

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1286

September Term, 2024

SABRINA COCHEYE EMBREY

v.

STATE OF MARYLAND

Leahy,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: March 5, 2026

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

A jury, sitting in the Circuit Court for Baltimore County, convicted Sabrina Embrey (“Appellant”) of second-degree child abuse and second-degree assault. The court sentenced Appellant to a ten-year term of incarceration for child abuse, with all but six months suspended, and a concurrent ten-year term for assault, all suspended, to be followed by three years of supervised probation upon release. Appellant timely appealed and asks us to address whether there was sufficient evidence of a physical injury to sustain the conviction for child abuse. For the following reasons, we shall affirm.

BACKGROUND

The following evidence was adduced at trial. On October 3, 2023, Appellant’s twelve-year-old child, “T.,” called 911 and reported that Appellant sprayed him with mace.¹ Officer Matthew McCuen of the Charles County Sheriff’s Office was dispatched to Appellant’s home to respond to the call. When he arrived, he detected the odor of “pepper spray” and observed a “big plume” of the “remnants” of the spray inside the home.² T. was “in a kneeling position kind of curled up into the corner.” He was “shielding his face[,]” which exhibited “some redness[.]” According to Officer McCuen, T. appeared

¹ To protect the child’s identity, we refer to the child by a randomly chosen initial.

² Officer McCuen stated that “mace” and “pepper spray” are similar in that both contain capsaicin as the “key ingredient.” The Supreme Court of Maryland has observed that mace and pepper spray cause similar effects. *Handy v. State*, 357 Md. 685, 698 (2000). “‘Mace’ is ‘a nonlethal spray containing purified tear gas and chemical solvents which temporarily incapacitate a person by causing eye and skin irritations.’” *Id.* at 698 n.3 (quoting *The Random House Dictionary of the English Language* 859 (unabr. ed.1983)). “‘Pepper mace’ is defined . . . as ‘an aerosol propelled combination of highly disabling irritant pepper-based products.’” *Id.* (quoting former Article 27, section 36(e)).

to be “experiencing some kind of pain[.]” T. told Officer McCuen that Appellant sprayed mace in his face. When Officer McCuen asked T., “[i]t kind of burns, doesn’t it?[,]” T. responded, “Yeah.”

Appellant told Officer McCuen that, during an argument, T. picked up a “sharp thing” and “kept pretending to throw things” at her. She retrieved a can of mace and told T. that she was going to use it on him if he kept “throwing stuff and pretending to throw stuff[.]” She said: “[T.] kept acting like he was going to come to me . . . and it was almost like he wanted me to do it. Finally I just had to do it because I couldn’t stand it.” She then said that she deployed the spray after T. threw a ball at her. Appellant told police, “mostly I sprayed the air and the walls. I got . . . [T.] a couple times, then I took him into the bathroom and I washed his face with soap.”

The jury was shown footage from Officer McCuen’s body camera. The footage shows T. repeatedly rubbing his face with a towel, grimacing, and clutching the right side of his torso, in an area where his shirt appears to be wet. When T. was asked why he was holding his side, T. responded, “burning.”

Officer McCuen testified that he had been sprayed in the face with pepper spray as part of his training, to understand its effects. Officer McCuen described the experience as “very uncomfortable” and “painful.” He explained that the spray “causes inflammation of the exterior of your body where it attacks the mucous membranes” which causes the body to go “into a reactionary force, and . . . you start to tear, you can get the sense of burning,

irritation on the skin.” According to Officer McCuen, water activates the capsaicin in the spray and can potentially worsen the burning sensation.

T. was called as a witness for the State. He said:

I remember being angry over a conversation and I started punching at [Appellant] and then I pretended to throw something at her. She must have looked back and saw that there was a screwdriver on the bed[.] . . . I went over to the bed and she, she had the mace in her hand and I started acting like I was getting really violent, so she . . . chased me into my room to get me away from her.

And then I like ran at her, I threw something at her and then she sprayed me with the mace to calm me down. . . . [I]t didn’t hurt that bad, but, so then . . . I kept being violent.

And then she tried to chase me out [of] the house, so she got a knife, but she, she wasn’t going to do nothing. . . . [I]t was only to, she was just, I don’t know.

Kelly Beswick, a supervisor for Child Protective Services (“CPS”), testified that the incident was investigated and resulted in a finding of indicated child abuse.³ Ms. Beswick stated that T.’s face was “red from being pepper sprayed[,]” which constituted a physical injury, and that “[t]he injury could have caused substantial harm if the pepper spray had gone into [T.’s] eyes.” Ms. Beswick stated that, although corporal punishment is not considered child abuse in Maryland, spraying a child with pepper spray is “[a]bsolutely not” an appropriate form of corporal punishment.

³ Under provisions of the Family Law Article which require the reporting and investigation of child abuse, “[i]ndicated’ means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse . . . did occur.” Md. Code (1999, 2019 Repl. Vol., 2025 Supp.), Family Law Article (“FL”), § 5-701(l). “Abuse” means “the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed[.]” FL § 5-701(b)(1)(i).

