Circuit Court for Queen Anne's County
Case No. C-17-CR-23-000132

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 338

September Term, 2024

RAED AL-ATIYYAT

v.

STATE OF MARYLAND

Leahy,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 26, 2026

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

Following a one-day trial, a jury in the Circuit Court for Queen Anne's County found Raed Al-Atiyyat, the appellant, guilty of first-degree assault. Subsequent to his conviction, Al-Atiyyat filed a motion for a new trial, but the circuit court denied the motion and sentenced him to 25 years' imprisonment, all but ten suspended, consecutive to his 25-year sentence in a separate case.[1]

Al-Atiyyat timely filed this appeal and presents the following questions for our review:

I. "Was Mr. Al-Atiyyat deprived of a fair trial because the State failed to correct false testimony by one of its witnesses?"

II. "Did the trial court abuse its discretion by reading an *Allen* charge without inquiring whether jurors were hopelessly deadlocked?"

III. "Was the evidence insufficient to convict Mr. Al-Atiyyat of first-degree assault?"

Finding no error or abuse of discretion, we affirm the judgment of the circuit court.

BACKGROUND

Al-Atiyyat and his ex-wife, M.,[2] were divorced in April 2016. Despite the divorce,

[1] In that case, Case Number C-17-CR-22-390 ("22-390" case), the circuit court found Al-Atiyyat guilty of, among other charges, sex abuse of a minor and sentenced him to 25 years of incarceration for that conviction. All other convictions were merged for sentencing purposes. In an unreported opinion, this Court affirmed the circuit court's judgments in the 22-390 case. *See Al-Atiyyat v. State*, No. 2378 Sept. Term 2023, 2025 WL 1703679, at *1 (Md. App. Ct. June 18, 2025).

[2] In order to protect the victim's identity, we refer to her by an initial that has no connection to her name. *See Juan Pablo B. v. State*, 252 Md. App. 624, 629 n.3 (2021), *rev'd on other grounds*, 480 Md. 650 (2022). For the children involved in this case, we adopt the abbreviations used in the parties' appellate briefs. We intend no disrespect in doing so.

they continued to live together in the marital home through November 2016 with their five children. Al-Atiyyat's niece also lived with them during this period. In March 2023, Al-Atiyyat was charged by criminal information with first-degree assault on the charge that he choked M. on July 2, 2016. He was tried before a jury on June 21, 2023.[3]

At trial, the State presented testimony from M. and two of the five children, S. (born December 2006) and D. (born March 2009), regarding the choking incident. M. testified that she and Al-Atiyyat were arguing in an "Arabic living room" that day, while her children, as well as Al-Atiyyat's niece, were present. During the argument, Al-Atiyyat "lunged" at M., got "on top of" her, and choked her with both hands. M. "panicked[,]" believing that she "was gonna die." She also heard Al-Atiyyat saying multiple times that he was "gonna kill" her.

The choking ended when the children pulled Al-Atiyyat off M. M. immediately took her car keys, went outside, and drove away in her minivan. While driving, she lost control of the vehicle and collided with a telephone pole.

S. and D. corroborated M.'s account of the incident. D., who was seven years old at the time of the assault, recalled that the incident occurred in "the Arabic kind of dining room." She also recalled that Al-Atiyyat was "incredibly angry" and was "on top of" M., with "both of his hands around her neck, pinning her down to the ground until . . . her eyes

[3] Before the trial in the instant matter, the 22-390 case proceeded to a three-day jury trial from March 6 to 8, 2023, which resulted in a hung jury. Following a bench retrial on July 12 and 13, 2023, Al-Atiyyat was convicted and sentenced in the 22-390 case as noted *supra*. *See* footnote 1.

started to close." S., who was nine years old at the time, similarly testified that she and her siblings were "sitting in [the] Arabic living room" when Al-Atiyyat was "getting on top of" M. and starting to choke her, even as M.'s face was "turning red." S. also made an in-court identification of Al-Atiyyat. On cross-examination, defense counsel asked S., "You specifically remember[ed] this as July 2nd, 2016, on a calendar?" S. answered, "Yes." Counsel then asked, "Prior to coming to court today, did you review your testimony with anybody?" to which S. answered, "No."

Deputy Jeff Lewis of Queen Anne's County Sheriff's Office responded to the crash. Upon arrival, he observed the "minivan that had run headfirst into a telephone pole" and saw M. receiving treatment by paramedics in the back of an ambulance. Deputy Lewis, however, did not see M.'s neck area. He also did not obtain a statement from M. or other witnesses at the scene. During Deputy Lewis's testimony, photographs of the crash scene were admitted into evidence.

Marcelo Grasso II, one of the paramedics dispatched to the scene, found M. lying on the grass approximately 20 feet from the minivan. Grasso applied a cervical collar and a "long backboard" to stabilize her neck and spine. He then assessed her injuries and called for a helicopter to University of Maryland Shock Trauma Center. Although initially moaning and not fully alert, M. gradually became responsive. When Grasso asked what happened, M. said, "Well, I'm running from him, or he was chasing me." When asked who was chasing her, she replied, "Him, my husband."

On cross-examination, Grasso acknowledged that he had no independent

recollection of the event and had read his "Mears report" before testifying. Grasso's report was admitted into evidence and was published to the jury. He explained that the report is "basically an assessment report of a patient" and must be completed "within the first one or two hours" of an incident to ensure accuracy. He further acknowledged that M. only indicated that there had been "fighting" between her and Al-Atiyyat, without mentioning choking. Grasso did not observe any bruising or discoloration on M.'s neck when applying a cervical collar. Nor did he find any signs of abuse or neglect, even though he "personally look[ed] for them" when conducting patient assessments. Consistent with this testimony, Grasso's report provided, in relevant part, "SKIN: no signs of abuse or neglect, pale, warm, dry." On redirect, Grasso clarified that different types of people may respond to physical trauma differently.

M. was transported to the Shock Trauma Center. When hospital staff asked how she felt at home, she replied that she was "okay at home." When asked if she was being abused at home, M. answered, "No." M. testified that she did not report the abuse to hospital staff or police at the time because she was "afraid of leaving [her] kids at home with [Al-Atiyyat]." She reported the incident in December 2016, stating she finally decided to do so because she "had to get away with [her] kids."

