Circuit Court for Washington County
Case No.: C-21-CR-22-000179

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1377

September Term, 2024

DAEZONNE LATRELL VARSANYI

v.

STATE OF MARYLAND

Nazarian,
Reed,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 16, 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).

This case arises from a 3-day bench trial in the Circuit Court for Washington County in which appellant, Daezonne Varsanyi ("Varsanyi"), was convicted of first-degree child abuse and two counts of second-degree child abuse.[1] Varsanyi was sentenced to 25 years' imprisonment with all but 20 years suspended for first-degree child abuse and two concurrent terms of 15 years' imprisonment with all but 10 suspended for the two counts of second-degree child abuse.

QUESTIONS PRESENTED

Varsanyi presents questions for our review:

1. Did the trial court erroneously admit evidence regarding Mr. Varsanyi's administrative leave under Md. Rule 5-404(a)?

2. Was the evidence insufficient to support Mr. Varsanyi's conviction for first and second degree child abuse?

[1] Varsanyi was charged with:

1. First-degree child abuse on or about January 11, 2022 to January 14, 2022, in violation of Md. Code Ann. (2002, 2021 Repl Vol.) § 3-601(b)(1)(ii) of the Criminal Law Article;
2. First-degree child abuse on or about January 20, 2022 in violation of Md. Code Ann., Crim. Law § 3-601(b)(1)(ii);
3. Second-degree child abuse on or about January 1, 2022, in violation of Md. Code Ann., Crim. Law § 3-601(d);
4. Second-degree child abuse on or about January 11, 2022 to January 14, 2022 in violation of Md. Code Ann., Crim. Law § 3-601(d).

At the beginning of its case, the State nol prossed Count I. At the close of its case, the State moved to amend Count II to reflect a charge of violating Md. Code Ann., Crim. Law § 3-601(b)(1)(i). The court granted this motion.

BACKGROUND

Varsanyi is the biological father of K.V., born November 16, 2021. Amy Schandel ("Schandel") is K.V.'s biological mother. K.V. was born about one month prior to her due date and weighed just four and a half pounds. She was otherwise a healthy baby with no complications at or immediately following her birth. At the time of K.V.'s birth, Varsanyi and Schandel lived together.

On January 20, 2022, Schandel was attending class at the local community college while Varsanyi watched K.V. While Schandel was in class, Varsanyi called her, but she could not answer. He then texted her twice in quick succession, saying "I need help," and "Emergency." Schandel stepped out of class and FaceTimed with Varsanyi, at which point she saw that K.V. was very pale, bordering on bluish, and she was whimpering.

Schandel called 911 on her way to the apartment. The paramedics had arrived by the time she pulled up. Schandel took a limp and seemingly lifeless K.V. from Varsanyi and ran her to the ambulance. The medics took K.V. to Meritus Medical Center, before airlifting her to Children's National Hospital for additional care. Upon their arrival, the staff took K.V. for an MRI and then rushed her into emergency brain surgery. K.V. was hospitalized at Children's National for about a month before going to rehab at the Hospital for Sick Children.

At the time of the trial, K.V. was two years old and significantly delayed in her milestones. She did not sit up on her own, walk, or talk, and, with the help of both physical and occupational therapy, had only just started eating solid foods.

The medical team at Children's National Hospital suspected that K.V.'s injuries may have been the result of child abuse and notified the authorities. Detective Andrew Koontz became involved with the case on January 21, 2022, at which point he conducted several interviews with Varsanyi and Schandel. Schandel's account was largely consistent with her testimony. Varsanyi generally corroborated Schandel's account but provided the following additional details:

Varsanyi told Detective Koontz that Schandel was the primary caregiver unless she was out of the apartment, at which point Varsanyi took over the childcare duties. Varsanyi specified that they never left K.V. alone with anyone else, and one of them was always with her. On the evening of the incident, Varsanyi was playing video games and checking on K.V. periodically while she slept. At some point between 5:00pm and 6:30pm, he gave K.V. a bottle, but she didn't drink much of it, and he put her back to sleep. K.V. started to cry about 35-45 minutes after Varsanyi put her back down. He responded to K.V. and noticed she was breathing rapidly and was noticeably hot to the touch. Varsanyi called Schandel but she didn't pick up. Varsanyi then took K.V.'s clothes off to cool her down and started splashing water on her. Varsanyi thought K.V. stopped breathing at one point and he attempted to administer CPR. Both Schandel and Varsanyi indicated that K.V. had not been dropped or had any other similar accident.

