ADVANCE SHEET HEADNOTE
April 13, 2026

2026 CO 23

No. 24SC244, *Lopez v. People*—Evidence—Opening the Door Doctrine—Admissibility of Expert Witness Testimony—Expert Coaching Testimony—CRE 608(a)—CRE 702—*Golob v. People*, 180 P.3d 1006 (Colo. 2008)—*People v. Snook*, 745 P.2d 647 (Colo. 1987)—*People v. Gaffney*, 769 P.2d 1081 (Colo. 1989)—*People v. Fasy*, 829 P.2d 1314 (Colo. 1992)—*Venalonzo v. People*, 2017 CO 9, 388 P.3d 868.

In this child sexual assault case, the district court admitted expert testimony from a forensic interviewer who, in response to a juror's question, stated that she observed no signs indicative of coaching during her interviews with the child victims. The defendant appealed, arguing that the expert's testimony was effectively an opinion on the child victims' truthfulness on a particular occasion, which is inadmissible. A split division of the court of appeals agreed with the defendant that the expert's response to the juror's question was inadmissible, reasoning that an expert witness may not testify about the lack of indicia of coaching during a child victim's interview because such testimony is analogous to an improper opinion about another witness's truthfulness on a particular occasion. But the division nevertheless upheld the trial court's ruling under the opening the

door doctrine. It determined that the defense had opened the door to the otherwise inadmissible testimony by persistently advancing the theory at trial that the children's maternal grandmother wanted to keep custody of them and had therefore coached them or otherwise influenced them to fabricate the allegations or form false memories of abuse.

The supreme court affirms. Assuming, without deciding, that the testimony at issue was inadmissible, the court holds that the defense opened the door to it by repeatedly suggesting to the jury—through both the introduction of evidence and the presentation of argument—that the children had been coached or otherwise improperly influenced by their maternal grandmother because she wanted to maintain custody of them. By consistently attacking the credibility of the children with assertions that they had been coached or otherwise improperly influenced, the defense opened the door to the expert's testimony that she perceived no indication of coaching.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 23

Supreme Court Case No. 24SC244
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA2313

Petitioner:

Gustavo Lopez,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
April 13, 2026

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **JUSTICE HOOD**, **JUSTICE GABRIEL**, and **JUSTICE BERKENKOTTER** joined. **CHIEF JUSTICE MÁRQUEZ**, joined by **JUSTICE BOATRIGHT** and **JUSTICE BLANCO**, dissented.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 "[O]ne who induces a trial court to let down the bars to a field of inquiry that is not competent or relevant to the issues cannot complain if his adversary is also allowed to avail himself of the opening." 1 Kenneth S. Broun et al., *McCormick on Evidence* § 57, Westlaw (Robert P. Mosteller ed., 9th ed. database updated Feb. 2025) (quoting *Warren Live Stock Co. v. Farr*, 142 F. 116, 117 (8th Cir. 1905)). The majority of courts seem to heed this general principle of "fighting fire with fire," though it is known by different monikers. *See id.*; *see also Bearint ex rel. Bearint v. Dorel Juv. Grp., Inc.*, 389 F.3d 1339, 1349 (11th Cir. 2004) ("This Circuit recognizes the concept of 'curative admissibility'—also called 'opening the door' or 'fighting fire with fire.'"). In Colorado, the principle travels under the banner of "opening the door." *See, e.g.*, *People v. Melillo*, 25 P.3d 769, 775 (Colo. 2001).

¶2 Courts across the country beat to different drums in their application of the door-opening principle. 1 Broun et. al, *supra,* § 57. In *Hemphill v. New York*, 595 U.S. 140, 152 (2022), for example, the Supreme Court observed that New York's version of the principle requires state courts "to determine whether one party's evidence and arguments, in the context of the full record, have created a 'misleading impression' that requires correction with additional material from the other side." Colorado largely speaks the same language as New York when it comes to the opening the door doctrine. *See People v. Murphy*, 919 P.2d 191, 195

(Colo. 1996). We have explained that a party may open the door to otherwise inadmissible evidence by selectively presenting "facts that, without being elaborated or placed in context, create an incorrect or misleading impression."[1] *Golob v. People*, 180 P.3d 1006, 1012 (Colo. 2008) (citing *Murphy*, 919 P.2d at 195). The doctrine aims to prevent a party "from gaining and maintaining an unfair advantage" at trial. *Id.; see also People v. Miller*, 890 P.2d 84, 98–99 (Colo. 1995) (same).

¶3 In this sexual assault on a child case, the People presented the testimony of Kim Grimm, who conducted the forensic interviews with the child victims, N.L. and A.L. After Grimm described her interviews with N.L. and A.L. and offered generalized expert opinions on conducting forensic interviews with children in criminal cases—including the signs of coaching she is trained to look for—a juror submitted a question for her. The juror inquired whether the child victims'

[1] We are aware that in common parlance lawyers and judges often use "opening the door" imprecisely, including to permit *admissible* evidence to refute or rebut an argument or other evidence. *See generally People v. Miller*, 890 P.2d 84, 99 (Colo. 1995) (citing 21 *Wright & Miller's Federal Practice & Procedure* § 5039 (1977)), for the proposition that trial courts and appellate courts alike often create confusion by using terms like "opening the door," "fighting fire with fire," and "curative admissibility" in situations requiring analysis pursuant to the rules of evidence). In this opinion, when we refer to opening the door, we mean the doctrine that allows a party to present otherwise *inadmissible* evidence because the opposing party has selectively introduced information that leaves the factfinder with an inaccurate or misleading impression.

behaviors during Grimm's interviews were consistent with the behaviors of children she'd observed in cases where she'd discerned that coaching had occurred. Defense counsel objected, arguing that the question called for Grimm to offer an expert opinion on the credibility of the children. But the trial court overruled the objection and allowed the question. Grimm then testified that she didn't "feel like [she] saw huge red flags with that or anything that indicated that." Elaborating, she stated that each child was able to provide very specific experience-based details regarding the events in question. The jury later found the defendant, Gustavo Lopez, guilty of the charges.

¶4 Lopez appealed, and a split division of the court of appeals affirmed the judgment of conviction in a published opinion. *People v. Lopez*, 2024 COA 26, ¶ 56, 550 P.3d 731, 741. The division agreed with Lopez that Grimm's response to the juror's question was inadmissible, reasoning that an expert witness may not testify about the lack of indicia of coaching during a child victim's interview. *Id.* at ¶ 12, 550 P.3d at 734. Such testimony, explained the division, is analogous to an opinion about another witness's truthfulness on a particular occasion, which is improper. *Id.* But the division nevertheless upheld the trial court's ruling under the opening the door doctrine. *Id.* at ¶ 13, 550 P.3d at 734. It determined that the defense had opened the door to the otherwise inadmissible testimony by persistently advancing the theory at trial that the children's maternal grandmother wanted to

keep custody of them and had therefore coached them or otherwise influenced them "to fabricate the allegations" or form "false memories of abuse." *Id.* at ¶ 23, 550 P.3d at 736. Lopez then sought our review, and we granted his petition.

¶5 Whether Grimm's answer to the juror's question was admissible is a sticky wicket, but one on which we do not need to bat today. The question Lopez has asked us to address revolves around the opening the door doctrine: Whether the division erred in holding that he opened the door to the challenged expert testimony. And in Colorado, that doctrine stirs to life only when the evidence in question is inadmissible.

¶6 We now affirm. Assuming, without deciding, that the testimony at issue was inadmissible, we hold that the defense opened the door to it by repeatedly suggesting to the jury—through both the introduction of evidence and the presentation of argument—that the children had been coached or otherwise improperly influenced by their maternal grandmother because she wanted to maintain custody of them. By consistently attacking the credibility of the children with assertions that they had been coached, the defense opened the door to Grimm's testimony that she perceived no indication of coaching.[2]

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[2] The question raised by Lopez reads as follows:

> Whether a criminal defendant can open the door to expert witness testimony that another witness told the truth on a particular occasion.

