Circuit Court for Frederick County
Case No. C-10-CR-21-000414

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1097

September Term, 2024

JESSE COOK

v.

STATE OF MARYLAND

Nazarian,
Albright,
Beachley, Donald E.,**
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 26, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

** Beachley, J., now a Senior Judge, participated in the hearing and conference of this case while an active member of this Court.

On the afternoon of June 17, 2020, first responders arrived at a Frederick County home after one of the home's occupants called 911 and reported that A.B., an infant not yet two months old, wasn't breathing. Emergency Medical Technicians ("EMT") transported A to a Frederick County hospital, where he was pronounced dead shortly after arrival. The medical examiner ruled A's death a homicide and determined his cause of death to be torso injuries resulting from blunt force trauma to the abdomen.

In September 2023, a jury in the Circuit Court for Frederick County convicted A's father, Jesse Cook, of one count of child abuse in the first degree for causing the injury resulting in A's death and two counts of child abuse in the second degree for causing two additional, non-fatal injuries suffered by A. Mr. Cook now appeals from his conviction for first-degree child abuse, arguing that the State presented insufficient evidence at trial to prove he caused A's fatal injury. We affirm.

I. BACKGROUND

Mr. Cook met A's mother, K.M.,[1] in 2015. A month later, the two started dating. They dated for sixth months, broke up, then rekindled their relationship after three years of separation. About eight months after they resumed dating, K, who was living in Virginia at the time, learned she was pregnant with A. She moved into Mr. Cook's home in Frederick when she was five months pregnant and gave birth to A soon after. Not even two months later, on June 17, 2020, A died.

After an autopsy conducted by the Office of the Chief Medical Examiner and an

[1] We have used random initials to identify A and A's mother to protect their privacy.

investigation into A's death undertaken by officers with the Frederick County Sheriff's Office ("FCSO"), a grand jury indicted Mr. Cook on July 14, 2021 on charges of child abuse in the first degree for injury resulting in death and child abuse in the second degree for fractures in A's ribs. On July 15, 2021, the circuit court issued a warrant for Mr. Cook's arrest,[2] and on January 30, 2023, a grand jury charged him by supplemental indictment with an additional count of child abuse in the second degree for a second non-fatal abdominal injury suffered by A. The court held a four-day trial in September of 2023, during which seventeen witnesses testified and the parties introduced more than fifty exhibits. We summarize the relevant testimony below.

K testified about her relationship with Mr. Cook and the events leading up to and following A's death. She testified that when she texted Mr. Cook to inform him of her pregnancy with A, he didn't respond for three days. When Mr. Cook did respond, he asked her to come live with him in Frederick, which K said she did several months later. K testified that Mr. Cook never went with her to any of her regular prenatal appointments and that he didn't attend the baby shower her sister and her friends threw for her, opting instead to attend his friend's birthday party even though her sister and her friends invited him to the shower and other men attended. Nevertheless, K said that Mr. Cook seemed happy about becoming a father and that he was with her at the hospital when A was born.

K testified that she became concerned about Mr. Cook's behavior when he interacted with the newborn. For example, she explained that A had jaundice when the

[2] Mr. Cook was incarcerated for an unrelated offense when the court issued the warrant.