Detective Koontz interviewed Schandel and Varsanyi on several additional occasions. At the end of an interview on January 31, 2022, Varsanyi admitted that he shook K.V. when he thought she had died. Varsanyi had never admitted to this in any of the prior interviews.

Through their investigation, detectives uncovered multiple noteworthy text message exchanges between Varsanyi and Schandel. On January 11, 2022, Schandel noticed K.V. had a mark on her face and messaged Varsanyi. Schandel ended the text exchange by telling Varsanyi that he was "too rough" with K.V. Schandel believed the mark on K.V.'s face was from a time when Varsanyi was playing with her cheeks too aggressively. Schandel also saw a bruise on K.V.'s toe and thought it also resulted from Varsanyi playing too rough with K.V. Along with the mark on K.V.'s face and toe, Schandel also noticed a red spot in K.V.'s left eye a few days later.

On January 14, 2022, Schandel was out, and Varsanyi was home with K.V. Varsanyi texted Schandel that K.V. wouldn't "shut up." Schandel responded to Varsanyi, telling him to "stop fucking shaking her," and ended the text exchange by saying, "please don't shake her."[2] Schandel testified that she and Varsanyi had FaceTimed just before the text message was sent and she witnessed him walking around and bouncing K.V. while she cried. Schandel thought the bouncing was too much for K.V. because she was so small and young. Schandel witnessed Varsanyi bouncing K.V., but never saw him shake her.

In his testimony, Varsanyi generally corroborated Schandel's account and his statements to Detective Koontz but provided additional background information. He explained that he looked up "can a baby's back crack?" because he thought he heard a noise similar to that of knuckles cracking when he picked K.V. up from the bassinet one day.

[2] The actual text messages read as, "srop fucking shaking hwe" and "Please don't shaie hwr." Schandel testified that these were typographical errors, and she had intended to text "stop fucking shaking her" and "please don't shake her," respectively.

Varsanyi stated that he was working at the Potomac Center as a direct care assistant up until the date of his arrest. As part of his position, Varsanyi worked with "incompetent" residents, distributing medication, spending time with the individuals and, at times, physically restraining them when they became violent. Varsanyi testified that he dealt with "a lot of difficult people" as part of his employment and had to "keep [his] cool." On cross-examination, Varsanyi admitted that he was on administrative leave at the time of his arrest, pending an investigation to determine if he had improperly restrained one of the residents.

Varsanyi's mother, father, and best friend testified that Varsanyi was a loving, gentle, and cautious father who was slow to anger.

Tanya Hinds, M.D. ("Dr. Hinds"), a licensed and board-certified child abuse pediatrician with the Child and Adolescent Protection Center within Children's National Hospital, was qualified as an expert for the prosecution. Based on her examination and the medical record, Dr. Hinds concluded that K.V. had suffered multiple types of non-accidental trauma on several, separate occasions. These traumas included a subdural hematoma in the brain, a neck ligament injury, hemorrhaging in both eyes, and several rib fractures.

Dr. Hinds noted an absence of evidence of a skull fracture or other external injury that would indicate that K.V. hit her head or was dropped. She indicated that the brain bleeding and other damage to the brain sustained by K.V. were consistent with an acute injury. Dr. Hinds stated that a cursory review of K.V.'s medical history suggested that K.V. may have had a disorder that increased her propensity to bleed, which would alter Dr.

Hinds's findings. However, upon closer inspection, Dr. Hinds discovered that K.V. actually has a clotting disorder which would not have had the same result.

Regarding the neck ligament injury, Dr. Hinds noted that K.V. had a fluid buildup in her spinal cord which could be caused by routine handling by medical personnel during an emergency, but the ligament injuries K.V. sustained in the same area of the body would not have resulted from routine care.

Dr. Hinds explained that the type of hemorrhaging found in K.V.'s eyes could have been a product of non-accidental trauma, crush injuries, or birth trauma, but the record in K.V.'s case supports a finding that the hemorrhaging in both eyes was caused by the former.