I. Facts and Procedural History

¶7 As relevant here, Lopez was charged with sexual assault by one in a position of trust and aggravated incest against each of his two young children: N.L. (his son) and A.L. (his daughter). Two different events gave rise to the charges. First, on one occasion, Lopez inserted his finger into N.L.'s anus three times while spanking him. N.L. experienced bleeding and significant pain in his anus the following day. Second, Lopez drove A.L. to a parking lot, got into the backseat of the car with her, pulled down his pants, and attempted to place her hand on his penis. She refused and started crying, so he offered her $100. Because she continued to refuse, he returned to the front seat. He warned her, however, not to tell anyone about the incident.

¶8 Following the children's outcries, Lopez was arrested. Upon seizing his cell phone, investigators discovered images of prepubescent children in various stages

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This framing notwithstanding, as in *Liggett v. People*, 135 P.3d 725, 732 n.2 (Colo. 2006), we abstain from addressing whether the opening the door doctrine may ever permit a witness to testify that another witness *told the truth* on a particular occasion. That issue is simply not implicated here. Indeed, the division refrained from tackling it. As the division aptly pointed out, Grimm did not testify that the children *told the truth* during their forensic interviews. Instead, she said that she didn't see any indication of *coaching*. "This court is not empowered to give advisory opinions based on hypothetical fact[ual] situations" posed by counsel. *Tippett v. Johnson*, 742 P.2d 314, 315 (Colo. 1987).

of undress. These images depicted some children exposing their genitalia and others performing sexual acts.

¶9 Contrary to their outcries, N.L. and A.L. didn't allege any wrongdoing by Lopez during initial interviews conducted by a social worker. However, each later made sexual abuse allegations against their father during a forensic interview conducted by Grimm. The children's testimony at trial was consistent with their statements to Grimm.

¶10 The theory of the defense at trial was that the children's maternal grandmother had coached them or otherwise influenced them to fabricate the allegations or form false memories of abuse because she wanted to maintain custody of them. Defense counsel wove this theme throughout the trial, from the initial ripple to the final wave—introducing it in voir dire, incorporating it into the opening-statement roadmap, reinforcing it through witness examinations and testimony, and hammering it home in closing arguments.

¶11 In support of the defense's theory, counsel advanced multiple arguments: during the initial interviews conducted by a social worker, when the children weren't yet living with their grandmother, they did not report any wrongdoing by Lopez; when the children later disclosed the allegations (during Grimm's forensic interviews), there was turmoil in the family and the children had been living with their grandmother for approximately nine months; there were inconsistencies

within each of the children's statements; there was no physical evidence supporting the allegations; at the time of Grimm's interviews, the children admittedly wanted to live with their grandmother rather than with their parents; not long before Grimm's interviews, the children's mother told their grandmother that she wanted the children back; and the children were aware that their grandmother wanted them to report the allegations to Grimm.

¶12 The People introduced videos of the forensic interviews of N.L. and A.L. through Grimm. And, in response to direct-examination questions, Grimm discussed her interviews with the children.

¶13 Additionally, without objection, the People qualified Grimm as an expert witness and elicited from her generalized expert opinions on child forensic interviewing. Grimm educated the jury about the purpose and general structure of a child forensic interview, techniques she uses to try to obtain an accurate and complete account of an incident, the concept of suggestibility, the degree to which outside forces may influence a child's storage and retrieval of a memory, steps to mitigate the risk of inadvertently influencing a child, and the concept of a child being coached to say something happened when it didn't actually happen. On the issue of coaching specifically, Grimm talked about the signs that forensic interviewers are trained to look for:

> [I]f a child is being coached, it is more difficult for them to describe all the details of what they can hear, what the room looked like, meaning

> what the clothing looked like that they were wearing, exactly what was said or how they felt in that situation. When a child is coached, it is typically difficult for them to recall that information because in coaching a lot of times people aren't telling the child to say all of these things as well.

¶14 On cross-examination, Grimm acknowledged that her role in interviewing N.L. and A.L. was not to make credibility determinations or to investigate whether anyone had coached them or otherwise improperly influenced them. Further, Grimm stressed that she was neither opining about the children's character for truthfulness nor vouching for their credibility during her interviews. Nor, she explained, could she testify about whether the children were telling their stories for the first time or the hundredth time when they spoke with her. She also agreed with defense counsel that her questions were not intended to "get a specific answer." To the contrary, she reiterated that, consistent with her training, she tried to avoid suggestive questions. And she recognized that, while she endeavored to be careful not to influence either child's account of the allegations, she could not speak about whether people had previously asked the children suggestive questions.

¶15 When Grimm had finished answering the lawyers' questions, a juror submitted a written question for the court to ask her. The juror wanted Grimm to compare N.L.'s and A.L.'s behaviors during her interviews to those of alleged child sexual-assault victims she'd interviewed who had been coached: "In your

expert opinion, was either [N.L.'s] or [A.L.'s] behavior consistent with interviews where coaching was present?" Defense counsel objected, arguing that the question called for Grimm to "opine as to [the] credibility of [other] witness[es]," namely, N.L. and A.L. The People responded that the question was "relevant and appropriate" because, without objection, Grimm had discussed coaching with the jury. Besides, noted the People, this was not a question about whether Grimm believed the children were telling the truth during her interviews; instead, the question was simply inquiring whether Grimm had observed signs of coaching in either of the children, an area in which she'd been properly qualified to opine as an expert.

¶16 The trial court overruled the objection. It concluded that "[c]oaching is . . . different . . . broader than merely commenting on credibility, which the appellate court cases frown upon." The court thus relayed the juror's question to Grimm, and she answered as follows:

> In my opinion I don't feel like I saw huge red flags with that or anything that indicated that because both children were able to provide very specific experience-based details around the events that they did talk with me about.

After this exchange, at defense counsel's prodding, Grimm conceded that where, as in this case, child victims offer varying accounts of the charged incidents, one possible explanation is that they are not telling the truth.

¶17 The jury returned guilty verdicts on all counts. Lopez then appealed. His primary argument before the division was that the trial court erred in permitting Grimm to opine that she saw no indication of coaching. This testimony was inadmissible, contended Lopez, because it vouched for the children's truthfulness during their forensic interviews.

¶18 A fractured division affirmed the trial court's ruling on other grounds in a published opinion. *Lopez*, ¶¶ 30, 56, 550 P.3d at 737, 741. Relying on the decisions of two other divisions, *People v. Bridges*, 2014 COA 65, ¶ 16, 410 P.3d 512, 514–15, and *People v. Heredia-Cobos*, 2017 COA 130, ¶ 17, 415 P.3d 860, 864, the division first agreed with Lopez that expert witnesses "may not opine that a child was not coached in making allegations" or even that there were no signs of coaching during a child's interview. *Lopez*, ¶ 12, 550 P.3d at 734. The division noted that it is now well settled in Colorado that a witness may not testify that another witness told the truth on a particular occasion. *Id.* And, in the division's view, the challenged expert testimony crept too close to testimony about another witness's truthfulness during an interview and was thus "tantamount to vouching" for that witness's credibility on a specific occasion. *Id.* (quoting *Heredia-Cobos*, ¶ 14, 415 P.3d at 864).