Ms. Beswick testified that Appellant “was having some difficulty with her son[.]” The Department offered Appellant in-home services to address the issue, but Appellant declined. Appellant “mentioned that she wanted a voluntary placement of [T.] out of her home, so . . . that was offered to her, however she declined, so services were not put in place, she did not want the services that the Department had offered.” According to Ms. Beswick, Appellant did not want to go forward with the process, which would have required her to take T. to a psychiatrist for a recommendation and obtain consent from T.’s father.

At the conclusion of the State’s case, Appellant moved for a judgment of acquittal on the ground that there was insufficient evidence of physical injury. The court denied the motion.

The defense theory of the case was that the use of mace was justified because T. was repeatedly violent toward Appellant and she had to protect herself. Appellant testified that T. was diagnosed with “disruptive mood dysregulation disorder” and anxiety, for which he is treated with prescription medication. When asked how T.’s disorder affects his behavior, Appellant responded:

He lacks impulse control and he becomes very violent. . . . And because I know . . . his traumatic history as a child, I . . . try to just take all of that into consideration when I handle him, but sometimes . . . I don’t know how to handle it because his behavior is so violent and tumultuous. And in the past year he has gained probably 60 pounds[.] . . . [W]hen he was smaller it was easy to handle him[.] [I]f he became upset, I could hold him and hug him and give him kisses and talk to him and calm him down. But . . . he’s [now] much larger than me, so it’s really hard to . . . control his violence like I could before.

Appellant testified that, prior to the incident that gave rise to the charges, she had called police six to eight times because of T.’s violent behavior. In June of 2023, police took T. from the home in handcuffs and a “spit mask.” He was taken to the emergency room and was admitted to a psychiatric hospital for approximately three weeks. After the incident in question, T. was again hospitalized, from December of 2023 to February of 2024.

Appellant testified that T. “physically attacked” her six days prior to the incident that is the subject of this appeal. She stated:

I had to run an errand. . . . [T.] wanted to go with me. He didn’t want to do school work and he started being very violent. . . . [S]o violent[,] it scared me so bad[.] . . . I took off running to my room. I closed the door, slammed the door, locked the door. And before I could even step back from the door, he had thrown his body weight against the door. The whole entire door to my master bedroom came off its hinges. He came into the room pursuing me. . . . He was swinging at me. I was trying to block him, push him away. He picked up the floor lamp that was next to my bed. It has . . . a metal pole on it and he began to . . . hit me with it. . . . And [the lamp] broke . . . [and] the glass . . . broke off . . . and sliced my toe.

Appellant called 911. While she was on the phone, T. punched her in the nose. When police arrived, Appellant explained that she feared for her life and asked for help getting T. to the hospital again. Police told Appellant that there was nothing they could do because of T.’s age and advised her to get an “emergency petition” from the court,⁴ but Appellant did not understand how an emergency petition would help her during an attack. She testified:

⁴ Pursuant to Md. Code, (2000, 2023 Repl. Vol.) § 10-622(a) of the Health General Article, if there is reason to believe that an individual “[h]as a mental disorder” and “[p]resents a danger to the life or safety of the individual or of others[,]” a petition for emergency evaluation may be made.

I just didn't get any more help after [the police] helped me to get [T.] to [a psychiatric hospital] in June. . . . [The police] started showing up and saying ["there's] nothing we can do, he's too young, nothing we can do.["] . . . And I felt like that was encouraging [T.] [to think,] ["I'm a kid, oh, I can hurt my mom, the [p]olice are not doing anything to me[."]] [A]nd so[,], he kept on. And so what was I supposed to do?

Regarding the incident that is the subject of this appeal, Appellant testified that she deployed the mace only after T. picked up a large floor fan in his bedroom. She said, "I knew I was going to get hit." She said that she sprayed the mace over T.'s head, which caused them both to start "choking" and "coughing." She added: "[i]t was getting in - - on my skin and his skin just from being in the air I guess[.] . . . [I]t was too much for both of us and I could see it was too much for him and he was finally like[,], ["okay, mom, . . . this is affecting me[.]" Appellant told T. to go to the bathroom and rinse his face. According to Appellant, T. was "fine" and there was nothing "wrong with his eyes[.]"

Appellant testified that T. started "getting mad again[,]" so she "spray[ed] in the air again, over his head, just so [T.] can . . . get that again[,], like[,], ["okay, I don't want to go through this again.[']]" Appellant followed T. into the kitchen and sprayed over his head again because she thought he was looking for a knife. At that point, T. went upstairs and called 911.

On cross-examination, the prosecutor asked Appellant whether she was aware that she should not be using pepper spray on a child. Appellant answered, "I know it's wrong to do it unprovoked."