Dr. Hinds also discussed K.V.'s rib fractures. She indicated that K.V. had three broken ribs that were all in various states of healing, one on the left side that was "fresher" and two on the right that had been healing for some time. She indicated that the older rib fractures are unlikely to have occurred during K.V.'s birth Dr. Hinds stated that the rib fractures could have a direct correlation to the hemorrhaging in K.V.'s left eye that Schandel noticed in mid-January. Dr. Hinds noted that, though rib fractures can be caused by severe vomiting, coughing or some similar self-inflicted pressure in adults, it is "rare and unusual for infants to self-inflict" the pressure to the ribs necessary to cause these fractures and, potentially, the hemorrhaging in the left eye. Dr. Hinds opined that, because the rib fractures were in various states of healing, they would not have been caused by medical intervention or forceful resuscitation at the time of K.V.'s emergency. She also

noted no family history of disorders or radiological signs that would indicate "a predisposition to fracture."

Dr. Hinds opined that K.V.'s cumulative injuries would have caused someone in her condition to be "immediately and persistently ill from the time they received an experience of inflicted force until sometime after they got life sustaining or lifesaving medical interventions."

Joseph Scheller, M.D. ("Dr. Scheller"), a licensed and board-certified pediatric neurologist, was qualified as a defense expert. Dr. Scheller agreed with Dr. Hinds' assessment that K.V. suffered a recent subdural hematoma in the brain. He noted that the retinal hemorrhaging was caused by significant pressure in the brain because of the subdural hematoma, but did not agree with Dr. Hinds that these injuries were likely the result of child abuse. He indicated that the retinal hemorrhaging could have been worsened by K.V.'s clotting disorder and that the symptoms K.V. exhibited at the time of the emergency would not necessarily appear immediately after the event causing the subdural hematoma.

Dr. Scheller further opined that K.V.'s rib fractures likely did not occur at the time of the medical emergency and that they were weeks to months old. He noted that the subconjunctival hemorrhage in K.V.'s left eye is common in children and can be caused by any number of things, including gagging, coughing, and scratching. According to Dr. Scheller, it did not necessarily occur at the same time as the rib fracture and there is no way to connect those injuries.

Dr. Scheller stated that the fluid in the neck ligament that Dr. Hinds believed to be evidence that K.V. was violently shaken, could have been caused by any number of things, including resuscitation attempts, brain surgery, and other care at the hospital. Indeed, he stated that the imaging of the neck does not necessarily show a neck injury; it merely shows that there is fluid in the neck.

Dr. Scheller indicated that K.V.'s injuries could have been caused by impact of the head on a surface and not necessarily a "rotational injury" as determined by Dr. Hinds. Had these injuries been the result of a "rotational injury," he would have expected to see hemorrhaging in both eyes.

On cross-examination, Dr. Scheller found it possible that the rib fractures could have occurred at birth but acknowledged that it is not common for babies of K.V.'s low birth weight that were born via c-section to experience skeletal fractures at birth. He noted that there is some evidence that premature babies that had difficulty growing in utero, as was the case with K.V., may have increased the likelihood of fractures, but that K.V. did not have the other skeletal limitations that he would expect to see if that were the case. Dr. Scheller further acknowledged that relatively recent medical research indicates that retinal hemorrhaging does not necessarily display in both eyes as a result of increased pressure in the brain and can be unilateral.

At the close of the State's evidence, Varsanyi moved for a judgment of acquittal as to count two, which the court denied.[3] Defense counsel renewed the motion at the conclusion of Varsanyi's case, and it was again denied. The court found Varsanyi guilty of first-degree child abuse and two counts of second-degree child abuse.

Additional facts will be included as necessary to inform our analysis.

DISCUSSION

A. Admission of Character Evidence

Varsanyi contends that the circuit court erred in allowing the State to elicit testimony on cross-examination that he was placed on administrative leave by his employer pending an investigation into whether he improperly restrained a resident of the facility. He alleges that the statements he made on direct examination pertaining to his employment at the Potomac House should not be considered character evidence that would open the door to rebuttal evidence. Varsanyi further argues that the court should not have admitted evidence as to why he had been placed on administrative leave as it was based on an unproven allegation. The State counters that Varsanyi opened the door to impeachment character evidence when he testified as to his character for nonviolence in the face of stressful

[3] Varsanyi alleged that the State had not provided sufficient evidence to support a finding of first-degree child abuse pursuant to Md. Code Ann., Crim. Law 3-601(b)(1)(ii) because it had not proven that Varsanyi had "engaged in a continuing course of conduct which includes three or more acts" of abuse. The State interjected that Count 2 contained a typographical error and should have cited to subsection (i) of the statute instead of subsection (ii). The court granted the State's last-minute request to amend the charging document to reflect that Varsanyi is charged under Md. Code Ann., Crim. Law 3-601(b)(1)(i), finding that Varsanyi had been given sufficient notice of the charges against him regardless of the typographical error. Varsanyi did not raise this question on appeal.

situations at work, that there is no case law which prohibits the introduction of a mere allegation as rebuttal character evidence, and that, even if the court had erred, any error was harmless.