Excerpts from M.'s medical report were admitted into evidence without objection. In relevant part, the report described M.'s symptoms as follows:

> Reports back pain and headache. 33 year old female unrestrained driver presents to the TRU after high speed single vehicle MVC in to telephone pole. . . . Awake and alert in the field and TRU. Reported to be tachycardic in the field initially but BP always OK. Pelvic binder placed in the field. Here

> complains of right hip and low back pain. No CP, abdominal pain or SOB, No neck pain.

The report also discussed M.'s cervical spine CT scan results:

> CT cervical spine: Axial and reformatted images were performed following administration of intravenous contrast material. Images were obtained from the circle of Willis to the top of T4 vertebra. Axial images show no evidence of cervical spine fracture, blunt carotid or vertebral artery injury. A Ventriculoperitoneal catheter is seen right side of neck.

After the State's case-in-chief concluded, defense counsel moved for judgment of acquittal, claiming that the State failed to present "any testimony regarding a serious physical injury." The court denied the motion.

During the defense's case, Al-Atiyyat testified on his own behalf and categorically denied choking M. The defense also called a neighbor, Rebecca Lofland, as a witness. Ms. Lofland had known Al-Atiyyat's family for years, and M. came to visit her "[p]robably once a week, or sometimes more." Her husband was also a "good acquaintance" with Al-Atiyyat, although Ms. Lofland denied that they were "real good friends."

Ms. Lofland testified that M. and the children visited her home a few weeks after the July 2016 incident. During the visit, M. repeatedly stated that she "ran off the road intentionally because [Al-Atiyyat] was not paying attention to her." M. never mentioned being choked. Al-Atiyyat testified that Mr. Lofland had told him about M.'s statement, but he told Mr. Lofland that he preferred to "leave it for the court."

In rebuttal, the State recalled M., S., and D. Both M. and S. denied that Ms. Lofland ever asked about the cause of the car crash or that M. attributed the crash to her desire for Al-Atiyyat's attention. D. denied any recollection of knowing or speaking with the

Loflands in 2016. The defense then renewed its motion for judgment of acquittal and moved for a directed verdict, but the trial court denied both motions.

Following jury instructions, the parties presented closing arguments. During its closing argument, the defense challenged the credibility of S. and D., stating:

> So I'm going to start with two young ladies who came in here today with (indiscernible) were nine years old and seven years old, seven years ago. . . . [Y]ou hear [the] two young women come in and testify about an incident that happened seven years ago when they are seven and nine years old. And I want you to -- you have to rely on your notes and your memory of the testimony. But both of them use language that is nearly identical in saying, "We were in our Arabic living room," which almost exactly matches what their mother said. They both said, "That's the day mom crashed a car after dad choked her." Exactly what their mother said seven years ago.

The jury subsequently began deliberations at 6:47 p.m. Before the jurors retired, the court announced that food had been ordered to "help [them] get through [their] deliberations[.]"

About two and a half hours later, at 9:11 p.m., the jury sent its first note, asking, "can you have first degree assault without leaving marks?" The court declined to answer, explaining that the question appeared to involve a "factual issue that's exclusively up to the [j]ury" and instructing the jury to continue deliberations.

At approximately 9:50 p.m., the court received the second note: "We are at 11 to 1 and have been for the last solid two hours. What should we do?" The court then discussed with counsel the possibility of giving a modified "*Allen* charge"[4] as outlined in MPJI-Cr.

[4] *Allen v. United States*, 164 U.S. 492 (1896).

2:01.

> THE COURT: Of course, we don't know how that 11 to 1 stand is, and we can't ask them, and the only suggestion I have is to tell the Jury -- give them the Allen charge, which is 2.01, which I declined to give earlier thinking we might need it on an occasion like this. If you want, I'll read it aloud before you tell me whether you agree or don't agree to it. But I'm inclined to do it. Are you both familiar with it, or do you want me to read it?

In response, defense counsel requested that the court first inquire the jury about the likelihood of any progress, but the court declined.

> [DEFENSE COUNSEL:] I'm familiar with it. I know what it reads. My only suggestion would be that before the Judge -- before the Court decides to give the Allen charge, I would the Court to inquire as to their belief of their likelihood if they've been deadlocked for two hours, of any progress. Only because it's 10:10 – it's 10:05 at night and they've been back a little over three hours and it seems like deadlocked for two of them.
>
> THE COURT: Well, I understand your position. But I don't see any downside to giving this.
>
> [DEFENSE COUNSEL:] Understood.
>
> THE COURT: And I don't propose to leave them out all night long. I mean, there is some reasonable limit to this, but I think I'm going to give it a try.
>
> [DEFENSE COUNSEL:] Okay.

At 10:06 p.m., the court brought in the jury and read the MPJI-Cr. 2:01:

> I received a second note from your Forelady, which I reviewed with counsel. I'll read it for the record. It's dated 9:50 p.m. It says, "We are 11 to 1 and have been for the last solid two hours. What should we do?"
>
> I do have one instruction to give you, which is as follows: **The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous.**
>
> **You must consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to your**

individual judgment.

Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow Jurors. During your deliberations, do not hesitate to reexamine your own views. You should change your opinion convinced wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow Jurors, or with a mere purpose of reaching a verdict.

(Emphasis added). After reading the MPJI-Cr. 2:01, the court added:

> Now, I realize the hour is late, but I'm going to ask you to continue to deliberate with that last instruction in mind and see if you can reach an agreement. **I'm not going to keep you here all night, but I'd like to see you give it another shot, and I'm not going set a time limit on this.** But I will see what you can do.

(Emphasis added). The parties did not object to this additional comment.

Only 13 minutes later, the jury sent its third note, requesting transcripts of the testimony of M., S., and D. The court informed the jury that there was no transcript available and that jurors must rely on their memories and the notes they took. At 10:43 p.m.—approximately 37 minutes after the court gave the modified *Allen* charge—the jury returned a verdict, finding Al-Atiyyat guilty of first-degree assault.

Motion for New Trial

Within 10 days after the guilty verdict, Al-Atiyyat filed a motion for a new trial under Maryland Rule 4-331. Among other things, he claimed that S. "prohibited" defense counsel from conducting a proper cross-examination by falsely testifying that "she had not discussed her testimony with anyone prior to testifying."