¶19 But the division then agreed with the People that, to the extent the expert testimony at issue was inadmissible, Lopez opened the door to it by continuously

maintaining that the children's allegations were the product of coaching or improper influence by identifiable individuals. *Id.* at ¶ 23, 550 P.3d at 736. Drawing from the analytical map charted in *Bridges* and *Heredia-Cobos*, the division explained that Lopez opened the door to the testimony in question by persistently advancing the theory that grandmother had coached the children or otherwise influenced them to fabricate the allegations or form false memories of abuse. *Id.*

¶20 The division hastened to add a caveat, however: Simply attacking a child victim's credibility doesn't open the door to otherwise inadmissible coaching testimony. *Id.* at ¶ 24, 550 P.3d at 736. Rather, explained the division, the opening the door doctrine must be narrowly construed to permit such testimony only when the record establishes "that the defendant 'clearly intended to suggest to the jurors' that the child had been coached or otherwise improperly influenced by certain identifiable people." *Id.* (quoting *Heredia-Cobos*, ¶ 23, 415 P.3d at 866). Because the division concluded that the record in this case satisfied this condition, it upheld the trial court's ruling allowing Grimm to answer the juror's question. *Id.* at ¶¶ 24, 30, 550 P.3d at 736–37.

¶21 Judge Schutz dissented. He didn't bat an eye at the idea that a defendant in a criminal case may open the door to testimony about generic behaviors a coached witness typically manifests. *Id.* at ¶ 61, 550 P.3d at 742 (Schutz, J., dissenting). Consequently, he acknowledged that when a defendant introduces evidence that

a child victim has been coached, the People are entitled to introduce "expert testimony explaining what factors the jury should consider" in evaluating whether the child has been coached. *Id.* at ¶ 71, 550 P.3d at 744. But Judge Schutz locked horns with his colleagues both in the division in *Heredia-Cobos* and in the division here on their conclusion that, under the opening the door doctrine, a witness may testify that a particular child didn't appear to have been coached. *Id.* In his view, expert testimony suggesting that a child didn't appear to have been coached, on the one hand, and expert testimony that a child told the truth, on the other, are the same dish on a different plate. *Id.* at ¶ 72, 550 P.3d at 744–45. And because everyone agreed that the latter is improper, he asserted that the former must be as well. *Id.* Thus, he would not have followed *Heredia-Cobos*'s holding, which he perceived as too broad and out of sync with our jurisprudence. *Id.* at ¶ 67, 550 P.3d at 743.

II. Analysis

¶22 We begin with a brief word about the division's analytical springboard—anchored in *Bridges* and *Heredia-Cobos*—that expert testimony that a child victim showed no signs of coaching is always inadmissible. This premise set the stage for the division's application of the opening the door doctrine—a finding of inadmissibility is the first rung on that ladder. Because the admissibility question is not before us, however, we quickly set it aside and simply assume,

without deciding, that Grimm's contested testimony was inadmissible. We therefore proceed to apply the opening the door doctrine.

¶23 We ultimately agree with the division that Lopez opened the door to Grimm's expert testimony that she saw no indication of coaching during her forensic interviews with N.L. and A.L. Accordingly, we affirm. Before we turn out the lights, however, we offer two admonitions. First, as the division observed, the opening the door doctrine must be narrowly construed. Second, the width of the opening dictates how much the opposing party may carry through it.

A. A Brief Word on the Division's Admissibility Analysis

¶24 As noted, the division grounded its admissibility analysis in its sister divisions' decisions in *Bridges* and *Heredia-Cobos*. The division in *Bridges* determined, in short order, that the forensic interviewer's expert testimony that the two child victims had not been coached was just as improper and inadmissible under CRE 608(a) as expert testimony that a child victim told the truth on a specific occasion. *Bridges*, ¶ 16, 410 P.3d at 514. A few years later, the division in *Heredia-Cobos* followed suit; it similarly ruled, again with only a light analytical touch, that a forensic interviewer's expert testimony about a child victim not showing any signs of having been coached is just as improper and inadmissible under CRE 608(a) as testimony that a child victim told the truth during an interview. *Heredia-Cobos*, ¶ 16, 415 P.3d at 864. Like its predecessors, the division here seemingly

proceeded on the understanding that our case law had resolved the admissibility question under review. But the issue is more nuanced than the three divisions appear to have appreciated.

¶25 Although it is clear that an expert witness may not *directly* vouch for the credibility of a child victim by opining that the child told the truth on a particular occasion, "the scope . . . of that proposition . . . ha[s] always been somewhat unclear." *Venalonzo v. People*, 2017 CO 9, ¶ 67, 388 P.3d 868, 885–86 (Coats, J., concurring in the judgment). And our case law doesn't squarely resolve whether the ambit of the proposition stretches far enough to sweep in expert testimony either that a child victim has not been coached or that no signs of coaching were detected during a child victim's interview.[3]

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[3] *Compare People v. Snook*, 745 P.2d 647, 648 (Colo. 1987) (analyzing the admissibility of the challenged expert testimony under CRE 608(a), not CRE 702, and disagreeing with the People that (1) expert "opinion evidence that merely corroborates a particular person's version of the offense" without directly vouching for the person's character for truthfulness falls outside the scope of CRE 608(a)'s prohibition, and (2) no abuse of discretion occurred because the expert testimony did not "explicitly" corroborate the child victim's credibility); *People v. Wittrein*, 221 P.3d 1076, 1081–82 (Colo. 2009) (following *Snook* and applying CRE 608(a) without mentioning CRE 702); and *Venalonzo*, ¶¶ 32, 33, 388 P.3d at 877–78 (adhering to *Snook*'s CRE 608(a) analysis—without determining whether the testimony was expert opinion evidence subject to CRE 702—in rejecting the division's conclusion that the testimony that child victims commonly give conflicting details was proper rebuttal evidence in light of the defense's contention that the conflicting details were indicia of fabrication; and declaring that testimony with "direct and *indirect* implications [about] a child's truthfulness" wanders outside the evidentiary fence line) (emphasis added)); *with People v. Gaffney*, 769 P.2d 1081, 1086 (Colo. 1989) (explaining that CRE 608(a) doesn't preclude "all

¶26 This is a thorny issue to be sure. But it's one we have no occasion to prune today.

¶27 The division agreed with Lopez that the disputed expert testimony was inadmissible, and the People didn't file a cross-petition to challenge that ruling. Only Lopez sought review, and the sole question he raised deals with the division's application of the opening the door doctrine. Of course, had the division deemed Grimm's challenged testimony admissible, there would have been no need to summon the opening the door doctrine, and any concerns Lopez and others may have about the application of the doctrine in this case would have been

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statements that may tend to support the credibility of a child-victim's out-of-court statements or in-trial testimony concerning a sexual crime," and acknowledging that CRE 702 permits expert testimony establishing that traits, characteristics, and/or behaviors exhibited by a child victim matched those found in other child victims of sexual abuse); *People v. Fasy*, 829 P.2d 1314, 1317–19 (Colo. 1992) (upholding the admission of expert testimony that (1) the child victim's behaviors after the sexual assault aligned with those of children suffering from posttraumatic stress disorder, (2) the child victim suffered from that disorder, and (3) a sexual assault could have triggered the disorder; rejecting the defendant's reliance on CRE 608(a); and holding that the challenged expert testimony was admissible under CRE 702, in part because it helped the jury understand post-incident behaviors exhibited by the child victim, including the yearslong delay in reporting the sexual abuse, notwithstanding the fact that such testimony *indirectly and incidentally* bolstered the child victim's credibility); and *People v. Cooper,* 2021 CO 69, ¶ 97, 496 P.3d 430, 448 (cautioning that generalized expert testimony isn't rendered inadmissible merely because it has an "incidental" bolstering effect on a domestic violence victim's credibility; and citing *People v. Relaford*, 2016 COA 99, ¶ 30, 409 P.3d 490, 496, for the proposition that "expert testimony generally tends to bolster or attack the credibility of another witness" (quoting *People v. Koon*, 724 P.2d 1367, 1370 (Colo. App. 1986)).

rendered obsolete. Given the current posture of the case, we assume, without deciding, that the expert testimony in the spotlight was inadmissible and we accordingly turn our focus to the opening the door doctrine.

