be reviewed on appeal for plain error.[28] Matta has failed to establish plain error, however. Further, even if Matta had not waived this issue, a review of the record demonstrates that Matta's claims are meritless.

[28] Supr. Ct. R. 8; *cf. Hunter v. State*, 2001 WL 1636741, at *1-2 (Del. Dec. 12, 2001) (reviewing claim that admission of testimony violated D.R.E. 403 for plain error where appellant objected at trial on relevancy grounds and did not base his objection on violation of D.R.E. 403); *but see Sanabria v. State*, 974 A.2d 107, 111-17 (Del. 2009) (holding trial court abused its discretion by admitting third-party statements into evidence without conducting balancing test under D.R.E. 403 where parties did not argue plain error review applied).

A. Because The Statements Objected To Were Not Hearsay Or, Alternatively, Were Properly Admissible Under The State Of Mind Hearsay Exception, The Trial Court Properly Permitted Their Admission.

Under D.R.E. 801(c), a statement is hearsay if it is made by a non-testifying declarant and offered into evidence to prove the truth of the matter asserted.[29] "Out-of-court statements offered for some purpose other than to prove the truth of the matter asserted are not inadmissible hearsay."[30] In addition, this Court has held that it is proper to admit out of court statements when they are admitted for another purpose, such as for the purpose of showing the effect of the statement on the listener.[31]

Here, as Matta apparently now concedes, the trial court properly considered the purpose for which D.M.'s grandmother's and uncle's statements were offered and determined that they were not hearsay because they did not go to the truth of the matter asserted. (A173-74). The court also properly found that the statements were admissible under the state of mind hearsay exception to show D.M.'s resulting state of mind. (A173-74). D.M.'s state of mind was put directly into issue by the defense's argument that his timing for disclosure was suspect and was inconsistent with someone who had been molested, and D.M.'s grandmother's and uncle's

[29] D.R.E. 801(c).

[30] *Cannon v. State*, 2008 WL 1960131, at *2 (Del. May 6, 2008).

[31] *Atkins v. State*, 523 A.2d 539, 547 (Del. 1987); D.R.E. 803(3).

statements were highly probative on that issue. Based on those statements, the jury could reasonably have found that D.M. thought his family knew what was going on at the time and did not care and, therefore, he would not have reported the abuse.

B. The Superior Court Did Not Commit Plain Error Or Otherwise Err By Not Conducting A Balancing Test Under D.R.E. 403 And By Not Excluding The Evidence Under D.R.E. 403.

Although Matta concedes that the statements were admitted for another purpose other than the truth of the matter asserted, Matta argues for the first time that the trial court nevertheless abused its discretion when it failed to conduct a balancing test under Rule 403 before admitting the statements. (Opening Br. 31-36). Matta contends that the statements contain "clearly intended assertions of criminal conduct," and they thus should not have been admitted over his objection because of their "unfair prejudice." (*Id.* 32-36). Although Matta now criticizes the trial court for not conducting a balancing test under Rule 403 and excluding the evidence under that rule, the record reveals that defense counsel never asserted any objection under Rule 403. (*See* A171-75). Nor did Matta request a cautionary instruction. (*Id.*). Accordingly, his claims are waived and may now be reviewed on

appeal only for plain error.[32] Matta has failed to establish plain error.[33] Further, even if Matta had not waived this issue, Matta's argument fails.

Rule 403 permits the court to exclude otherwise "relevant evidence if its probative value is substantially outweighed by a danger of … unfair prejudice…."[34] Here, the trial judge, who was in the best position to observe and determine the effect and possible prejudice apparently saw no undue prejudice from the prosecutor's questions.[35] Nor does the record support Matta's claim that the probative value of the evidence was substantially outweighed by any prejudice to him from the admission of D.M.'s grandmother's and uncle's statements.

Matta first downplays the relevance of the statements. According to Matta, while the statements "may say why he did not tell these two [relatives] when he was a child living with them, their materiality is limited because they say nothing about why he never initiated a report to the police during the many years that followed

[32] D.R.E. 103; Supr. Ct. R. 8; *Neal v. State*, 2005 WL 1074397, at *3 (Del. May 4, 2005) (reviewing claim evidence inadmissible under D.R.E. 403 for plain error where not raised below); *Ashley*, 1993 WL 397604, at *3 (finding admission of drug related evidence was not plain error under D.R.E. 403); *Hunter*, 2001 WL 1636741, at *1-2.