Al-Atiyyat attached an email exchange between defense counsel and the State.

Defense counsel's email, dated June 27, 2023, provided as follows:

> In reviewing the testimony from last week, I have confirmed the following testimony offered by [S.] on June 21, 2023 that:
>
> Question "Prior to coming to Court today did you review your testimony with anyone?"
>
> Answer "No"
>
> Can you please confirm that no one in your office spoke to [S.] about her testimony prior to June 21, 2023.

Later that day, the State replied as follows:

> There have been two separate investigations regarding your client, Raed Al-Atiyyat. The most recent investigation began in August of 2022. Prior to last week's jury trial, we had a three day jury trial in March in which [S.] also testified.[5] The State spoke with [S.] and asked her what she remembered happening for both incidents prior to both trials.

Al-Atiyyat argued that if the State notified the trial court that S.'s testimony was false, "[d]efense counsel could have explored the issue on the record during cross examination." He further emphasized that the credibility of witness testimony was a "material issue" in the case, and counsel's inability to "properly cross examine [S.] regarding conversations that could have influenced her testimony denied [him] a fair trial."

Al-Atiyyat also challenged the *Allen* charge, claiming that the instruction pressured the sole holdout juror to change positions. He argued that the guilty verdict, returned just 37 minutes after the *Allen* charge, "[c]learly" showed that the "holdout juror's position was

[5] It appears that the "three[-]day jury trial in March" refers to Al-Atiyyat's first trial in the 22-390 case, which resulted in a hung jury. Following that trial, counsel in the underlying case entered her appearance in the 22-390 case and represented Al-Atiyyat through his sentencing in January 2024.

overcome by the coercive nature of the situation." He further contended that "[f]orcing the [j]ury to continue to deliberate after 10:00 p.m., when they had been in the courthouse since 8:15 a.m., was tantamount to forcing a compromise verdict in order to go home."

In opposition, the State argued that the defense counsel's cross-examination question to S. was imprecise, noting that counsel asked whether S. had *reviewed* her testimony with anyone, not whether she had *discussed* it. Citing a definition of "review" as "a formal assessment or examination of something with the possibility or intention of instituting change if necessary[,]" the State averred that S.'s response was not false because "reviewing testimony is not the same as being asked what happened." The State also highlighted that defense counsel was "fully aware" of S.'s prior interviews and testimony from Al-Atiyyat's separate case, and therefore "had plenty of material for cross-examination" but chose not to use it.

Regarding the *Allen* charge, the State countered that there was no "information to indicate that the 'holdout juror' was coerced into a verdict." Pointing to the trial court's announcement that the jury would not be kept "all night," the State argued that this statement "supports the proposition that the no juror should . . . compromise their own feelings or opinions for the sake of putting an end to deliberation." The State noted that "[i]t is not uncommon for juries to deliberate late into the night" and the jury was provided with dinner and break times. The State also emphasized that defense counsel did not object to the trial court's reading of MPJI-Cr. 2:01.

The circuit court denied the motion for a new trial. At the sentencing hearing on

April 4, 2024, Al-Atiyyat renewed the motion, noting that the judge who initially denied it was not the one who had presided at his trial. The sentencing court—presided over by the trial judge—denied the renewed motion and sentenced Al-Atiyyat to 25 years' imprisonment, all but ten suspended. Al-Atiyyat subsequently noted the instant appeal on April 17, 2024.

DISCUSSION

I.

False Testimony

Parties' Contentions

Al-Atiyyat contends that the circuit court abused its discretion in denying his motion for a new trial, claiming that the State "allowed false testimony by [S.] to go uncorrected" at trial. Specifically, as he did before the circuit court, Al-Atiyyat claims that the State's post-trial acknowledgement—that it "spoke with [S.] and asked her what she remembered happening"—flatly contradicts her sworn statement that she had not "review[ed]" her testimony with anyone prior to trial. He further argues that the State "knew of the falsity" of this denial, given that the prosecutor "was the one who discussed the testimony with S." Because much of the State's case relied on witness testimony, Al-Atiyyat maintains that "S.'s credibility was very much at issue[,]" creating "reasonable probability that the false testimony may have affected the verdict."

The State counters that Al-Atiyyat's claim is "meritless[,]" emphasizing that defense counsel "did not ask whether S. 'discussed her testimony' with anyone else before

trial[.]" Instead, the State argues, counsel's question could be "reasonably understood to ask whether S. had *rehearsed* her testimony" and therefore "S.'s answer can be readily reconciled with the prosecutor's post-trial disclosure." While acknowledging that it cannot knowingly leave false testimony uncorrected, the State insists that it has no obligation "to supervise whether defense counsel's questions accurately conveyed her intent."

In the alternative, the State argues that even if S.'s testimony were false, it was not material, and therefore, does not warrant reversal. According to the State, had S.'s testimony been "corrected" at trial, the jury would have merely learned that "[t]he State spoke with [S.] and asked her what she remembered happening" prior to the trial, and such information "does not suggest that [S.] misremembered events or that her testimony was coached." Finally, the State notes that defense counsel utilized S.'s testimony to attack her credibility during the closing argument, by arguing to the jury that it was "very interesting" that S. stated that "she didn't talk to anybody about [her] testimony before [she] came in here today."[6]

[6] In note 12 of its brief, the State surmises that

> defense counsel's decision not to probe further after S.'s answer may have been strategic. The defense knew that S. gave two interviews since the assault (including one in 2022, less than a year before trial), but chose not to pursue follow-up questioning after getting the answer at issue. . . . [S]uggesting too strongly that S.'s testimony was recently manufactured could have opened the door for the State to introduce prior consistent statements. . . . Md. Rule 5- 802.1(b).

(Citations to record omitted).