The Record

Varsanyi argues that the court misinterpreted Maryland Rule 5-404(a)(2)(A) in finding that he "opened the door" to impeachment evidence when he testified the following on direct examination:

> [DEFENSE COUNSEL]: And were you working?
>
> [APPELLANT]: Yes.
>
> [DEFENSE COUNSEL]: Where were you working?
>
> [APPELLANT]: At the Potomac Center.
>
> [DEFENSE COUNSEL]: And what did you do at the Potomac Center?
>
> [APPELLANT]: I was a direct care [sic] assistant. Well, at first, I was a trainee. Then you get moved up to an assistant and I would basically care for, you know, if I'm saying this correct, I think it's incompetent or competent residents. The one where they're not, you know, they can't function normally, and I give them medication. I would basically supervise them. You know, play with them. Whatever they wanted to do, just spend the whole day with them. And, you know, sometimes they will, you know, act out, and, you know, we were it's called mantering (phonetic sp.) where we were certified to [sic] restraints on these residents because they will, you know, attack other residents, attack staff and just go the whole nine yards and I basically was you know, I worked in an all male cottage where there's nothing but, you know, older guys. And I was working there, you know, eight to 16 hours a day.
>
> [DEFENSE COUNSEL]: So, would it be fair to say that you had to deal with a lot of difficult people?
>
> [APPELLANT]: Yes, sir.

[DEFENSE COUNSEL]: And you had to keep your cool at your job?

[APPELLANT]: Yes, sir, you know, you, you -- they would spit on you right in front of your face. You know, they would hit you, bite you, scratch you. Anything that, you know, to try to get you fired. Anything to, you know, get you amped up.

[DEFENSE COUNSEL]: And you continued the, did you continue to work there and enjoy your job up until you were incarcerated?

[APPELLANT]: Yes, sir.

On cross-examination, the State further questioned Varsanyi about his employment at the Potomac Center:

[PROSECUTOR]: You, at some point you stopped going to work at the Potomac Center though, correct?

[APPELLANT]: Can, can you repeat that?

[PROSECUTOR]: You said you were employed by the Potomac Center up until –

[APPELLANT]: Yes.

[PROSECUTOR]: -- the day you were arrested, correct?

[APPELLANT]: Yes.

[PROSECUTOR]: But prior to that point you had stopped going to work at the Potomac Center, correct?

[APPELLANT]: No, I didn't stop. I was on administrative leave.

[PROSECUTOR]: Yes. When were you placed on administrative leave from the Potomac Center?

[APPELLANT]: I couldn't date that.

[PROSECUTOR]: Approximately?

[APPELLANT]: I can't date it. I, um, I can't date it. I don't want to give a false date. You know, I don't, I don't remember.

[PROSECUTOR]: Okay, rough, rough idea?

[APPELLANT]: I can't date it.

[PROSECUTOR]: Was it before [K.V.] was born? Or after?

[APPELLANT]: It was after.

[PROSECUTOR]: Okay, and if I told you there were texts –

[APPELLANT]: And while –

[PROSECUTOR]: And if I told you there were text messages with you and [Schandel] that around mid to early December you were talking to her about having meetings with management at the Potomac Center?

[APPELLANT]: Yes.

[PROSECUTOR]: Would that help refresh your recollection –

[APPELLANT]: Yes.

[PROSECUTOR]: -- that was about the time?

[APPELLANT]: Yeah, but it, when that message was sent, you know, I was on administrative leave for a while because the meetings that they were being scheduled would take weeks.

[PROSECUTOR]: Okay.

[APPELLANT]: Because they were, they were -- they had to go, you know, there was an investigation.

[PROSECUTOR]: Okay, was that regarding, was the investigation regarding allegations involving your conduct with patients?