[33] *Wainwright*, 504 A.2d at 1100.

[34] D.R.E. 403.

[35] *See Thompson*, 399 A.2d at 199.

[and] [t]hey also fail to explain why he never told other, more sympathetic, family members." (Opening Br. 34-36). He is mistaken.

The evidence was relevant because D.M.'s state of mind and the impression left on him by his family's actions were contested issues at trial. (*See, e.g.*, A172 (conceding that D.M. could "testify about how he felt"); A475-84 (defense closing arguing that D.M.'s timing for disclosure was suspect and inconsistent with someone who had been molested); A489-91 (State's rebuttal responding to defense's arguments). The fact that D.M. did not disclose the abuse to the police or other family members does not render the statements irrelevant under D.R.E. 401 and 402. Moreover, the statements were relevant to explain why D.M. had not disclosed the molestation to his family *or anyone else*, and to explain why D.M. would have voluntarily continued the relationship with Matta and failed to seek assistance from his family or anyone else, including his belief that his consistent presence at Matta's residence was accepted if not actively encouraged by his family. (A170-71). Matta's claim also overlooks that, while J.P. testified that D.M. "dealt with his father and he was kind and respectful to his mother" (A273) (emphasis added), D.M. testified that his home life was chaotic and unstable; he did not "trust" his family, his father was an alcoholic and "verbally abusive;" his mother was "very ["physically"] abusive" and called him a "bastard fuckface;" and he did not have "a very close relationship with [his sister]." (A140-41, A165-67, A182, A216-18).

Second, Matta is wrong that he was unduly prejudiced. Relying on this Court's decision in *Sanabria v. State*,[36] Matta claims that the evidence was "problematic" because D.M.'s uncle's statement referred to the "uncharged crime of anal sex with a minor" and D.M.'s uncle's and grandmother's statements referred to "elements of the crimes the State was trying to prove in the indictment," (*i.e.*, by implying that "Matta and D.M. were having sex."). (Opening Br. 33-34). He contends that the "inherent prejudice of these statements asserting both charged and uncharged crimes against the accused" substantially outweighs their probative value. (*Id.* 36). Matta's reliance on *Sanabria* is misplaced, and he is otherwise incorrect.

In *Sanabria*, Sanabria, who had been convicted of burglary, argued that the trial court abused its discretion when it admitted, through a police officer, a dispatcher's out-of-court statement that a home's motion detector was triggered.[37] Notably, there was little evidence supporting Sanabria's guilt aside from the homeowner's testimony that items had been moved. This Court held that the unfair prejudice to Sanabria from having the jury hear the content of the statements, which was the only evidence that a burglar was physically in the home, outweighed the probative value of the evidence to the State.[38]

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[36] 974 A.2d 107.

[37] *Id.* at 109-10.

[38] *Id.*

Sanabria is distinguishable. Even without D.M.'s testimony concerning his grandmother's and uncle's out-of-court statements, the evidence was sufficient to convict Matta of the sexual abuse based on D.M.'s detailed testimony alone.[39] Furthermore, unlike in *Sanabria,* D.M.'s grandmother's and uncle's statements did not relate to an element of the charged offenses. Nor did D.M.'s uncle's statement refer to any uncharged crime of anal sex. The statement from D.M.'s grandmother that Matta was "his daddy" does not mention any particular sex act—charged or uncharged. D.M.'s grandmother's statement was elicited to explain why D.M. did not disclose the abuse to his family contemporaneously. (A175). D.M.'s grandmother's characterization of Matta being D.M.'s "daddy" was not itself an accusation of specific sexual crimes or acts, but rather it indicated that D.M. believed the relationship between Matta and D.M. was common knowledge in his family. (A175). As the State explained in rebuttal, D.M.'s grandmother's statement, combined with his family going on a Disney cruise without him and D.M.'s father getting remarried and not inviting him to his house, contributed to explain to the jury why D.M. continued the relationship with Matta and did not report the abuse. (A488-90).

[39] *See Hardin v. State*, 840 A.2d 1217, 1224 (Del. 2003) ("The testimony of a sole witness … will be sufficient to form the basis for a conviction if the testimony presented by that witness establishes every element of the offense and is found by the jury to be credible.").