Legal Framework

Motion for New Trial

Maryland Rule 4-331(a) provides that "[o]n motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial." Md. Rule 4-331(a). "This decision is ordinarily reviewed under the abuse of discretion standard," which is "largely deferential to the trial judge's decision." *Williams v. State*, 462 Md. 335, 344, 345-45 (2019). "The abuse of discretion standard requires a trial judge to use his or her discretion soundly and the record must reflect the exercise of that discretion." *Campbell v. State*, 373 Md. 637, 665-66 (2003). A trial court is deemed to have abused its discretion "when [the court] makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous." *Guidash v. Tome*, 211 Md. App. 725, 735 (2013); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) ("A [trial] court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."). Our decisional law has also defined abuse of discretion as occurring when the trial judge's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable[,]" *Shepperson v. State*, 491 Md. 605, 617 (2025) (quoting *Arrington v. State*, 411 Md. 524, 552 (2009)), when the judge "exercises discretion in an arbitrary or capricious manner or . . . acts beyond the letter or reason of the law[,]" *State v. Galicia*, 479 Md. 341, 389 (2022) (quoting *Cooley v. State*, 385 Md. 165, 175 (2005)) (alteration in original), or when exercise of the discretion is "manifestly

unreasonable," *Mainor v. State*, 475 Md. 487, 499 (2021) (quoting *In re Don Mc.*, 344 Md. 194, 201 (1996)).

We generally do "not disturb a circuit court's discretion in denying a motion for a new trial." *Washington v. State*, 424 Md. 632, 667 (2012). In order to reverse the denial of a motion for a new trial under Rule 4-331(a), the "degree of probable prejudice [must be] so great that it was an abuse of discretion to deny a new trial." *Williams*, 462 Md. at 345 (internal quotation marks and citation omitted). Still, the discretion afforded a trial judge in granting or denying a motion for a new trial "is broad but . . . not boundless." *Nelson v. State*, 315 Md. 62, 70 (1989). Moreover, "under some circumstances[,] a trial judge's discretion to deny a motion for a new trial is much more limited than under other circumstances." *Merritt v. State*, 367 Md. 17, 29 (2001). For example, "'a trial judge has virtually no 'discretion' to refuse to consider newly discovered evidence that bears directly on the question of whether a new trial should be granted,' and a new trial should be granted when newly discovered evidence clearly indicates that the jury has been misled." *Campbell*, 380 Md. at 666 (quoting *Buck v. Cam's Rugs*, 328 Md. 51, 58-59 (1992)). On the other hand, the trial judge's discretion is especially broad when a motion for a new trial is based on events that happened "under the direct eye of the trial judge[,]" because the trial judge is "in a unique position to assess the significance" of those events. *Washington v. State*, 191 Md. App. 48, 123 (2010) (quoting *Jackson v. State*, 164 Md. App. 679, 699 (2005), *cert. denied*, 390 Md. 501 (2006)). Thus, the discretion of a trial court to grant or deny a motion for a new trial "expands and contracts, depending upon the nature of the

factors being considered, and its exercise 'depends upon the opportunity the trial judge had to feel the pulse of the trial, and to rely on [the judge's] own impressions in determining questions of fairness and justice.'" *Brewer v. State*, 220 Md. App. 89, 111 (2014) (quoting *Argyrou v. State*, 349 Md. 587, 600 (1998)).

Knowing Use of False Evidence

The Supreme Court of Maryland has recognized that a prosecutor's knowing use of material, false evidence in a criminal trial violates the defendant's right to due process and offends the "constitutional concept of fairness." *Hall v. Warden*, 222 Md. 590, 593 (1960); *see also Giglio v. United States*, 405 U.S. 150, 153 (1972). More specifically, "the constitutional concept of fairness demands that State officials not only refrain from producing testimony known to be false, but that they correct statements known to be false, even if unsolicited." *Hall*, 222 Md. at 593. Accordingly, "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Wilson v. State*, 363 Md. 333, 346-47 (2001) (quoting *United States v. Agurs*, 427 U.S. 97, 103 (1976) (footnote omitted)).

The prohibition against the State's knowing use of false testimony "does not require that the witness could be successfully prosecuted for perjury." *United States v. Freeman*, 650 F.3d 673, 680 (7th Cir. 2011) (citing *United States v. Boyd*, 55 F.3d 239, 243 (7th Cir. 1995)). Testimony "may be false either because it is perjured, or, though not itself factually inaccurate, because it creates a false impression of facts which are known not to be true."

Hamric v. Bailey, 386 F.2d 390, 394 (4th Cir. 1967). Stated differently, false testimony may include "half-truths" or "vague statements that could be true in a limited, literal sense but give a false impression to the jury." *Freeman*, 650 F.3d at 680. Furthermore, "[t]he principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction . . . does not cease to apply merely because the false testimony goes only to the credibility of the witness." *Napue v. Illinois*, 360 U.S. 264, 269 (1959). To be clear, however, "[t]his is not to say that the prosecutor must play the role of defense counsel, and ferret out ambiguities in his witness'[s] responses on cross-examination." *United States v. Harris*, 498 F.2d 1164, 1169 (3d Cir. 1974).

It is the defendant's burden to prove that the State knowingly used false testimony to obtain the conviction. *See Lyde v. Warden*, 1 Md. App. 423, 427-28 (1967); *United States v. Briscoe*, 101 F.4th 282, 298 (4th Cir. 2024) (explaining that the defendant has "the heavy burden of showing that [witnesses] testified falsely") (citations omitted). In doing so, the defendant must demonstrate three elements: "(1) that the testimony at issue was false; (2) that the prosecution knew or should have known of the falsity; and (3) that a reasonable probability exists that the false testimony may have affected the verdict." *United States v. Basham*, 789 F.3d 358, 376 (4th Cir. 2015). As noted, "[a] new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury[.]'" *Stevenson v. State*, 299 Md. 297, 306-07 (1984) (quoting *Giglio*, 405 U.S. at 154) (internal quotation marks and citation omitted). On the other hand, the defendant is not entitled to a new trial where "a combing of the prosecutors' files after the

trial has disclosed evidence possibly useful to the defense *but not likely to have changed the verdict*[.]" *Id.* (quoting *Giglio*, 405 U.S. at 154) (emphasis added).

Analysis

With the foregoing principles in mind, we begin our analysis by looking at the entirety of S.'s cross-examination:

> [DEFENSE COUNSEL:] You specifically remember this as July 2nd, 2016, on a calendar?
>
> [S.:] Yes.
>
> **[DEFENSE COUNSEL:] Prior to coming to court today, did you review your testimony with anybody?**
>
> **[S.:] No.**
>
> [DEFENSE COUNSEL:] No. And between July 2nd, 2016, and December of 20, 2017, you didn't tell anybody what happened?
>
> [S.:] No.
>
> [DEFENSE COUNSEL:] Court's indulgence.
>
> THE COURT: Yeah.
>
> [DEFENSE COUNSEL:] Do you remember what time of the day your mother left the house on July 2nd, 2016.
>
> [S.:] It was, I think, mid afternoon. It wasn't early morning, early in the day.
>
> [DEFENSE COUNSEL:] Nothing further.