At this point, defense counsel objected to the line of questioning, arguing that the testimony elicited would be inadmissible as evidence of prior bad acts. The State argued

that Varsanyi had opened the door to evidence regarding his administrative leave when he used testimony about his employment to bolster his character for calmness in the face of chaos. The defense responded that it had not presented that testimony as character evidence, but instead to confirm his employment.

Citing *State v. Robertson*, 463 Md. 342 (2019), the court found that Varsanyi's testimony as to his ability to stay calm during stressful situations while working with a difficult population opened the door to potential impeachment by the State. As such, the State was permitted to elicit the following testimony:

> [PROSECUTOR]: Isn't it true that you were suspended from your duties at the Potomac Center due to allegations that you had engaged in unlawful abusive force with a patient?
>
> [APPELLANT]: You said unlawful use of force?
>
> [PROSECUTOR]: Okay, I would say improper use of force?
>
> [APPELLANT]: Kind of sort of.
>
> [PROSECUTOR]: Okay, and did it involve you basically engaging in physical contact with a patient in a situation where there was a concern that you shouldn't have?
>
> [APPELLANT]: No, the code was called.
>
> [PROSECUTOR]: Okay. You were suspended because they were investigating your physical contact with a patient and whether or not it was appropriate, correct?
>
> [APPELLANT]: Can you repeat the question?
>
> [PROSECUTOR]: You were suspended because there was an investigation about whether your physical contact with a patient was appropriate or not?
>
> [APPELLANT]: No, I wouldn't say my physical contact was or wasn't appropriate. Yeah.

[PROSECUTOR]: You, you wouldn't say that your physical contact wasn't appropriate?

[APPELLANT]: When you say physical contact are you, can you go more in depth? Like –

[PROSECUTOR]: Did you –

[APPELLANT]: I used a restraint on him.

[PROSECUTOR]: Okay. You used a restraint on a patient –

[APPELLANT]: Yes.

[PROSECUTOR]: -- and you were being investigated because –

[APPELLANT]: Of that restraint.

[PROSECUTOR]: -- they were determ -- they were investigating and there was concern that that restraint wasn't appropriate for this patient?

[APPELLANT]: Yes.

[PROSECUTOR]: In light of the situation, correct?

[APPELLANT]: Um, yes.

Standard of Review

"Whether an opening the door doctrine analysis has been triggered is a matter of relevancy, which [an appellate court] reviews *de novo*." *State v. Heath*, 464 Md. 445, 457 (2019). "Whether responsive evidence was properly admitted into evidence is reviewed for an abuse of discretion." *Id.* at 458. We review a decision to admit rebuttal evidence for proportionality, to determine whether the proffered rebuttal evidence was "'necessary to remove any unfair prejudice that might have ensued.'" *Little v. Schneider*, 434 Md. 150, 163-64 (2013) (quoting *Savoy v. State*, 64 Md. App. 241, 254 (1985)). "[A]n 'abuse of

discretion exists where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to guiding rules or principles.'" *Heath*, 464 Md. at 458 (quoting *Robertson*, 463 Md. at 364).

Law Governing the Admission of Character Evidence

Maryland Rule 5-404 provides in full:

> (a) Character Evidence. (1) Prohibited uses. Subject to subsections (a)(2) and (3) of this Rule, evidence of a person's character or character trait is not admissible to prove that the person acted in accordance with the character or trait on a particular occasion.
> (2) Criminal and delinquency cases. Subsection (a)(2) of this Rule applies in a criminal case and in a delinquency case. For purposes of subsection (a)(2), "accused" means a defendant in a criminal case and an individual alleged to be delinquent in an action in juvenile court, and "crime" includes a delinquent act as defined by Code, Courts Article, § 3-8A-01.
> (A) **Character of accused. An accused may offer evidence of the accused's pertinent trait of character. If the evidence is admitted, the prosecution may offer evidence to rebut it.**
> (B) Character of Victim. Subject to the limitations in Rule 5-412, an accused may offer evidence of an alleged crime victim's pertinent trait of character. If the evidence is admitted, the prosecutor may offer evidence to rebut it.
> (C) Homicide Case. In a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
> (3) Character of witness. Evidence of the character of a witness with regard to credibility may be admitted under Rules 5-607, 5-608, and 5-609.
> (b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts including delinquent acts as defined in Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

(Emphasis added).