hospital released him and that the doctor instructed her and Mr. Cook to place him by the window in the sunlight at 9:00 a.m. to help relieve the yellowing of his skin. Instead, though, K testified that one afternoon while she was either showering or taking a nap, Mr. Cook took A outside and laid him down on a blanket in direct sunlight, causing A to become sunburned. K described also certain "exercises" Mr. Cook would do with baby A, where he would pull him up by his hands into a standing position. The State admitted into evidence photographs of Mr. Cook doing these exercises with A. K said that when Mr. Cook handled A in this manner, A "was crying and crying," and that she "[had] to call a nurse to tell him . . . to stop doing exercises with the baby." Then she testified about several other concerning behaviors, including Mr. Cook lying the baby down in his tub for a bath with the water up to his cheekbones and running down the stairs while holding the baby. Further, she said that when Mr. Cook came home from work, she would be cooking in the kitchen and he would head straight upstairs to the room where the baby was sleeping without her noticing until she heard A scream. She would then run upstairs to see what was wrong, but by the time she got there, A was crying and Mr. Cook was leaving the room already. Finally, K described an incident that she said occurred when she and Mr. Cook were changing the baby's diaper together. Mr. Cook had just put a new diaper on A when the baby began to urinate again, and K turned away to grab a new diaper. When her back was turned, she heard "a small hit" and heard A scream. When she asked Mr. Cook if he'd hit the baby, he denied that he had.

K testified that she returned to work at her job in Virginia six weeks after A was

born but only went to work three times before A died. The first day she returned to work, Thursday, June 11, 2020, she explained that Mr. Cook was off work and offered to watch A, but she refused because she "didn't want to leave [A] with [Mr. Cook]." Instead, K said, she took A with her to her sister's[3] house in Centreville (about a one-hour drive from Frederick) on Wednesday, June 10, and the two spent the night there with her sister, her sister's husband, and her sister's three kids. K testified that her sister's children got along well with A and that they were never alone with the baby while she and A were at her sister's house. K's sister watched A from around 6:00 a.m. when K left for work until around 3:00 p.m. or 4:00 p.m. when she returned, and K stated that A seemed fine when she saw him after work. K and A stayed at K's sister's house again that night.

The next morning, on Friday, June 12, K testified that she left her sister's house and dropped A off at the home of a friend of hers and her sister who lived nearby because her sister had to work that morning and couldn't babysit. Her sister picked A up from their friend's home around noon, and K picked up A from her sister's house that afternoon when she finished work. K said that when she picked A up from her sister's house, he was acting "fine" aside from some ongoing constipation issues. Then K returned with A to Mr. Cook's house, where they stayed for the next three days. According to K, Mr. Cook was upset when she arrived and told her that she "couldn't take his son to sleep in another house." That weekend, K testified, A was acting "different." She explained specifically that

[3] We will refer to other witnesses through descriptions, such as sister or friend, rather than by their names or initials. This approach is a bit more cumbersome, but hopefully will allow the reader to keep everyone's role clear without compromising their privacy.

although A seemed fine and was eating and sleeping, he wasn't smiling, wasn't moving like he normally did, and "was crying a little."

On Tuesday, June 16, the day before A's death, K went back to work and left A with her friend because her sister couldn't watch him and K didn't want to leave him with Mr. Cook. When asked why she didn't want to leave A with Mr. Cook, she responded that she "only knew [she] couldn't" and felt that she "had to do something not to leave him there." K said that when she left A with her friend that morning, he was still "crying, sad" and acting "different," and that her friend texted her while she was at work to tell her that A "was a little fussy." K testified that she picked A up on Tuesday at around 3:00 p.m., and that when she did, "[h]e didn't smile; only crying." She then took A back with her to Mr. Cook's house. That evening, K slept in the room where A's bed was, and Mr. Cook slept in the room that he shared with K. K explained that she woke up when A started vomiting. She woke Mr. Cook and told him she wanted to take A to the hospital, but he told her they should wait and see if the baby went back to sleep, which he did eventually.