(Emphasis added). As noted, Al-Atiyyat argues that S.'s cross-examination testimony was irreconcilable with the parties' post-trial email exchange—in which the State acknowledged that it "spoke with [S.] and asked her what she remembered happening"—

and was therefore false. We disagree.

To begin, Al-Atiyyat has failed to meet his "heavy burden" of establishing that the testimony was false. *Briscoe*, 101 F.4th at 298. Immediately before S. denied having "review[ed]" her testimony with anyone, defense counsel asked whether she independently recalled the date of the altercation. In this context, a witness like S., who was 16 years old at the time of the trial, could reasonably interpret the follow-up question regarding a "review" of her testimony as an inquiry into whether her testimony had been "coached" or influenced by someone else. *See United States v. Dickerson*, 248 F.3d 1036, 1042 n.4 (11th Cir. 2001) (noting that the defense counsel's question of whether a witness met with the prosecution to "go over" his testimony "could be understood to ask whether the witness had been 'coached'").

Indeed, the term "review" is susceptible to multiple interpretations that connote an act of revising or changing a statement. *See Review*, Meriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/review (last visited December 23, 2025) (including "revision" as a definition of "review"); *Review*, Cambridge Dictionary Online, https://dictionary.cambridge.org/dictionary/english/review (last visited December 23, 2025) (defining "review" as "to think or talk about something again, *in order to make changes to it*") (emphasis added). It is the role of the defense counsel to "ferret out ambiguities in [the] witness'[s] responses on cross-examination[,]" *Harris*, 498 F.2d at 1169, but counsel made no such efforts here. Accordingly, because S.'s denial is reconcilable with the State's acknowledgment that it merely asked her "what she

remembered happening," we cannot conclude that S. testified falsely.

Even assuming S.'s response created a false impression to the jury, Al-Atiyyat failed to demonstrate that the State knowingly used that testimony to obtain his conviction. As the Ninth Circuit observed, the State "can never guarantee that a witness will not commit perjury" or otherwise provide false testimony. *United States v. Aichele*, 941 F.2d 761, 766 (1991). The State's duty is to refrain from knowingly presenting false testimony and "from knowingly failing to disclose 'that testimony used to convict a defendant was false.'" *Id.* at 766 (quoting *United States v. Endicott*, 869 F.2d 452, 455 (9th Cir. 1989)). Here, nothing in the record suggests that the State failed in either duty. In *United States v. Adebayo*, the Seventh Circuit found no violation of due process rights when "[i]t was *Adebayo's* attorney who, on cross-examination, elicited from [a witness] his perjurious assertion" and "the Government present[ed] no perjured testimony in its own case[.]" 985 F.2d 1333, 1342 (7th Cir. 1993) (emphasis in the original). Similarly, even assuming S.'s response at issue was false, it was elicited solely by the defense, and Al-Atiyyat does not claim that the State used the response to bolster its case.

Finally, Al-Atiyyat failed to demonstrate a reasonable probability that S.'s testimony, even if corrected, would have affected the jury's verdict. Al-Atiyyat claims that because there was no physical evidence of assault, "anything that would have impeached" S.'s credibility would have reasonably affected the trial's outcome. We remain unpersuaded. As explained above, S.'s response was not "false" and therefore did not undermine her credibility. *See Basham*, 789 F.3d at 377 (applying the "clearly erroneous"

standard in reviewing the trial court's determination that no false testimony was presented). Moreover, we agree with the State that, had S.'s testimony been "corrected" at trial, the jury would have merely learned that the State spoke with S. and asked her what she remembered happening prior to trial, and that that does not suggest that her testimony was coached.

We further observe that counsel had ample opportunities to clarify her own question or probe S.'s response at trial but chose not to do so. *See Freeman*, 650 F.3d at 681 (considering "whether the defendants had an adequate opportunity to expose the false testimony on cross-examination" in addressing a claim involving the State's knowing use of false testimony); *see also Harris*, 498 F.2d at 1169 (explaining that the prosecutor is not required to "play the role of defense counsel, and ferret out ambiguities in his witness'[s] responses on cross-examination"). The defense instead utilized S.'s denial during its closing argument, telling the jury it was "very interesting" that S. claimed not to have spoken to anyone before testifying. The record establishes that the defense elicited and utilized the allegedly false testimony it now claims that the State should have remedied.

In sum, we discern no abuse of discretion by the trial court in declining to grant a new trial. *Cf. Basham*, 789 F.3d at 376-78 (affirming the trial court's denial of a motion to alter or amend judgment where the court found that "the government did not advance an argument to the court or to the jury" in support of the testimony at issue).

II.

Allen Charge

Parties' Contentions

Al-Atiyyat next contends that the trial court abused its discretion in giving an *Allen* charge without first asking whether the jurors were "hopelessly deadlocked." Al-Atiyyat avers that by failing to make this inquiry and instead telling the jurors that the court was "not going [to] set a time limit" on deliberation, the trial court "risked coercing the lone juror into going along with the majority." To demonstrate this alleged coercive effect, Al-Atiyyat emphasizes that the "jurors reached a verdict in about thirty minutes" after the trial court gave the *Allen* charge.

In response, the State contends that the trial court "had no obligation to ask the jury for *its* sense of whether it was 'hopelessly deadlocked.'" (Emphasis in the original). Rather, according to the State, the court has discretion to "decide whether . . . it would be useful to know whether the jurors thought they were 'hopelessly deadlocked[,]'" and the court's decision to the contrary does not constitute an abuse of discretion. The State further argues that Al-Atiyyat did not raise any objection to the court's comment about "not . . . set[ting] a time limit" and even if he did, the comment "removed any pressure to reach a verdict on a deadline" and therefore was not coercive.