As highlighted above, subsection (a)(2)(A) of the rule states that once a criminal defendant "offer[s] evidence of [his or her] pertinent trait of character[,]" "the prosecution

may offer evidence to rebut it." The open door doctrine, as it is often referred, "is based on principles of fairness and serves to balance any unfair prejudice one party may have suffered." *Robertson*, 463 Md. at 351-52 (quotation marks and citation omitted). It permits the parties to "'meet fire with fire,' as they introduce otherwise inadmissible evidence in response to evidence put forth by the opposing side." *Little*, 434 Md. at 157 (quoting *Terry v. State*, 332 Md. 329, 337(1993)).

Analysis

We review *de novo* the court's finding that Varsanyi opened the door to rebuttal character evidence when he testified that he had to handle "a lot of difficult people" and "keep [his] cool" as part of his employment. The court determined that this testimony amounted to a "pertinent trait of character" that the State was permitted to rebut with evidence that Varsanyi had been placed on administrative leave pending investigation into a potentially improperly-administered restraint on a resident. Md. Rule 5-404(a)(2)(A). Based on our review of the record, the court did not abuse its discretion.

"The scope of what constitutes a 'pertinent character trait' under Rule 5-404(a)(2)(A) is defined by the nature of the crimes alleged." *Vigna v. State*, 241 Md. App. 704, 717-18, *aff'd* 470 Md. 418 (2020). Evidence opens the door to impeachment when it concerns:

> an attribute or trait the existence or non-existence of which would be involved in the noncommission or commission of the particular crime charged… In other words, pertinent character traits must be relevant to the specific crimes charged—they must have some bearing on the likelihood that a person exhibiting that trait would (or would not) commit the crimes of which [the defendant] stands accused.

Id. at 718 (quotation marks and citation omitted).

Here, Varsanyi testified as to his calmness in the face of stressful situations at work to bolster his image and convince the court that he would be less likely to harm K.V., even when placed under significant duress. His assertion that he "ke[pt] his cool" when dealing with people who at times became violent was clearly meant to portray Varsanyi as a peaceful, nonviolent person and, in turn, minimize the likelihood that he would commit child abuse. Varsanyi's ability to handle the stress of the job is a pertinent character trait as it bears directly on his propensity to become aggressive when dealing with the stress of caring for a newborn. Because his testimony was directly linked to his character for peacefulness, the court did not abuse its discretion in concluding that he opened the door for the State to present evidence that he was the target of an ongoing investigation at work that called this specific character trait into question. *See* Maryland Rule 5-404(a)(2)(A).

Varsanyi further asserts that the elicited testimony regarding the reason he was placed on administrative leave was inadmissible because it was merely an investigation into potential wrongdoing that had not yet been proven. Varsanyi offered testimony that he had been placed on administrative leave because of an investigation without prompting from the State. When the State asked Varsanyi if he had stopped going to work prior to his arrest, he willingly stated, "No, I didn't stop. I was on administrative leave." Later, when asked about the timing of his administrative leave, Varsanyi stated, unsolicited, "there was an investigation." Prior to these admissions, the State's line of questioning was focused only on whether Varsanyi had worked up until the time of his arrest, as he had stated on direct examination. His unprompted admissions that he was placed on administrative leave

pending an investigation naturally led to more questioning by the State as to the nature of the investigation. Varsanyi does not specify, and we are not aware of, any case law in Maryland that precludes the entry of evidence of an unproven allegation for this purpose.

Even if we had discerned error in the admission of this evidence, we agree with the State that any such error would be harmless. The State provided substantial evidence to support Varsanyi's conviction, including expert testimony from a child abuse pediatrician, K.V.'s medical records, testimony from K.V.'s mother and primary caregiver, and text message exchanges in which the parents discussed Varsanyi's aggressive handling of K.V. Indeed, the court never mentioned the fact that Varsanyi had been placed on administrative leave or the allegation of an improperly-administered restraint when reaching the verdict, instead relying exclusively on the aforementioned evidence. We rely on the trial court's silence on this evidence in its verdict findings, which independently supports harmlessness.