When A woke up around 7:00 a.m. on June 17, K noticed that he wasn't crying or smiling and that his eyes were red. She testified that she told Mr. Cook again that she wanted to take A to the hospital, but he told her no, and she put the baby down for a nap at 11:00 a.m. K said that she wanted to stay with A while he napped, but Mr. Cook told her that they needed to work in the garden, so the two of them went outside to do yardwork. K, who could watch A through a baby monitor connected to her phone, checked on him every ten to fifteen minutes while she was doing yardwork with Mr. Cook but stated that

she "could only see his head" and couldn't tell if he was sleeping or awake. After two and a half to three hours had passed, she became concerned because typically A napped for only two hours in the mornings. She testified that she went inside to check on A and found that he wasn't breathing. K said she attempted CPR and screamed for Mr. Cook, and the girlfriend of Mr. Cook's roommate, who lived in the basement, heard her and ran upstairs. She told the roommate's girlfriend to go get Mr. Cook, which she did, and the roommate's girlfriend called 911 as Mr. Cook entered A's room and began attempting CPR. K testified that when the EMTs arrived and found A unresponsive, they took him to the hospital, and she, Mr. Cook, and Mr. Cook's roommate followed behind. Shortly after, the doctor informed K and Mr. Cook that A had passed.

Finally, K testified briefly about her involvement in the investigation that FCSO officers conducted into A's death. She testified that she stayed with Mr. Cook for a year after A died and that she spoke to police several times during that year. Once, when the detective on the case came to speak to them at Mr. Cook's house, K stated that Mr. Cook told her not to talk to him because the police "were [their] enemies" and "wanted to separate" them. She explained that she spoke to the detective anyway, and the detective informed her that A had two broken ribs and a perforated intestine when he passed. K concluded her testimony by asserting that she couldn't recall anything ever happening while A was in her care that could have caused such injuries, or anything happening while A was in her sister's or the friend's care that was concerning to her. Her concern, she said, was with Mr. Cook.

K's sister and her friend both testified about the time they spent babysitting A in the week leading up to his death. The friend testified that her son, who was fifteen or sixteen at the time, was home on both June 12 and June 16 for part of the day while she babysat A but was never alone with the baby. She said that A was "beautiful" and "smiling" when she watched him on June 12 and that no accidents or injuries occurred. According to the friend, when K brought A back to her house on June 16, she asked K why she needed her to watch A again. She testified that K told her "that she didn't trust his father" and would rather the friend watch him. The friend stated further that A was "different" on June 16 than he'd been on June 12. She said that she texted K to tell her A was "fussy" and "crying," and K left work early to pick him up.

K's sister testified that she couldn't remember if anyone was home with her when she watched A on Thursday, June 11, but that her three children (ten, sixteen, and twenty-one years old) were with her when she watched A on the afternoon of Friday, June 12. She said that A was "fine" and "easygoing" on June 11 and was crying on June 12 but was otherwise "fine" and didn't have any problems. According to the sister, her children got along "very good" with A; the baby was never out of her sight either of the days she watched him; and nothing happened either day that could have injured A. The sister confirmed also that Mr. Cook didn't attend A's baby shower even though she and K's friends had invited men but testified that Mr. Cook seemed "good" and "emotional" when she visited his home for the first time after A's birth.

Several first responders who reported to Mr. Cook's home on June 17, 2020 testified

as to what they observed about the demeanor of the home's occupants when they arrived on scene. Zachary McNeil, a Frederick County firefighter and EMT, testified that when he arrived at the home, he first encountered multiple women who were "just kind of screaming, crying." He then went upstairs and found Mr. Cook with A. According to Mr. McNeil, Mr. Cook's demeanor "wasn't the same as the others" and that unlike the women he encountered, Mr. Cook was acting "non-hysterical." Matthew Smith, a Frederick County firefighter, testified that the women at the home appeared "distraught" and "extremely upset about what had happened" while Mr. Cook "was just standing" with "not really any emotion at all." Sergeant Kevin Britt of the FCSO said that both of A's parents were standing on the front porch of the home when he arrived there. He testified that K was "crying hysterically" and that Mr. Cook "wasn't crying or anything" but was "normal" and "trying to calm or comfort" K. Sergeant Britt returned to the home on June 22, 2020 to interview K and Mr. Cook and stated that the former "was sad and upset" while the latter "appeared normal." On cross-examination, both Mr. Smith and Sergeant Britt agreed that in their experience, different people can react differently to grief.