B. Lopez Opened the Door to the Contested Expert Testimony

¶28 We construe the contours of the opening the door doctrine de novo. *See People v. Johnson*, 2021 CO 35, ¶ 15, 486 P.3d 1154, 1158. However, a lower court's determination that a party opened the door to otherwise inadmissible evidence is subject to review for an abuse of discretion. *Id.* at ¶ 16, 486 P.3d at 1158. We likewise review a trial court's decision to admit expert testimony for an abuse of discretion. *People v. Coons*, 2021 CO 70, ¶ 41, 495 P.3d 961, 969.

¶29 The opening the door doctrine may permit a party to present otherwise inadmissible evidence after the opposing party has introduced incomplete evidence that may lead the factfinder astray. *See Golob*, 180 P.3d at 1012. This judicially crafted rule serves to prevent a party from getting the upper hand at trial by selectively presenting facts that create an incorrect or misleading impression. *Id.*; *see also Miller*, 890 P.2d at 98–99 (same). Through the opening the door doctrine, a party may correct or otherwise place in context any such misimpression by bringing in evidence that would otherwise be barred. *Golob*, 180 P.3d at 1012.

¶30 In *Golob*, a whodunit case, the parties' experts examined partial shoeprints collected at the crime scene and compared them to the soles of Golob's boots.

180 P.3d at 1009. In response to questions on direct examination, the People's expert testified that he interpreted the conclusion in the defense expert's report to be consistent with his finding that it was *highly probable* that Golob's right boot made one of the prints collected at the crime scene. *Id.* In support of this testimony, the People's expert pointed to the defense expert's determination that the identifying marks on the soles of Golob's boots did not "conclusively match" the collected prints. *Id.* According to the People's expert, that determination meant that the defense expert's comparison fell within " the *probable range*." *Id.* (emphasis added)). Although the defense expert took issue with this interpretation of his report, he was unable to convey his disagreement to the jury because, based on the People's objection, the trial court limited his testimony to the "specific characteristics of Golob's boots" and precluded him from testifying about his comparison of the prints recovered to the soles of Golob's boots. *Id.* at 1009, 1012.

¶31 We agreed with the trial court's decision to exclude the defense expert's testimony comparing the recovered shoeprints to the known footwear, as he lacked direct training and experience in that field. *Id.* at 1012. But we nevertheless held that the trial court "should have permitted [him] to offer his comparison testimony because the prosecution opened the door" to it:

> By limiting [the defense expert's] testimony, the trial court permitted the jury to hear only one side of this issue. [The defense expert] was

> unable to explain the means by which he reached his opinion or how it differed from [the] opinion [offered by the People's expert]. Once the trial court permitted [the People's expert] to comment on [the defense expert's] opinion, it should have allowed [the defense expert] to testify on this subject to provide the full context of the print evidence to the jury.

Id. at 1012–13. We added that the trial court's ruling allowed the testimony of the People's expert regarding the defense expert's report "to stand unchallenged and resulted in an unfair advantage . . . through the selective presentation of expert opinion to the jury on . . . important evidence." *Id.* at 1013.

¶32 Taking our cues from *Golob*, we conclude that the division in this case correctly ruled that Lopez opened the door to the challenged expert testimony. As the division discerned, by repeatedly suggesting to the jury—through both the introduction of evidence and the presentation of argument—that the grandmother had coached the children or otherwise influenced them to fabricate the allegations or form false memories of sexual abuse, the defense opened the door to Grimm's expert opinion that she did not perceive any indication of coaching.

¶33 In voir dire, defense counsel questioned prospective jurors about the topic of suggestibility: whether people can sway or influence family members; whether anyone had had experiences with people taking advantage of others or with people suggesting to others that something that isn't real is actually real; whether children are suggestible, prone to being taken advantage of, or susceptible to being manipulated into believing that something that's not real is actually real; whether

someone who is close to a child can convince the child to believe that something that's not real is actually real; and the possible motives someone may have for attempting to influence a child's perception of reality.

¶34 Defense counsel went so far as to discuss a "hypothetical" to determine whether a prospective juror thought that an adult could suggest to a child that something happened even though it didn't happen. The hypothetical involved a five-year-old child whose grandmother was living with the child and wanted the child to stay with her. Before counsel could continue, the court sustained the People's objection, finding that defense counsel was asking "an improper staking out question" that included "the facts of the case or the purported facts" of the case and seeking to ascertain how the prospective juror "would judge" that scenario.

¶35 The defense kept the same threads running during its opening statement. Defense counsel told the jurors that the versions of events they were about to hear would "differ based on who ha[d] control over the children" at any given time. Thus, counsel encouraged the jury to pay close attention to the timing of the children's statements, where the children were "when things [were] happening," and who the children were with "when they [were] making these various allegations."

¶36 Counsel further interlaced the defense theme into the fabric of the cross-examinations of the People's witnesses. For example, the defense introduced evidence in support of its coaching theory through its questions of A.L. Defense counsel asked A.L. about her denial of any wrongdoing by Lopez during the social worker's interview, which occurred before A.L. moved in with her grandmother. Counsel then juxtaposed that interview with the interview by Grimm, which occurred after A.L. moved in with her grandmother. Through further questioning, A.L. conceded the following: that she discussed with her grandmother why she was going to be interviewed by Grimm and what she planned to say during the interview; that her grandmother wanted to make sure A.L. would say exactly what she ended up saying during Grimm's interview; that she spoke to her brother before Grimm interviewed him, and that she was aware that her brother was also going to say "some stuff" during that interview; that she wanted to live with her grandmother; that her grandmother was aware this was her wish; and that her grandmother likewise wanted to live with her.

¶37 In similar fashion, the defense introduced evidence in support of its coaching theory during the cross-examination of N.L. For example, defense counsel conveyed to the jury that, after moving in with his grandmother, N.L. recounted a different narrative to Grimm than the one he'd shared with the social worker. N.L. acknowledged that when he initially spoke to the social worker, he

didn't mention any inappropriate touching by Lopez. He further admitted that it was after he moved in with his grandmother that he told Grimm that Lopez had inappropriately touched him. Moreover, N.L. agreed with defense counsel that: he talked to his grandmother about Grimm's interview beforehand; his grandmother wanted to make sure he would tell Grimm what happened; and he told Grimm that he wanted to live with his grandmother rather than with his mother or father.

¶38 Along the same lines, while the children's grandmother was on the stand, defense counsel suggested that the grandmother threw Lopez under the bus to keep custody of the children. Specifically, the defense elicited testimony from the grandmother that she delayed reporting the allegations of abuse for almost a year. She further agreed with defense counsel that she reported these allegations after the children's mother announced that she wanted to regain custody of the children.

¶39 Next, during the cross-examination of Grimm, the defense presented evidence that the fact that there were multiple interviews conducted with each child gave rise to suggestibility concerns. Defense counsel also prompted Grimm to acknowledge that the children might have discussed the sexual abuse allegations with many people before their forensic interviews.

¶40 At the end of the trial, in closing argument, the defense drummed into the jurors the theme sowed in voir dire and nurtured throughout the trial. Counsel argued that the grandmother coached the children or otherwise influenced them to fabricate the allegations or form false memories.

¶41 In sum, Lopez defended against the charges in this case by persistently presenting evidence and argument that the grandmother egged the children on to fabricate allegations or form false memories. The defense's theory of the case was that the children changed their initial stories and made unfounded allegations against Lopez during Grimm's forensic interviews because their grandmother had coached them or otherwise improperly influenced them. But that was only part of the story: the defense's telling. The rest of the story was filled in by Grimm, who opined, in response to a juror's question, that based on both her observations of N.L.'s and A.L.'s behaviors during her forensic interviews and her comparison of those behaviors to the behaviors of children she'd observed in cases where coaching appeared to be present, she detected no indication of coaching here.