Sufficiency of Evidence

Varsanyi argues that the evidence presented was insufficient to support his convictions for first- and second-degree child abuse. He claims that "[t]here was no direct evidence that he inflicted any injury" on K.V., no witnesses, and "no incriminatory confession." Varsanyi also alleges that "there was competent and believable contradictory evidence" that cast doubt on the State's contention that K.V. sustained the injuries within the period that she was in Varsanyi's care. The State contends that Varsanyi's conviction "does not rest on speculation alone" and that the court appropriately relied on contextual and circumstantial evidence to reach the verdict. The State maintains that the court

correctly weighed the expert testimony of Dr. Hinds against that of Dr. Scheller based on their qualifications and level of participation in K.V.'s particular case.

Standard of Review

An appellate court reviews cases tried without a jury on both the law and the evidence. Md. Rule 8-131(c). A reviewing court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

The standard for reviewing the sufficiency of evidence is "'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.'" *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). As we explained in *Chisum v. State*, 227 Md. App. 118, 129-30 (2016):

> The issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict. It is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place. The burden of production is not concerned with what a factfinder, judge or jury, does with the evidence. It is concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence. It is an objective measurement, quantitatively and qualitatively, of the evidence itself. It is a question of supply and not of execution.

While a conviction may rest on circumstantial evidence, it "must do more than raise the possibility or even the probability of guilt. [I]t must… afford the basis for an inference of guilt beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 458 (1997) (quotation marks and citation omitted) (explaining that the trier of fact may not resort to speculation or conjecture).

Law Governing First- and Second-Degree Child Abuse

Md. Code Ann., Crim. Law §3-601 provides, in pertinent part:

> (a)(1) In this section the following words have the meanings indicated.
> (2) "Abuse" means 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.
>
> * * *
>
> (5) "Severe physical injury" means:
> (i) brain injury or bleeding within the skull;
> (ii) starvation; or
> (iii) physical injury that:
> 1. creates a substantial risk of death; or
> 2. causes permanent or protracted serious:
> A. disfigurement;
> B. loss of the function of any bodily member or organ; or
> C. impairment of the function of any bodily member or organ.
> (b)(1) A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not:
> (i) cause abuse to the minor that:
> 1. results in the death of the minor; or
> 2. causes severe physical injury to the minor; or
> (ii) engage in a continuing course of conduct which includes three or more acts that would constitute a violation of subsection (d) of this section.
>
> * * *
>
> (d)(1)(i) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor.

First-degree child abuse is defined by Md. Code Ann., Crim. Law § 3-601(b)(1)(i), while second-degree child abuse is governed by 3-601(d)(1)(i).

Analysis

We have considered the evidence in the light most favorable to the State, as we are required to do, and conclude that the record is sufficient to allow a rational factfinder to find Varsanyi guilty of both first- and second-degree child abuse. Turning initially to the

first-degree child abuse charge, the State presented evidence that, though born prematurely, K.V. was an otherwise healthy baby. Additionally, the State provided myriad text message exchanges between Schandel and Varsanyi, which paint the picture of a father who is primarily concerned with smoking marijuana and who becomes increasingly aggressive and annoyed with K.V.

The State also presented the testimony of Dr. Hinds, an expert in child abuse pediatrics who personally examined K.V. in the hospital. Dr. Hinds found to a reasonable degree of medical certainty that K.V. had suffered a non-accidental trauma and that it likely occurred just before she was rushed to the hospital. She based this finding on the type and severity of the bleeding and damage within the brain, as well as the neck ligament injury and hemorrhaging in both eyes. According to Dr. Hinds, the cumulative injuries would have caused someone in K.V.'s condition to be "immediately and persistently ill from the time they received an experience of inflicted force until sometime after they got life sustaining or lifesaving medical interventions."

Schandel's testimony illustrated the severity of K.V.'s resulting injuries. At two years old, K.V. could not sit up on her own, walk or talk, and had just recently started eating solid foods.