In rebuttal, the State called Cesar Martinez, a CPS assessor, who testified that Appellant had used mace on T. prior to the incident on October 3, 2023. He said that, in

April of 2023, CPS received reports of “physical incidents” between Appellant and T. A report prepared by Mr. Martinez was admitted into evidence. In the report, Mr. Martinez wrote: “[Appellant] said that [T.] has been violent at home [Appellant] said that she did mace [T.] just a little as she was worried for her safety when [T.] sprayed her face with cleaning supplies. [Appellant] now fully understands that she is not to mace [T.] ever again.” Elsewhere in the report, Mr. Martinez wrote: “Worker provided guidelines on how to proceed in case interactions with [T.] escalated. [W]orker also explained that using mace on a child regardless of the reason is physical abuse.”

At the close of all evidence, Appellant renewed her motion for judgment of acquittal. The court again denied the motion. As mentioned above, the jury convicted Appellant of second-degree assault and second-degree child abuse. This appeal followed.

DISCUSSION

Second-degree child abuse occurs when a “parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor” causes “abuse to the minor.” Md. Code (2002, 2021 Repl. Vol., 2025 Supp.), Criminal Law Article (“CR”), § 3-601(d)(1)(i). “Abuse” of a child is defined by statute as “physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor’s health or welfare is harmed or threatened by the treatment or act.” CR § 3-601(a)(2).

Appellant maintains that the evidence was insufficient to support a finding that T. sustained a physical injury. According to Appellant, “[s]ubjecting a child to painful or

uncomfortable sensations . . . does not constitute felony child abuse resulting in a physical injury” within the meaning of CR § 3-601(a)(2). The State contends that the evidence supported a rational inference that Appellant’s use of pepper spray “caused [T.] bodily suffering and harm, and thus caused him ‘physical injury.’”

“When reviewing the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State and assess whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Krikstan*, 483 Md. 43, 63 (2023) (quoting *Walker v. State*, 432 Md. 587, 614 (2013)). “[T]he test 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.” *Benton v. State*, 224 Md. App. 612, 629 (2015) (cleaned up; emphasis in original) (quoting *Painter v. State*, 157 Md. App. 1, 11 (2004)).

The term “physical injury” is not defined in the criminal child abuse statute. In interpreting the statute, the Supreme Court of Maryland has stated:

As defined in Black’s Law Dictionary 966 (3rd ed. 1933), an injury is “[a]ny wrong or damage done to another . . .”; the term is defined in Webster’s Third New International Dictionary 1164 (1961) as “an act that damages, harms, or hurts: an unjust or undeserved infliction of suffering or harm.” Of course, the injury would be a physical one if it relates to or pertains to the body. To be a “cause” of physical injury to another, a person would in some manner have to be accountable for the “condition that brings about an effect or that produces or calls forth a resultant action or state.” Webster’s Third New International Dictionary 356.

State v. Fabritz, 276 Md. 416, 424 (1975).

Viewing the evidence in the light most favorable to the State, as we must, we conclude that the evidence was sufficient to persuade a rational jury that Appellant’s use of mace resulted in physical injury. The State introduced evidence that Appellant sprayed mace in T.’s face. Officer McCuen explained that pepper spray, which has the same key ingredient as mace, attacks the mucuous membranes of the body and causes inflammation, which results in a “very uncomfortable” and “painful” burning sensation. According to Officer McCuen, T.’s face was red, and he appeared to be in pain. The body camera footage shows T. grimacing while holding a towel to his face and clutching the side of his body. Appellant testified that she could see that the effects of the mace were “too much” for T. This evidence was sufficient for the jury to conclude that T. experienced bodily suffering or harm amounting to a physical injury.

In support of her argument that the evidence was insufficient, Appellant claims that the Department of Social Services “expressly found there was no injury.” The record does not support this contention. Ms. Beswick testified that a physical injury had occurred, that is, T.’s face was observed to be red as a result Appellant’s use of pepper spray. That the Department of Social Services did not find that the physical injury resulted in immediate harm to T.’s health or welfare, but only that “[t]he injury could have caused substantial harm if the pepper spray had gone into [T.’s] eyes[,]” does not negate the finding that a physical injury had occurred.

Appellant further argues that the evidence was insufficient because T. declined medical attention; he was not taken to the hospital or diagnosed with an injury; the

photographs of T.’s face taken by Officer McCuen show no “visible redness,” and T. testified that being sprayed with mace did not hurt “that bad[.]” These contentions are unavailing as they relate to the weight of the State’s evidence, and not its sufficiency. “Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.” *State v. Smith*, 374 Md. 527, 533-34 (2003) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). “[I]f two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence.” *Ross v. State*, 232 Md. App. 72, 98 (2017).

In sum, the evidence was sufficient to support Appellant’s convictions for second-degree child abuse. The court did not err in denying Appellant’s motion for a judgment of acquittal.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
COSTS TO BE ASSESSED TO
APPELLANT.**