¶42 Given the defense's persistent theme and Grimm's unopposed generalized expert testimony about coaching, it is hardly surprising that a juror posed the question at issue: "In your expert opinion, was either [N.L.'s] or [A.L.'s] behavior consistent with interviews where coaching was present?" The jurors were almost invited to ask it. In essence, the juror's question sought to have Grimm apply her

generalized expert opinions—none of which the defense disputed—to the facts of the case, which is something expert witnesses are routinely permitted to do at trial. And precluding Grimm from addressing the juror's question would have given Lopez an unfair advantage by creating a misleading impression.

¶43 There were, after all, two sides to the coaching coin. The defense's contention that the children were coached or otherwise improperly influenced by their grandmother was one side. The other was Grimm's answer to the juror's question: During her interview of each child, she saw no indication of coaching. Grimm's response supplied the context necessary to complete the picture the defense had painted. True, that evidence was prejudicial to Lopez, but our rules don't prohibit prejudicial evidence. What they prohibit is *unfairly* prejudicial evidence. And, in the context of the evidence introduced and arguments presented by Lopez, there was nothing unfairly prejudicial about Grimm's challenged expert testimony. Accordingly, we conclude that Lopez opened the door to it.

C. Two Admonitions

¶44 As we come down the home stretch, we feel compelled to part with two admonitions. First, we wholeheartedly agree with the division that the opening the door doctrine must be narrowly applied. *Lopez*, ¶ 24, 550 P.3d at 736. Lopez could not have opened the door to the expert testimony at issue simply by

challenging the child victims' credibility. The door was opened in this case because defense counsel repeatedly suggested—through the introduction of evidence and the presentation of argument—that the children had been coached or otherwise improperly influenced by their grandmother.

¶45 Second, "[m]erely because a defense attorney opens the door does not mean that a prosecutor can come storming through it in a pair of hobnailed boots." *United States v. Sepulveda*, 15 F.3d 1161, 1189 n.24 (1st Cir. 1993). As Lopez urges, any evidence admitted under the opening the door doctrine must be limited to that necessary to remove any unfair prejudice that may have ensued from the original evidence. *See People v. Cohen*, 2019 COA 38, ¶ 23, 440 P.3d 1256, 1262 (stating that the opening the door concept "isn't unlimited"). In other words, the opening's width must dictate how much the opposing party may pass through it.

¶46 Here, the record reflects that the People didn't weaponize the door kicked open by the defense: The defense relentlessly pressed throughout the trial its claim that the children had been coached or otherwise improperly influenced by their grandmother, and the People responded through Grimm's opinion that she perceived no indicia of coaching during her interviews with the children.[4] More

[4] Nothing in our opening the door jurisprudence fenced the People into a nonevidentiary response. Nor is there support in Colorado law for the notion that Lopez, as the party who swung the gate open, was entitled to stand in the doorway

importantly, the record bears out that the district court didn't abuse its discretion in permitting Grimm's challenged expert testimony, which was tightly confined in scope and did nothing to widen the door opened by the defense. *See Coons*, ¶ 41, 495 P.3d at 98 (noting that we review a trial court's admission of expert testimony for an abuse of discretion). Appellate courts reviewing for an abuse of discretion reverse only when the disputed decision "is manifestly erroneous." *Id.* (quoting *People v. Rector*, 248 P.3d 1196, 1200 (Colo. 2011)). This highly deferential standard keeps an appellate court from second-guessing the trial court's on-the-ground judgment. *Cooper*, ¶ 93, 496 P.3d at 447. With no manifest error in sight in this case, we have no basis to climb down from the appellate perch and intrude upon the district court's domain. Instead, our review ends where the district court's exercise of sound discretion began.

III. Conclusion

¶47 For the foregoing reasons, we affirm the division's judgment. We remand the case to the division with instructions to return it to the district court.

CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE BOATRIGHT** and **JUSTICE BLANCO**, dissented.

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and dictate *the form* of the evidence the People properly carried across the threshold.

CHIEF JUSTICE MÁRQUEZ, joined by JUSTICE BOATRIGHT and JUSTICE BLANCO, dissenting.

¶48 Today the majority relies on the "opening the door" doctrine to justify the admission of otherwise inadmissible expert opinion testimony on the credibility of child witnesses. It does so in a child sexual assault case, the very kind of case that frequently hinges on credibility. In so doing, it holds for the first time that a defendant "opens the door" to such inadmissible (and unfairly prejudicial) evidence merely by pursuing a garden-variety "coaching" theory of defense that challenges the credibility of the allegations against the defendant. Here, the majority does not identify specific testimony introduced by the defense that would require additional context to correct an objectively misleading impression. Instead, it holds for the first time that a defendant "opens the door" to the introduction of otherwise inadmissible expert vouching testimony simply by pursuing a *theory of defense*—through voir dire and opening statements (neither of which are evidence), and even closing arguments (which are not only not evidence, but which somehow contribute to "opening the door" *after* the close of evidence). In short, the majority takes an already confusing and amorphous doctrine and stretches it beyond recognition.

¶49 The majority assumes, without deciding, that the expert's testimony was inadmissible. Maj. op. ¶ 6. But this issue should be decided outright. As Judge

Schutz explained, the testimony at issue here was inadmissible because there is no principled distinction between testimony that a child "was not coached" and testimony that a child "was being truthful." *People v. Lopez*, 2024 COA 26, ¶ 60, 550 P.3d 731, 741 (Schutz, J., dissenting). In other words, the expert's testimony in this case was impermissible vouching. *See People v. Eppens*, 979 P.2d 14, 17–19 (Colo. 1999).

¶50 Equally importantly, the opening the door doctrine is inapplicable here. As I explain below, the doctrine comes into play only when one party (1) introduces testimony that (absent correction or additional context) creates an objectively misleading inference for the jury and (2) prevents the opposing party from explaining or rebutting that objectively misleading inference. Because Gustavo Lopez did neither in this case simply by pursuing his theory of defense, the doctrine does not apply. In any event, permitting expert opinion testimony regarding the child victims' truthfulness on specific occasions is a disproportionate response that injects unfair prejudice, particularly in a case such as this that hinges on credibility. The majority distorts the doctrine by applying it here, and in so doing, it effectively deters future defendants from pursuing a defense that a victim was coached into making false allegations.

¶51 For the foregoing reasons, I respectfully dissent.

I. The Expert's Testimony Was Inadmissible Because It Concerned Specific Instances of the Children's Truthfulness

¶52 "In Colorado, neither lay nor expert witnesses may give opinion testimony that another witness was telling the truth on a specific occasion." *People v. Wittrein*, 221 P.3d 1076, 1081 (Colo. 2009). Testimony that another witness told the truth amounts to a credibility determination, which is a matter "solely within the jury's province." *People v. Baker*, 2021 CO 29, ¶ 2, 485 P.3d 1100, 1102; *see also Venalonzo v. People*, 2017 CO 9, ¶ 32, 388 P.3d 868, 877 ("The danger in admitting such testimony lies in the possibility that it will improperly invade the province of the fact-finder.").

¶53 "Testimony that another witness is credible is *especially problematic* where the outcome of the case turns on that witness's credibility," a situation that often arises in child sexual assault cases. *Venalonzo*, ¶ 33, 388 P.3d at 877 (emphasis added). A child's testimony as to abuse has an outsized importance because children may delay reporting sexual abuse, so collecting physical evidence becomes difficult or impossible. *Id.*, 388 P.3d at 878. This means that the child's testimony becomes the most significant evidence in the case. *Id.*

¶54 Here, the majority acknowledges that "it is clear that an expert witness may not *directly* vouch for the credibility of a child victim by opining that the child told the truth on a particular occasion." Maj. op. ¶ 25. Yet that is exactly what

happened here: By testifying that the children were not coached in a case that turned on their credibility, the expert *directly* vouched for their credibility. That is, the expert's testimony was inadmissible because it concerned specific instances of the children's truthfulness. *See Eppens*, 979 P.2d at 17 ("It is well established that CRE 608(a)(1) does not permit a witness to offer an opinion that a child was telling the truth on the specific occasion that the child reported a particular sexual assault by a defendant.").