And, D.M.'s uncle's statement was vague and only served to convince D.M. that his family was aware that something was wrong. While D.M.'s uncle's "lewd" statements allude to D.M. "lik[ing] the buzzing in [D.M.'s] ass or something like that" (A174), his uncle's statements do not implicate Matta in any specific uncharged anal sexual acts with D.M. D.M. characterized his uncle's statements, which made him "very upset" and "very emotional," as meaning that his uncle "knew things weren't quite right with the situation." (*Id.*)

Because D.M.'s state of mind and the impression left by his family's actions were contested issues at trial, the probative value of D.M.'s testimony was not substantially outweighed by the risk of unfair prejudice, and the court did not commit plain error or abuse its discretion by not excluding the out-of-court statements under Rule 403.

C. The Trial Court Did Not Commit Plain Error Or Otherwise Err By Not, *Sua Sponte*, Giving A Limiting Instruction.

Matta also argues that the trial court erred by failing to give a limiting instruction "that the third-party statements and other bad acts [we]re not being admitted for the truth of the matter." (Opening Br. 36). Matta did not request such an instruction at trial, and thus his claim is reviewed for plain error.[40]

[40] Supr. Ct. R. 8; *Williams*, 796 A.2d at 1288-90.

Here, the fact that the statements by D.M.'s grandmother and uncle were not accompanied by a limiting instruction did not deprive Matta of a substantial right or clearly show manifest injustice.[41] Unlike in *Sanabria*, upon which Matta relies, the out-of-court statements by D.M.'s grandmother and uncle were not a principal factor in his conviction.[42] The case was primarily based upon D.M.'s detailed testimony regarding the abuse by Matta. To convict Matta of the sexual abuse, the jury had to accept D.M.'s account of the incidents and reject the defense's argument that D.M. was being untruthful. (*See, e.g.*, A74-94, A192-258, A475-85). The out-of-court statements by D.M.'s grandmother and uncle did not provide conclusive or prejudicial proof that Matta molested D.M. The statements did not refer to uncharged crimes or relate to an element of the charged offenses, as discussed above. Nor did the State argue that Matta should be found guilty because he committed uncharged crimes or that the statements constituted evidence of the charged crimes.

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[41] *See Wainwright*, 504 A.2d at 1100.

[42] *See Thomas v. State*, 2015 WL 2169288, at *3, n.13 (Del. 2015) (distinguishing *Sanabria*; officer's testimony not "principal factor" in defendant's convictions); *compare Williams v. State*, 98 A.3d 917, 922 (Del. 2014) (holding any error in admission of non-testifying police dispatcher's out-of-court statements to responding officer harmless because statements were not "principal factor" in conviction), *with Sanabria*, 974 A.2d at 121 (holding admission of non-testifying police dispatcher's out-of-court statements to responding officer unduly prejudicial when statements admitted without limiting instruction and were "principal factor" in conviction).

Thus, the failure to give such an instruction did not jeopardize the fairness of Matta's trial.[43] Because the claim is meritless, Matta cannot demonstrate error, plain or otherwise.

D. Any Error Was Harmless.

Finally, any possible error was at worst harmless error in the context of Matta's sexual abuse prosecution.[44] Even without D.M.'s testimony concerning his grandmother's and uncle's out-of-court statements, the evidence was sufficient to convict Matta of the sexual abuse based on D.M.'s detailed testimony alone.[45] In addition, D.M.'s brief testimony regarding his grandmother's and uncle's statements regarding his relationship with Matta did not provide conclusive or prejudicial proof that Matta had molested D.M. Because their statements can hardly be considered so unfairly prejudicial as have "jeopardize[d] the fairness and integrity of the trial process," any error was harmless.[46]

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[43] *See Hainey*, 878 A.2d at 433-34; *Williams*, 796 A.2d at 1290-91.

[44] *See Jewell*, 340 A.3d at 577-84; *Flonnory*, 893 A.2d at 530-31; *Miller*, 1993 WL 445476, at *2-3; *Johnson*, 587 A.2d at 447-451.

[45] *See Hardin*, 840 A.2d at 1224.

[46] *See Wainwright*, 504 A.2d at 1100.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below for the foregoing reasons.

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Dated: November 17, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY MATTA	)	
Defendant-Below,	)	
Appellant,	)	
	)	No. 514, 2024
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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DATE: November 17, 2025