Legal Framework

Under Maryland Rule 4-325, a trial court "may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are

binding." Md. Rule 4-325(c). After instructing the jury before closing arguments, the court may also "supplement [the instructions] at a later time when appropriate." Md. Rule 4-325(a). As a general matter, we review "a trial court's decision to give a particular jury instruction under an abuse of discretion standard." *Armacost v. Davis*, 462 Md. 504, 523 (2019). In doing so, we "must determine if the instruction at issue was a correct exposition of law and whether it was applicable to the case at hand." *Id.*

As the Supreme Court of Maryland explained, "[a]n *Allen*-type charge refers to the type of instruction administered to juries upon an indication that they are deadlocked, or initially as a general unanimity and duty to deliberate instruction before the jury commences deliberations." *Hall v. State*, 214 Md. App. 208, 218-19 (2013). Just like decisions concerning other jury instructions, "the decisions as to whether to utilize an *Allen*-type charge, when to employ it, and what words should be selected are best left to the sound discretion of the trial judge." *Kelly v. State*, 270 Md. 139, 143 (1973).

The primary concern regarding the use of *Allen*-type instruction is the potential for the court to impermissibly coerce a verdict. *See Hall*, 214 Md. App. at 219 ("When giving an *Allen*-type instruction . . . a trial court must be careful that its instruction does not coerce the jury into reaching a verdict."); *Browne v. State*, 215 Md. App. 51, 61 (2013) (explaining Maryland appellate opinions discussing the potentially coercive effects of the *Allen* charge). In Maryland, a criminal verdict must be unanimous, a requirement that "embraces not only numerical completeness but also completeness of assent[.]" *Caldwell v. State*, 164 Md. App. 612, 635 (2005). This means each juror must reach his or her decision "freely

and voluntarily, without being swayed or tainted by outside influences." *Id.*

The history of the *Allen* charge reflects the longstanding concerns with the potentially coercive nature of the instructions. In *Allen v. United States*, 164 U.S. 492 (1896), the United States Supreme Court approved the following jury instructions, which later became known as the "traditional" *Allen* charge:

> [I]n a large proportion of cases absolute certainty could not be expected; that, although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. **If, unon [*sic*] the other hand, the majority were for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.**
>
> * * *
>
> While, undoubtedly, the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. **The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves. It certainly cannot be the law that each juror should not listen with deference to the arguments, and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself. It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his opinion of the case at that moment, or that he should close his ears to the arguments of men who are equally honest and intelligent as himself.**

Id. at 501-02 (Emphasis added). Thus, the traditional *Allen* charge expressly suggested that jurors in the minority should listen to the majority's arguments "with deference" and

"with a distrust of [their] own judgment" and should consider the reasonableness of their doubts when they are not concurred in by the majority. *Id*.

In response to the growing concerns that the language of the traditional *Allen* charge may pressure jurors in the minority to abandon their own views and agree with the views of the majority, the American Bar Association ("ABA") endorsed a "modified" *Allen* charge, which has been approved and adopted by Maryland courts. *See Kelly*, 270 Md. at 144 (instructing trial courts to "closely adhere to the wording of the ABA recommended instruction" when giving an *Allen* charge). Maryland's pattern jury instruction, MPJI-Cr. 2:01, which was read in the underlying criminal trial, adheres to the ABA's recommendation, and provides as follows:

> The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations, do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.

MPJI-Cr § 2:01; *see also Hall*, 214 Md. App. at 219 (explaining that MPJI-Cr. 2:01 "closely follows" the ABA-approved language of the modified *Allen* charge).

Analysis

Al-Atiyyat acknowledges that the Supreme Court of Maryland has approved the modified *Allen* instruction "to help the jury come to a verdict." He also does not challenge the legal correctness of the trial court's *Allen* charge, which was substantively identical to

the language of MPJI-Cr. § 2:01. Al-Atiyyat argues, however, that the court should have inquired whether the jurors believed they were "hopelessly deadlocked" before giving the modified *Allen* charge.

This argument finds no support in our law. Courts have approved the use of an *Allen* charge "following an indication that the jury is deadlocked," *Hall*, 214 Md. App. at 219, "in the face of an apparent deadlock[,]" *United States v. Fermin*, 32 F.3d 674, 680 (2d. Cir. 1994), *overruled on other grounds by, Bailey v. United States*, 516 U.S. 237 (1995), or where, "[i]f an indication of deadlock is ambiguous and the trial judge has reasonable grounds to believe the jury is not in fact deadlocked, . . . the trial judge [took] reasonable steps to assure that the jury [was] in fact deadlocked." *United States v. Seawell*, 550 F.2d 1159, 1163 n.11 (9th Cir. 1977). It is not the role of the jury to determine the length of its deliberations because "[a]n experienced trial judge, in most cases, should be able to tell whether a jury has given its best consideration to the case." *Ward v. State*, 52 Md. App. 63, 69 (1982) (quoting *Devault v. United States*, 338 F.2d 179, 183-83 (10th Cir. 1964)). Instead, "the law imposes upon the trial judge judicial discretion to determine when the jury is deadlocked and unable to reach a verdict." *Id.*

We find *Juan Pablo B. v. State*, 252 Md. App. 624 (2021), *rev'd on other grounds*, 480 Md. 650 (2022), instructive here. In that case, at the close of the State's case-in-chief, the parties and the court discussed jury instructions, and the trial court noted that although both parties requested MPJI-Cr. 2:01, the court would "hold off on that one . . . until we have the *Allen* charge situation." *Id.* at 630-31. Subsequently, after the jury had been

deliberating approximately 90 minutes, it sent a note to the court, asking: "We agree on 3 counts, but can't agree on one. How do we proceed?" *Id.* at 631. Following a bench conference, the trial court gave the modified *Allen* charge from MPJI-Cr. 2:01 over both parties' objections. *Id.* The jury rendered its verdict "[j]ust over twenty minutes later[.]" *Id.*

On appeal, this Court held that the trial court soundly exercised its discretion in giving the *Allen* charge, explaining as follows:

