

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2674

September Term, 2016

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OSMAN SESAY

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Beachley,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: March 6, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Prince George’s County convicted Osman Sesay, appellant, of first-degree child abuse, second-degree child abuse, and second-degree assault. The court sentenced appellant to 25 years in prison, suspending all but 20 years, for first-degree child abuse, to be followed by a five-year period of probation. The remaining convictions merged for sentencing purposes. Appellant’s sole contention on appeal is that the State did not adduce sufficient evidence to sustain his convictions. For the reasons stated below, we affirm.

### **BACKGROUND**

On the morning of August 1, 2015, Isatu Jalloh (“Isatu”) woke up around 6:30 or 7:00 A.M. At the time, she lived in an apartment in Riverdale with her 23-month-old son, Ahmed Jalloh (“Ahmed”) and her boyfriend, appellant.<sup>1</sup> Isatu stated that she carried Ahmed to the bathroom for potty training and gave him a high-five for using the porta-potty for the first time. Isatu then microwaved a breakfast burrito for Ahmed and placed it and Ahmed on the floor next to the couch where appellant was laying. Isatu then left for work, leaving Ahmed with appellant, a normal practice.

Later that morning, Isatu noticed that she had missed several calls from an unknown number. When she called the number, appellant answered and told her to go to the hospital. There, doctors took her to see Ahmed’s body. Doctors had pronounced Ahmed dead at 11:06 A.M.

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<sup>1</sup> An unrelated woman and her infant son were also roommates.

The medical examiner who performed Ahmed’s autopsy testified that he died as a result of blunt force trauma to the head and torso. She opined that Ahmed’s injuries were “recent” and occurred anywhere from twenty minutes to, at most, five hours prior to his death. She noted a contusion on the left side of Ahmed’s face that was located around his temple and wrapped around his left ear. She testified that Ahmed had lacerations to his liver and pancreas, as well as hemorrhaging in his intestines and adrenal gland. She conceded that Ahmed’s head injuries could be consistent with a fall, but the injuries to his torso were not. The examiner also noted that Ahmed had subgaleal bruising, which she stated was under the scalp, and Ahmed’s brain was swollen.

A consulting neuropathologist testified that Ahmed’s brain was “swollen beyond what it normally should be” and was heavier than a child’s brain Ahmed’s age. Although there was no bleeding, he noted that there was fluid within the blood vessels of the brain, denoting a lack of oxygen. He opined that Ahmed’s injuries could be consistent with a fall.

Appellant testified in his defense. He stated that Ahmed had not eaten the burrito, so appellant gave him some applesauce, which the child ate. Appellant claimed that Ahmed looked “lethargic,” which he thought was a result of the air conditioner being broken, and the apartment being so warm. After changing Ahmed’s diaper, appellant fell asleep on the couch while he and Ahmed were watching television. Appellant claimed that twenty or thirty minutes later, he was awoken by a noise “like a thump.” He found Ahmed on the bedroom floor. Ahmed had vomited, his eyes were rolling back in his head, and he was shaking. Appellant performed a series of “abdominal thrusts,” thinking that Ahmed

had ingested something, and he slapped Ahmed’s face. Appellant went to a neighbor to borrow a cell phone to call 911. When paramedics arrived, Ahmed had no pulse. Emergency personnel transported Ahmed to the hospital where he was pronounced dead.

### DISCUSSION

Appellant’s sole contention on appeal is that the State did not produce sufficient evidence to sustain his convictions. He maintains that the State did not demonstrate that he had caused Ahmed’s injuries. Indeed, he argues that the State’s evidence merely showed that the child was dead, and appellant was the last one with him. Ultimately, appellant contends that the State had not excluded every reasonable hypothesis of innocence, and, therefore, the State had not produced sufficient evidence of his criminal conduct.

In reviewing the sufficiency of the evidence to sustain a conviction, we ask whether, in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *DeHogue v. State*, 190 Md. App. 532, 545 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “We give due regard to the jury’s findings of facts and its responsibility to weigh and resolve conflicting evidence, draw reasonable inferences from the evidence, and determine witness credibility.” *Brown v. State*, 182 Md. App. 138, 156 (2008). Notably, circumstantial evidence is sufficient to sustain a conviction, but “the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture.” *Smith v. State*, 415 Md. 174, 185 (2010).

At the outset, we note that the Court of Appeals has expressly rejected the “reasonable hypothesis of innocence” theory upon which appellant relies. In *Smith*, the Court observed that the fact-finder, not the appellate court, has the ability to choose among competing rational inferences. *Id.* at 183. The Court reiterated that appellate courts “do not second-guess the jury’s determination where there are competing rational inferences available.” *Id.* Rather, the proper standard to adjudicate claims of insufficient evidence in criminal trials is the one set forth in *Jackson*, 443 U.S. at 319, above. This Court also forcefully rejected the “reasonable hypothesis of innocence” theory in *Ross v. State*, 232 Md. App. 72, 98 (2017):

Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of 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. The State is NOT required to negate the inference of innocence. It is enough that the jury must be persuaded to draw the inference of guilt.

We are persuaded that the State produced sufficient evidence to sustain appellant’s convictions. The State demonstrated that Isatu left a healthy Ahmed in appellant’s care around 7:00 A.M., and four hours later, he was dead. The medical examiner testified that the child suffered blunt force trauma to the head and torso that was not consistent with a fall. The jury could reasonably infer that appellant was the source of those injuries.

This case is similar to *Deese v. State*, 367 Md. 293 (2001). In that case, a three-year-old child’s mother left him in the care of Deese while she went grocery shopping. *Id.* at 297. When she returned approximately two hours later, Deese said the child was

sleeping. *Id.* The mother left the child alone for a couple of hours, but she found the child unresponsive when she went to check on him. *Id.* An autopsy indicated that blunt force trauma to the head was the cause of death. *Id.* at 298-99.

On appeal, Deese made similar arguments to the one appellant makes here. *Id.* at 304-05. The Court of Appeals affirmed, noting that Deese had exclusive control of the child and was “the only possible agent who could have committed the crime.” *Id.* at 308. The Court noted that the State had demonstrated: 1) the child was alive in the morning; 2) the child was under Deese’s exclusive supervision for a period of time; 3) the child was found dead shortly after that period; 4) death was due to blunt force trauma; and 5) no one had contact with the child after 2) and before 3). *Id.*

Here, the State produced evidence showing that Ahmed was alive on the morning of August 1, 2015. Appellant had exclusive supervision for a period of time. Ahmed was found dead after that period of time. Ahmed had died as a result of blunt force trauma to his head and torso, and no one else had contact with him prior to appellant’s 911 call. A rational fact-finder could, therefore, conclude that appellant caused the injuries leading to Ahmed’s death.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**