¶55 Our precedent on direct vouching leads to this inescapable conclusion. Four decades ago, in *Tevlin v. People*, 715 P.2d 338, 339 (Colo. 1986), we considered the testimony of an expert in child abuse investigation. The expert formed an opinion as to whether "the victim gave truthful information based on the interviews [the expert] conducted with the victim and his stepbrother" and then "testified that he believed the victim was telling the truth about the fact that he was beaten by the petitioner with the belt." *Id.* at 340. We held that the expert's testimony ran afoul of CRE 608 because it went to the victim's truthfulness on a specific occasion—directly vouching for the child's credibility. *Id.* at 341; *see also People v. Oliver*, 745 P.2d 222, 225 & n.2 (Colo. 1987) (holding that expert witness and lay witness testimony that "they personally believed each of the three victims, based upon their experience and interviews of the victims" violated CRE 608(a)).

¶56 We subsequently held that testimony analogous to saying a witness told the "truth" can likewise run afoul of CRE 608(a). *Eppens*, 979 P.2d at 18. In *Eppens*, for example, we held that a social worker's lay testimony that she "felt [the victim] was sincere" was "tantamount to a statement that she found [the victim] to be truthful." *Id.* at 17–18. We found it particularly instructive that "sincerity" was "virtually synonymous with," and contained within, the definition of "truth." *Id.* at 18 (citing *Truth*, Webster's Third New International Dictionary, Unabridged (1986), which defined "truth" as "sincerity in character, action, and speech").

¶57 Here, the expert testified about coaching, a concept inextricably linked with truthfulness. She explained to the jury that coaching is "when someone is telling the child to say that didn't happen when it really did or they may be telling the child to say something happened that actually did not." In other words, the expert explained to the jury that "coaching" occurs when a child is told to share an *untruthful* version of events—i.e., to lie. The expert here also testified that she was trained to look for signs of coaching. Critically, she then testified that, in her expert opinion, she did not feel like she saw "huge red flags" or "anything that indicated" the children were coached because both were "able to provide very specific experience-based details around the events" they described to her.

¶58 The expert's own explanation of "coaching" made clear to the jury that signs of coaching indicate untruthfulness. By testifying that she did not see anything

that indicated coaching, the expert effectively testified that the children were not lying when they accused Lopez of sexual assault. Put simply, the expert directly vouched for the children's credibility. As the division correctly explained,

> [A]n expert witness may not opine that a child was not coached in making allegations, or—because it amounts to the same thing—that the expert did not see signs of coaching. Coaching testimony is impermissible because it "constitute[s] conclusions about [the children's] truthfulness in their respective interviews," and is "tantamount to vouching for the child[ren]'s credibility."

Lopez, ¶ 12, 550 P.3d at 734 (alterations in original) (citations omitted) (first quoting *People v. Bridges*, 2014 COA 65, ¶ 16, 410 P.3d 512, 514; and then quoting *People v. Heredia-Cobos*, 2017 COA 130, ¶ 14, 415 P.3d 860, 864).

¶59 Where, as in this case, an expert who is qualified in child forensic interviewing and trained to detect coaching in children testifies that a child was not coached to make accusations, "the jury's only conceivable use of such testimony would be as support for the complainant's truthful character." *People v. Snook*, 745 P.2d 647, 649 (Colo. 1987). Because the expert directly vouched for the children's credibility, her testimony was inadmissible under CRE 608(a).

II. The Defense Did Not "Open the Door"

¶60 Having concluded that the expert's testimony is inadmissible, I now turn to the question of whether the defense nevertheless "opened the door" to the testimony by pursuing a theory of defense that the children were coached into making false allegations. Precisely because the theory of defense did not create an

objectively misleading impression or give the defense an unfair advantage, the doctrine is inapplicable here. In any event, permitting the prosecution to introduce an expert opinion on credibility invaded the province of the jury and injected unfair prejudice into the case. The majority's holding to the contrary distorts the doctrine beyond recognition and effectively deters future defendants from pursuing such a defense.

A. The Theory of Defense Did Not Create an Objectively Misleading Impression or Give the Defense an Unfair Advantage

¶61 "The concept of 'opening the door,' not codified in our rules of evidence, is a court-promulgated curative measure that is not easily defined." *People v. Melillo*, 25 P.3d 769, 775 (Colo. 2001). We have conceptualized it as "an effort by courts to prevent one party from gaining an unfair advantage by presenting evidence that, without being placed in context, creates an incorrect or misleading impression." *Id.*

¶62 The purpose of the doctrine in Colorado is to prevent one side from raising an objectively misleading adverse inference while simultaneously preventing the other side from explaining or rebutting that inference. *See People v. Miller*, 890 P.2d 84, 98–99 (Colo. 1995). Accordingly, the doctrine does not apply unless both of those conditions are present. Because pursuing a defense theory that a victim was coached does not, in and of itself, raise an objectively misleading adverse

inference, and because the prosecution in this case was not prevented from explaining or rebutting the defense's theory, the opening the door doctrine is inapplicable here.

¶63 The origin of the doctrine in Colorado is difficult to pinpoint, but several early cases outline its foundation. It began as a form of impeachment. For example, in *Medina v. People*, 291 P.2d 1061, 1062 (Colo. 1956), we held that a defendant "opened the door" to the question of whether he had ever owned a pistol by testifying that he had not. To contradict the defendant's (objectively misleading) testimony, the prosecution introduced rebuttal testimony that the defendant had been arrested with a pistol some years earlier. *Id.* We held that the defendant "opened the door" to the question of gun ownership, and that a party may always "present evidence to challenge the credibility of an adverse witness by proof of independent facts and circumstances inconsistent with his or her testimony." *Id.*; *see also People v. Cole*, 654 P.2d 830, 834 (Colo. 1982) (holding that the defendant's testimony about not using a knife in a prior fight "opened the door to the issue of the prior fight" and that "the prosecution was entitled to introduce competent evidence to explain, refute, or disprove the statement, since the defendant's credibility was in issue").

¶64 We later relied on the doctrine to permit the use of otherwise restricted (and therefore inadmissible) testimony to contradict an objectively misleading

inference raised by an opponent. In *People v. Tenorio*, 590 P.2d 952, 957 (Colo. 1979), for example, officers were permitted to testify on direct examination that they received a call involving a man of the defendant's description, but not that he was reported to be drunk and brandishing a weapon. On cross-examination, however, defense counsel elicited testimony from an officer that he had his gun drawn and pointed at the defendant as he first approached. *Id.* at 958. On re-direct examination, the prosecution asked the officer why his gun was drawn, and the officer explained that the defendant was reported to have a weapon. *Id.* We held that the defense's cross-examination "opened the door" to the restricted testimony because "[t]he district attorney had a right to explain or rebut any adverse inferences which might have resulted from that cross-examination question." *Id.* In other words, the otherwise restricted testimony was admissible because it tended to explain the objectively misleading adverse inference raised by the defense's cross-examination.

¶65 Similarly, in *People v. Sams*, 685 P.2d 157, 164 (Colo. 1984), we reiterated that a defendant may not raise an objectively misleading adverse inference while simultaneously preventing the prosecution from explaining or rebutting that inference. *See id.* at 158, 164 (explaining that the proper remedy for the prosecution's loss of exculpatory identification evidence was suppression of all identification evidence, and allowing the defense to inquire into suppressed

identifications on cross-examination but warning that doing so would "open[] the door" for the prosecution to elicit additional testimony about the same).