> Here, among the circumstances the court faced were: the jury presented the court with a note, stating that it had reached agreement on three of the four charges but was deadlocked on the remaining one and requested guidance on how to proceed; the trial court had not given the duty-to-deliberate instruction, as requested by the parties, when it instructed the jury prior to the beginning of deliberations; the parties then objected to the instruction; the jury had been deliberating approximately 90 minutes before presenting the note at approximately 5:30 p.m.; and, as the court declared, this was a relatively uncomplicated case, turning primarily on the testimony of a single witness (the victim).
>
> Not all of these circumstances pull in the same direction. Appellant emphasizes the parties' objection to giving the instruction; what he regards as the relatively brief duration of jury deliberations; and the timing at the end of the day, which he maintains encouraged a rush to judgment. Other circumstances, however, weigh in favor of the trial court's decision to give the duty-to-deliberate instruction. First, the parties had requested the court give the same instruction following the close of all the evidence, but the court declined, expressing its preference to hold the instruction in reserve if needed. Second, the court aptly observed that this was a relatively straightforward case, in which only two witnesses testified. Third, and what distinguishes this case from many cited by Appellant, the jury asked for the court's instruction on how to proceed, triggering the court's obligation to advise the jury. Under these circumstances, we cannot say that the court's action was "manifestly unreasonable," or that it exercised its discretion "on untenable grounds, or for untenable reasons."

Id. at 633-34 (citations omitted).

Many of the facts highlighted by this Court in *Juan Pablo B.* as favorable to the trial court's modified *Allen* instruction are also present in the underlying case. This is a "relatively uncomplicated case," which turns primarily on the testimony of the victim, M., and involves a single criminal charge. *Id.* at 633. Neither the State nor the defense objected to the giving of the modified *Allen* charge. Defense counsel requested the trial judge to ask the jury whether it is "hopelessly deadlocked," but the jury had expressly informed the court that it was "at 11 to 1 . . . for the last solid two hours" and asked for the court's guidance, thus, as in *Juan Pablo B.*, 252 Md. App. at 634, "triggering the court's obligation to advise the jury."

We are not convinced by Al-Atiyyat's argument that the 37-minute interval between the giving of the *Allen* charge and the verdict suggests coerciveness of the instruction. Although the time between the giving of the *Allen* charge and the return of the verdict may be a factor in the coerciveness analysis, it is by no means dispositive. *See United States v. Chigbo*, 38 F.3d 543, 545-46 (11th Cir. 1994) (holding that a 15-minute window between the *Allen* charge and the jury's verdict did not demonstrate that the coerciveness of the charge); *Andrews v. United States*, 309 F.2d 127, 129 (5th Cir. 1962) (approving an *Allen* charge given after 65 minutes of deliberation and followed by a verdict 25 minutes later). Moreover, in this case, the jury's post-charge request for transcripts of the testimony of M., S., and D. demonstrates that the jury was still actively weighing the evidence after receiving the supplemental instruction. That the jury continued to examine evidence and deliberate even after the *Allen* charge suggests that the ultimate verdict was not a "surrender" to the

majority "for the mere purpose of reaching a verdict." MPJI-Cr § 2:01.

Nor do we find coerciveness in the trial judge's remark that he was "*not* going [to] set a time limit" on deliberations. (Emphasis added). To begin with, Al-Atiyyat made no objection to the comment, thus failing to preserve the issue for our review. As the Supreme Court of Maryland has made clear, "an objection to a jury instruction is not preserved for review unless the aggrieved party makes a timely objection after the instruction is given and states the specific ground of objection thereto." *Gore v. State*, 309 Md. 203, 207 (1988) (citations omitted). Even though Al-Atiyyat objected to the comment in his post-trial motion for a new trial, "[i]f such alleged error[ ] [was] not preserved for appellate review by timely objection at trial, raising [it] in a Motion for a New Trial and then appealing the denial of that motion is not a way of outflanking the preservation requirement." *Isley v. State*, 129 Md. App. 611, 619 (2000), *overruled in part on other grounds by Merritt v. State*, 367 Md. 17 (2001).

Indeed, courts in other jurisdictions have observed that setting rigid time limits can make an *Allen* charge impermissibly coercive. *See United States v. Hill*, 334 Fed. App'x 640, 646-47 (5th Cir. 2009) (discussing "precedent[s] expressing disapproval for setting time limits" in the *Allen* charge context); *Souza v. Ellerthorpe*, 712 F.2d 1529, 1532 (1st Cir. 1983) ("In some circumstances, setting deadlines for jury agreement may be coercive and a serious impairment of a defendant's right to a fair trial."); *see also United States v. Landsdown*, 460 F.2d 164, 169 n.3 (4th Cir. 1972) (noting that "[a] jury cannot operate under a rigid time deadline."). Here, by informing the jurors that they were not being "kept

all night" but were also not under a "time limit," the trial court effectively signaled that they should take the time necessary to reach a considered judgment without feeling rushed. *See U.S. v. Johnson*, 411 F.3d 928, 931 (8th Cir. 2005) (finding no indication of coercion or pressure on the jury where the trial court "explicitly told the jury that there was no set time limit for deliberations and to 'take as much time as you need.'"). Accordingly, we hold that the circuit court did not abuse its discretion in handling the deadlocked jury.

III.

Sufficiency of Evidence

Parties' Contentions

Finally, Al-Atiyyat contends that the evidence presented at trial was insufficient to sustain his first-degree assault conviction and requests that conviction to be reversed, claiming that "[t]here was no evidence of a severe injury—or any injury at all—to [M.'s] neck in the medical records or her initial statements to medical personnel." Notably, quoting this Court's opinion in *Chilcoat v. State*, 155 Md. App. 394, 403 (2004), Al-Atiyyat acknowledges that "a jury may infer the necessary intent from an individual's conduct and the surrounding circumstances, whether or not the victim suffers such an injury[.]" He also does not deny that he choked and threatened M. during the alleged assault on July 2, 2016. Nonetheless, Al-Atiyyat maintains that his threats or "conduct of briefly choking" do not constitute "sufficient evidence that he actually attempted to kill [M.,]" given that there was no evidence of injuries, marks, or loss of consciousness.

The State counters that a rational jury "could conclude that Al-Atiyyat attempted to cause serious physical injury" by choking M. because, "[a]s a matter of common sense, strangulation can impede breathing, causing death or serious injury." The State notes that, based on testimony presented at trial, the jury could reasonably find that Al-Atiyyat "strangled [M.] to the point that her face turned red, she appeared to begin losing consciousness, and she felt like she as going to die, and that he only stopped when others interceded." The State further argues that a rational jury could infer his requisite intent to cause death or serious injury from testimony that he repeatedly stated "that he was gonna kill [M.]"