K.V. was in Varsanyi's care immediately before she started to experience symptoms, she had no underlying conditions that would have caused these symptoms, and the text messages between Varsanyi and Schandel illustrate that Varsanyi routinely handled K.V. roughly and became easily frustrated by her needs. Varsanyi and Schandel reported that K.V. was never in anyone else's care without one of them present and that she had not

experienced any recent accidental head trauma. The medical injuries are consistent with those of an acute non-accidental trauma, and K.V. sustained a life-altering brain injury that significantly impacts her development. Based on the foregoing, the State presented sufficient evidence that Varsanyi, being K.V.'s father, did abuse K.V. to the point of causing severe physical injury in violation of Crim. Law § 3-601(b)(1)(i). The evidence established that K.V. suffered a subdural hematoma — bleeding within the skull — as a direct result of the trauma inflicted upon her. This injury falls squarely within the statutory definition of "severe physical injury" under Crim. Law § 3-601(a)(5)(i), which expressly includes "brain injury or bleeding within the skull." Accordingly, the State was not required to rely on inference or circumstantial proof to establish this element; Dr. Hinds's testimony, confirmed by the MRI findings and emergency surgical intervention, directly established that K.V. sustained the precise category of injury the General Assembly designated as severe.

The State also presented evidence that Varsanyi abused K.V. in violation of Crim. Law § 3-601(d) on or about January 1, 2022, and from about January 11, 2022 to January 14, 2022. Dr. Hinds testified that K.V. had three healing rib fractures that were unlikely to have been caused naturally, via birth trauma, as the result of a preexisting bone condition, or because of routine emergency medical care. She further indicated that the hemorrhaging in K.V.'s left eye could be related to her rib fractures, as they can both be caused by significant pressure inflicted on the ribs.

Varsanyi's internet search history indicates that on January 1, 2022, he Googled, "can a baby's back crack." Schandel testified that she noticed a mark on K.V.'s face and a

bruise on her toe on January 11, 2022, that she believed resulted from Varsanyi playing too roughly with K.V. On the same day, she texted Varsanyi that he was "too rough" with K.V. and "all you do is hurt her."[4]

On January 14, 2022, Schandel and Varsanyi FaceTimed while he was watching K.V. Schandel saw Varsanyi bouncing K.V. too aggressively. On the same day, Varsanyi texted Schandel that K.V. wouldn't "shut up," and Schandel repeatedly texted him to "stop fucking shaking her." This cumulative evidence, when considered in the light most favorable to the State, allows a rational trier of fact to find that Varsanyi's conduct on or about January 1, 2022, and from January 11, 2022 to January 14, 2022, meets the essential elements of second-degree child abuse pursuant to Md. Code Ann., Crim. Law § 3-601(d).

We agree with Varsanyi that there is an absence of direct evidence of physical abuse, eyewitnesses, and a confession that would bolster this finding. We acknowledge that the court's determination as to guilt was based almost entirely on circumstantial evidence. When assessing sufficiency of evidence, however, we do not discriminate between direct and circumstantial evidence. *Williams v. State*, 251 Md. App. 523, 569 (2021). Indeed, "[e]ven in a case resting solely on circumstantial evidence, . . . if 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).

[4] The text message includes a typographical error that we have corrected. The message actually reads, "all you do is hurt hwd."

We also acknowledge that Varsanyi presented contradictory medical evidence in the form of Dr. Scheller's expert testimony. Dr. Scheller testified that K.V.'s brain bleeding and trauma could have been sustained hours before she was in Varsanyi's care and that her rib fractures could have occurred naturally or during birth. He further opined that the fluid buildup in the neck ligaments was not necessarily a sign of non-accidental trauma and that K.V.'s unilateral eye hemorrhage is not common in rotational brain injuries caused by non-accidental traumas.

On cross-examination, however, Dr. Scheller himself admitted that K.V. was not a likely candidate for rib fractures caused naturally or by birth trauma as she was born via c-section and did not have an underlying condition that would make her bones more sensitive to fracture. He also admitted that recent medical literature supports a finding that unilateral eye hemorrhaging can occur in response to violent shaking of a child.

The court assessed Dr. Scheller's testimony against that of Dr. Hinds, taking into consideration that Dr. Hinds has more current and ongoing certifications, is up to date on the most recent medical literature, and personally examined K.V. Though Dr. Scheller offered competing medical evidence in support of Varsanyi's defense, the court did not err in assigning more weight to the testimony of Dr. Hinds as "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the factfinder." *State v. Stanley*, 351 Md. 733, 750 (1998).

CONCLUSION

Based on the foregoing, we are satisfied that the court did not abuse its discretion in allowing the State to elicit testimony that Varsanyi had been placed on administrative leave

pending an investigation into his physical restraint of a resident, or, if any error did occur, that it was harmless. We further determine that the evidence of record was sufficient to support Varsanyi's convictions for first- and second-degree child abuse.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.