¶66 Over a decade later, we applied the doctrine to allow the introduction of other crimes evidence otherwise barred by CRE 404(a). *Miller*, 890 P.2d at 96, 99. In *Miller*, the defendant was charged with possession and distribution of cocaine; a prosecution witness testified that he made two substantial purchases of cocaine from the defendant on the charged date. *Id.* at 87–88, 99. On cross-examination, the defense adduced testimony that suggested the prosecution witness's relationship with the defendant was entirely casual and lawful before the charged date, and that the two men knew each other only informally. *Id.* at 88, 97–99. On re-direct examination, the prosecution elicited testimony clarifying that the prosecution witness had bought cocaine from the defendant "quite a few" times even before the charged date. *Id.* at 88–90, 97. We held that the defense "open[ed] the door" to evidence of the defendant's other crimes by seeking "to exclude the inadmissible evidence that would place that relationship in its proper context, revealing the true nature and scope of the friendship." *Id.* at 99. We thereby reiterated that the defendant could not selectively present facts that created a factually incorrect or misleading impression while simultaneously preventing the prosecution from explaining or providing context to correct the misimpression created by the defense.

¶67 Thus, in *Miller*, we articulated for the first time the rule for "opening the door" as we use it today: "This concept of 'opening the door' represents an effort by courts to prevent one party in a criminal trial from gaining and maintaining an *unfair* advantage by the selective presentation of facts that, without being elaborated or placed in context, create an *incorrect or misleading* impression." *Id.* at 98–99 (emphases added) (first citing *Sams*, 685 P.2d at 164; and then citing *Tenorio*, 590 P.2d at 958).

¶68 In concluding that the defense "opened the door" in this case, the majority relies on *Golob v. People*, 180 P.3d 1006 (Colo. 2008). Maj. op. ¶ 32. But *Golob* rested on the same principles advanced in *Tenorio*, *Sams*, and *Miller*.[5] In *Golob*, the prosecution elicited testimony from its expert witness that characterized the defense expert's findings as consistent with his own findings. 180 P.3d at 1012. When the defense expert attempted to disagree, the prosecution objected, and the trial court excluded the defense expert's testimony. *Id.* at 1009, 1012. We held that

[5] *Golob* did not directly cite to *Tenorio*, *Sams*, or *Miller*; it instead cited *People v. Murphy*, 919 P.2d 191, 195 (Colo. 1996), which in turn cited *Tenorio*, *Sams*, and *Miller*. *Golob*, 180 P.3d at 1012. But *Golob* uses the same language as *Miller* to describe the opening the door doctrine. *Compare Golob*, 180 P.3d at 1012 ("'[O]pening the door' represents an effort by courts to prevent one party in a criminal trial from gaining and maintaining an unfair advantage by the selective presentation of facts that, without being elaborated or placed in context, create an incorrect or misleading impression."), *with Miller*, 890 P.2d at 98–99 (same). Therefore, *Golob* rested on the same principles as those advanced in *Tenorio*, *Sams*, and *Miller*.

the prosecution "opened the door" to the defense expert's testimony because, otherwise, the prosecution expert's testimony stood unchallenged and "resulted in an unfair advantage to the prosecution through the selective presentation of expert opinion to the jury on this important evidence." *Id.* at 1012–13.

¶69 The principle we followed in *Golob*, though applied in a new context, was nothing new: A party may not mislead the jury into believing objectively untrue facts. In *Tenorio*, for example, the concern was that the jury might have believed that the police officer drew and pointed his gun at the defendant for no reason, when in fact, the defendant reportedly had a weapon. *See Tenorio*, 590 P.2d at 958. In *Miller*, the concern was that the jury might have found it unlikely that the defendant would suddenly sell substantial quantities of cocaine to a person he knew only casually, when in fact, the defendant had sold cocaine to him several times before. *See Miller*, 890 P.2d at 99. And in *Golob*, the concern was that the jury might have believed that the defense expert's report aligned with the prosecution expert's report, when in fact, the defense expert disagreed with that characterization. *See Golob*, 180 P.3d at 1012–13.

¶70 Here, however, nothing about the theory of defense misled the jury to believe objectively untrue facts. It is the jury's role as factfinder to assess the credibility of witnesses at trial. As is often the situation in child sexual assault cases, the defense theory challenged the allegations against Lopez by focusing on

the children's credibility. The majority admits as much. Maj. op. ¶ 6 ("By consistently attacking *the credibility* of the children with assertions that they had been coached, the defense opened the door . . . ." (emphasis added)). Unlike the objectively misleading testimony animating this court's concerns in *Tenorio*, *Miller*, and *Golob*, the children's credibility in this case was a core issue for the jury to decide. In exercising its crucial role as factfinder, the jury might have believed the children's allegations, or it might have believed that the grandmother coached or otherwise improperly influenced the children because she wanted to maintain custody of them. Indeed, several aspects of the case arguably undermined the children's credibility: They initially denied the allegations, their forensic interviews were delayed, their testimony contained inconsistencies, there was no physical evidence of either incident, and they had an incentive to make up allegations against Lopez because they wanted to live with their grandmother. I also find it especially troubling that the majority treats the theory of defense in this case as presenting a "misleading impression." *Id.* at ¶ 42. I do not see how a garden-variety theory of defense centered on challenging the credibility of the allegations against the defendant constitutes "getting the upper hand at trial by selectively presenting facts." *Id.* at ¶ 29.

¶71 Importantly, the defense did not prevent the prosecution from explaining or rebutting the coaching theory. After the defense engaged in lines of questioning

on cross-examination to suggest that the children were coached, the prosecution could, and did, rebut those suggestions on re-direct examination. As just one example, the defense elicited testimony from the grandmother on cross-examination that she did not report the incidents to Social Services until after the children's mother tried to regain custody—suggesting that the grandmother fabricated the allegations to maintain custody of the children. But on re-direct examination, the prosecution (appropriately) elicited testimony that the grandmother did not report the incidents because she thought Social Services already knew. Because the theory of defense in this case did not create an objectively misleading adverse inference that could be corrected only by the introduction of otherwise inadmissible vouching testimony, the opening the door doctrine does not apply.

B. Permitting the Expert's Testimony Injected Unfair Prejudice

¶72 Even if a party "opens the door" to inadmissible evidence, not all inadmissible evidence may come in. As the majority acknowledges, *id.* at ¶¶ 44–45, the doctrine allows inadmissible evidence only to the extent necessary to remove any unfair prejudice, i.e., by correcting an objectively misleading impression. Permitting the prosecution to present an expert opinion on a child witness's credibility exceeds these limits and instead injects unfair prejudice into the case.

¶73 Experts are, and should be, permitted to educate jurors about typical behaviors of children who have been sexually assaulted. *People v. Fasy*, 829 P.2d 1314, 1317 (Colo. 1992) (holding that expert testimony was admissible where the expert testified that child sexual assault victims can suffer posttraumatic stress disorder and that the child victim suffered posttraumatic stress disorder). However, experts are not permitted to testify that a child was telling the truth about having been sexually assaulted. *People v. Gaffney*, 769 P.2d 1081, 1088 (Colo. 1989) (holding that expert testimony was inadmissible where the expert testified that the child's description of the events was "very believable"); *see also Snook*, 745 P.2d at 648–49 (holding that expert testimony was inadmissible where the expert testified that children tend not to fabricate erotic experiences).

¶74 To the extent the expert's testimony in this case helped the jury to understand the concept of coaching and described the signs of coaching, it was proper. For example, the expert testified,

> [I]f a child is being coached, it is more difficult for them to describe all the details of what they can hear, what the room looked like, meaning what the clothing looked like that they were wearing, exactly what was said or how they felt in that situation. When a child is coached, it is typically difficult for them to recall that information because in coaching a lot of times people aren't telling the child to say all of these things as well.