Legal Framework

We review the sufficiency of the evidence to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brice v. State*, 256 Md. App. 470, 487-88 (2022) (citations omitted). As a reviewing court, we do not re-weigh evidence or make credibility determinations, but instead examine the record for evidence that could convince the trier of fact of the accused's guilt beyond a reasonable doubt. *Smith v. State*, 415 Md. 174, 185 (2010). Put differently, the question before us is "not whether the evidence should have or probably would have persuaded the majority of fact finders but only *whether it possibly could have* persuaded *any* rational fact finder." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (quoting *Darling v. State*, 232 Md. App. 430, 465, *cert. denied*, 454 Md. 655 (2017))

(emphasis in original). In doing so, we draw all reasonable inferences in favor of the prevailing party. *Abbott v. State*, 190 Md. App. 595, 616 (2010).

Section 3-202(b) of Criminal Law Article ("CR") of the Maryland Code (2002, 2021 Repl. Vol.) proscribes three different modalities of first-degree assault, providing that a person "may not intentionally cause or attempt to cause serious physical injury to another[,]" CR § 3-202(b)(1), "may not commit an assault with a firearm[,]" CR § 3-202(b)(2), and "may not commit an assault by intentionally strangling another[,]" CR § 3-202(b)(3).[7] Relevant here, in order to obtain a first-degree assault conviction under CR § 3-202(b)(1), the State "must prove that an individual had a specific intent to cause a serious physical injury." *Chilcoat v. State*, 155 Md. App. 394, 403 (2004). Section 3-201(d) of Criminal Law Article defines "serious physical injury" in the following manner:

> (d) "Serious physical injury" means physical injury that:
> (1) creates a substantial risk of death; or
> (2) causes permanent or protracted serious:
> (i) disfigurement;
> (ii) loss of the function of any bodily member or organ; or
> (iii) impairment of the function of any bodily member or organ.

In *Chilcoat*, we explained that "serious physical injury" may be proved by

> evidence establishing that the defendant inflicted physical injury by an "act performed under circumstances that create a substantial risk of death." This definition of serious physical injury focuses on the circumstances in which the defendant performed the act that caused physical injury. The fortuity of prompt medical treatment and recovery by the victim is not a primary

[7] More specifically, the statute defines "strangling" as "impeding the normal breathing or blood circulation of another person by applying pressure to the other person's throat or neck." CR § 3-202(a). Notably, the trial court did not instruct the jury on the "strangulation" modality of first-degree assault.

consideration.

155 Md. App. at 403 (quoting *Konrad v. Alaska*, 763 P.2d 1369, 1376 (Alaska Ct. App. 1988)). We further explained that

> the statute [present CR § 3-202(b)(1)] prohibits not only causing, but attempting to cause, a serious physical injury to another. Although the State must prove that an individual had a specific intent to cause a serious physical injury, a jury may infer the necessary intent from an individual's conduct and the surrounding circumstances, whether or not the victim suffers such an injury. Also, the jury may "infer that 'one intends the natural and probable consequences of his act.'"

Cathcart v. State, 169 Md. App. 379, 393 (2006) (quoting *Chilcoat*, 155 Md. App. at 403 (citations omitted)), *vacated on other grounds*, 397 Md. 320 (2007).

Analysis

We conclude that there was sufficient evidence for a rational jury to determine that Al-Atiyyat intentionally caused serious physical injury to M. by creating a substantial risk of death. Al-Atiyyat argues that, given the absence of evidence showing physical injuries at trial, no rational jury could conclude that his "conduct of briefly choking" M. created a substantial risk of death. However, even if we assume that the evidence did not show "serious physical injury" sustained by M., section 3-202(b)(1) "permits conviction for first-degree assault based on an attempt to cause 'serious physical injury,' not merely a completed injury." *Brown v. State*, 182 Md. App. 138, 179 (2008); *see also Chilcoat*, 155 Md. App. at 403 ("[T]he statute prohibits not only causing, but attempting to cause, a serious physical injury to another."). Therefore, although "the State must prove that an individual had a specific intent to cause a serious physical injury, a jury may infer the

necessary intent from an individual's conduct and the surrounding circumstances, *whether or not the victim suffers such an injury*." *Cathcart*, 169 Md. App. at 393 (quoting *Chilcoat*, 155 Md. App. at 403) (emphasis added).

Here, viewing the evidence in a light most favorable to the State, a reasonable jury could find that Al-Atiyyat attempted to cause serious physical injury to M. with requisite intent on July 2, 2016. At trial, the jury heard from multiple witnesses that Al-Atiyyat choked M. with both of his hands on July 2. As a result of the choking, S. observed M.'s face was "turning red" and D. saw her eyes "started to close." The jury also heard M.'s own testimony that Al-Atiyyat repeatedly said he "was gonna kill" her during the attack, and that she felt she was "going to die." Indeed, we find numerous precedents involving choking or strangulation that resulted in "a substantial risk of death" or even in death itself. *See* CR § 3-201(d)(1) (defining "serious physical injury" as "physical injury that . . . creates a substantial risk of death"); *see also Metheny v. State*, 359 Md. 576, 591 (2000) (involving a victim who "died of asphyxia," which "can result from strangulation or choking"); *Dishman v. State*, 352 Md. 279, 300 (1998) (noting that the victim died due to lack of air most likely caused by either strangulation or by having mouth taped shut); *Stebbing v. State*, 299 Md. 331, 338-39 (1984) (victim died due to strangulation).

In sum, there was sufficient evidence for the jurors to "apply their common sense, powers of logic, and accumulated experience in life" to infer that Al-Atiyyat was attempting to cause a serious injury by choking M. to the point that she experienced difficulty breathing and started to lose consciousness. *Robinson v. State*, 315 Md. 309, 318

(1989). The "natural and probable consequences" of Al-Atiyyat's actions—threatening to kill M. and choking her until other children separated them—also reflected his intent to cause serious physical injury. *Chilcoat*, 155 Md. App. at 403 (citation omitted). Therefore, we hold that there was sufficient evidence from which a rational trier of fact could have found Al-Atiyyat guilty of first-degree assault.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.