It would have been entirely proper for the jury to take that expert's explanation and apply it to the evidence in the case, such as the children's video recorded interviews. But it was entirely *improper* for the expert to do the jury's work for it.

¶75 As Judge Schutz explained, jurors often feel saddled with the heavy responsibility of determining witnesses' credibility. *Lopez*, ¶ 60, 550 P.3d at 741 (Schutz, J., dissenting). This responsibility can feel particularly heavy in child sexual assault cases, "which are emotionally charged and present serious consequences for both the defendant and the alleged victims." *Id.* "Facing such pressures, there is a real risk that jurors may displace their burden to assess credibility by deferring to the opinion of a purported expert." *Id.* Those dangers are precisely why expert testimony about a witness's credibility is prohibited.

¶76 Notably, the prosecution specifically requested in a motion in limine that all witnesses be precluded from commenting on other witnesses' veracity, and it avoided asking the expert to opine directly on the children's truthfulness. Instead, the expert's testimony vouching for the children's credibility was elicited by a question from a juror after the prosecution completed its re-direct examination.

¶77 Permitting the expert to answer the juror's question was manifestly improper because it was inadmissible vouching testimony that was wholly unnecessary: The expert's testimony (and other evidence) in the case did not create

an objectively misleading impression that required correction. As such, allowing the expert to answer the juror's question was a clear abuse of discretion.

¶78 The majority asserts that the expert's testimony merely "supplied the context necessary to complete the picture the defense had painted." Maj. op. ¶ 43. But the expert in this case did more than supply "context": She directly vouched for the children's credibility by effectively testifying that they told the truth when they accused the defendant of sexual assault. Such testimony was tantamount to an expert opinion on the children's credibility.

¶79 Vouching testimony is uniquely harmful because it directly usurps the role of the jury. *Baker*, ¶¶ 2, 45, 485 P.3d at 1102, 1109. As we have explained, "[t]estimony that another witness is credible is especially problematic where the outcome of the case turns on that witness's credibility," and "[t]his often occurs in child sex assault cases." *Venalonzo*, ¶ 33, 388 P.3d at 877. When a child delays reporting sexual abuse, collecting physical evidence may be difficult or impossible, and the child's testimony will likely be the most significant evidence in the case. *Id.*, 388 P.3d at 878. Because the case will turn on whether the jury finds the child credible, "courts must be particularly mindful of testimony that a child victim is telling the truth when that child's testimony is 'the focal issue in the case.'" *Id.* (quoting *Snook*, 745 P.2d at 649).

¶80 The opening the door doctrine "'can be used only to *prevent* prejudice; it can't be used as an excuse to *inject* prejudice into the case.'" *People v. Ray*, 2025 CO 42M, ¶ 86, 575 P.3d 400, 427–28 (emphases added) (quoting *People v. Cohen*, 2019 COA 38, ¶ 23, 440 P.3d 1256, 1262–63). The doctrine "isn't unlimited and 'inadmissible rebuttal evidence "is permitted 'only to the extent necessary to remove any unfair prejudice which might otherwise have ensued from the original evidence.'"'" *Id.*, 575 P.3d at 427 (quoting *Cohen*, ¶ 23, 440 P.3d at 1262).

¶81 In this case, there was no physical evidence, and the children's forensic interviews were delayed. The children's testimony was therefore the most significant evidence, and the case turned on whether the jury found the children credible. Permitting an expert to vouch for the children's credibility was thus inherently unfairly prejudicial because it usurped the jury's role in determining a key disputed issue in the case. *See People v. Kembel*, 2023 CO 5, ¶ 53, 524 P.3d 18, 29 (explaining that unfairly prejudicial evidence has an "adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence" (quoting *United States v. Gilliam*, 994 F.2d 97, 100 (2d Cir. 1993))); *People v. Dist. Ct.*, 785 P.2d 141, 147 (Colo. 1990) (defining unfairly prejudicial evidence as having "an undue tendency to suggest a decision on an improper basis").

C. The Majority Significantly Expands the Boundaries of the Doctrine

¶82 Importantly, the majority's holding today significantly expands the use of the opening the door doctrine by applying it for the first time to a theory of defense.

¶83 The majority reasons that Lopez's theory of defense at trial "opened the door" by "repeatedly suggesting to the jury" that the children were coached and weaving "this theme throughout the trial, from the initial ripple to the final wave—introducing it in voir dire, incorporating it into the opening-statement roadmap, reinforcing it through witness examinations and testimony, and hammering it home in closing arguments." Maj. op. ¶¶ 10, 32.

¶84 We have never considered counsel's comments made during voir dire, opening statements, and closing arguments[6]—none of which are evidence—to "open the door" to the introduction of otherwise inadmissible evidence, and we should decline to do so here. *Pernell v. People*, 2018 CO 13, ¶¶ 4, 24, 411 P.3d 669, 670, 673 (declining to address whether an opening statement "opened the door" to inadmissible evidence); *see also Davis v. People*, 2013 CO 57, ¶¶ 2, 12, 310 P.3d 58, 59, 61.

[6] The majority does not explain how the defense's closing arguments, which obviously occurred *after* the close of evidence, contributed to "opening the door" to the expert's testimony here.

¶85 In *Medina*, we held that the prosecution could contradict the defendant's *testimony* with lay testimony on rebuttal. 291 P.2d at 1062. In *Tenorio*, *Sams*, and *Miller*, we held that the prosecution could contradict the defense's *cross-examination* with further questioning on re-direct.[7] *Tenorio*, 590 P.2d at 957–58; *Sams*, 685 P.2d at 164; *Miller*, 890 P.2d at 99. And in *Golob*, we held that the defense could contradict the prosecution's expert testimony with its own *expert testimony*. 180 P.3d at 1012–13.

¶86 But "[o]pening statements are not evidence, and they do not constrain later argument or introduction of evidence." *Davis*, ¶ 33, 310 P.3d at 65–66 (Bender, C.J., concurring in the judgment) ("What is inappropriate, however, is permitting opposing counsel to present irrelevant or otherwise inadmissible evidence on the basis that an opening statement, which carries no evidentiary weight, opened the door to its admission."). The majority's holding in this case stands not only for the remarkable proposition that a defendant may "open the door" to expert testimony that a victim was truthful but also that a defendant may "open the door" to such otherwise inadmissible evidence merely by pursuing a theory of defense "that the [victim] had been coached or otherwise improperly influenced." Maj. op. ¶ 44.

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[7] Even in *Venalonzo*, a more recent case applying the opening the door doctrine, we held that the prosecution could contradict the defense's *cross-examination* of a non-expert investigating officer with further questioning on re-direct examination. ¶ 44, 388 P.3d at 880.

¶87 I am deeply concerned about the implications of the majority's holding on future, similarly situated defendants. Coaching is a common defense to allegations of sexual assault on a child, and the majority's decision today undercuts any such defense. A defendant who seeks to defend against allegations of sexual assault on a child by explaining that a third party improperly induced the child's outcry may now anticipate the introduction of expert testimony vouching for the child's truthfulness. Indeed, going forward, defendants must be careful not to even *suggest* that a child victim might be told what to say—not in voir dire, opening statement, or closing argument—lest they "open the door" to expert testimony that the child told the truth. I cannot support this result.

III. Conclusion

¶88 By applying the opening the door doctrine to this case, the majority distorts it beyond recognition. Nothing about Lopez's theory of defense created an objectively misleading impression or gave the defense an unfair advantage. And in any event, permitting an expert to directly vouch for the victims' credibility was a disproportionate response that injected unfair prejudice into a case that hinged on credibility.

¶89 For the foregoing reasons, I respectfully dissent.