Sergeant Joseph McCallion of the FCSO and social worker Nicole Wetzel both interacted with K and Mr. Cook at the hospital where A was pronounced dead, and each testified as to their observations. Sergeant McCallion testified that he observed K and Mr. Cook when they "walked into the room to say their goodbyes to their child" and that K "was very emotional, crying," while Mr. Cook "was trying to console her" and had "a shocked look on his face." Ms. Wetzel testified that when she encountered K and Mr. Cook

before A was pronounced dead, K "was visibly distraught, sobbing, wailing [A's] name," while Mr. Cook "was more or less flat affect, supporting [K], kind of, you know, putting his arms around her" and didn't "have the same emotional response that [K] had." She said that she was with A's parents for an hour or two on the day of A's death and that their demeanors stayed mostly the same during the time she was with them. But Ms. Wetzel explained that although Mr. Cook's "facial response and demeanor" didn't change, he had a "physical reaction" to the news that A had passed: "his shoulders dropped . . . . [Y]ou could tell he had been hit with some information." Like Mr. Smith and Sergeant Britt, Ms. Wetzel agreed on cross-examination that, in her professional experience, everyone reacts differently to grief.

Dr. Donna Vincenti, the assistant medical examiner who performed A's autopsy the day after his death, testified as an expert in forensic pathology. Dr. Vincenti testified that during the autopsy, she identified twenty-eight rib fractures in various stages of healing and two different upper abdominal injuries in the fatty tissue near A's small bowel: an area of induration, or firmness, indicative of an older trauma, and a bowel perforation and hemorrhaging, or internal bleeding, indicative of a more recent trauma. She noted signs of peritonitis, an abdominal infection caused by the bowel perforation that, in her opinion, could cause a baby to act "fussy." Dr. Vincenti estimated that the older abdominal injury couldn't have occurred less than a week before A's death, and that the newer injury was likely inflicted hours to days before A died. Both injuries, Dr. Vincenti opined, were caused likely by blunt force trauma and were "consistent with a punch to the abdomen by an adult."

She testified that in her opinion, to a reasonable degree of medical certainty, A died of "torso injuries"—specifically, the more recent bowel perforation and resulting peritonitis. She opined that his death was a homicide. On cross-examination, Dr. Vincenti agreed that A's fatal stomach injury could have resulted from a punch by an adolescent as well as a punch by an adult. She agreed that the earliest the fatal injury could have occurred was a week before A's death, on June 10, but stated that it more likely occurred later.

Detective Timothy Moore testified about the FCSO's investigation into A's death. He testified that he responded to Mr. Cook's address after the 911 call on June 17 and observed K and Mr. Cook walking off the front porch. He noted that K "looked to be very hysterical and upset." After speaking with another officer at the scene, Detective Moore stated that he went to the hospital to which EMTs had transported A. While at the hospital, he spoke to A's parents together and noted that K was crying and "was still very upset" while Mr. Cook looked "blank . . . almost, like, in disbelief." He asked K and Mr. Cook if they would consent to a search of their home, and both signed a consent form which the court admitted into evidence.

On June 22, 2020, Detective Moore said, he returned to Mr. Cook's home with Sergeant Britt and a CPS social worker to conduct follow-up interviews with Mr. Cook and K and to execute a search warrant on the home. Detective Moore testified that on June 22, K "still seemed pretty upset about what had happened" while Mr. Cook "seemed rather normal." He explained that he interviewed Mr. Cook and K separately, and then the State played a recording of Mr. Cook's interview for the jury. During the interview, Detective

Moore asked Mr. Cook if anyone had been rough with baby A. Mr. Cook denied that anyone had been. Detective Moore then informed Mr. Cook that A's autopsy had revealed multiple rib fractures and injuries to his small bowel and asked again if Mr. Cook was ever rough with A. Mr. Cook denied again that he had been and then described for Detective Moore the exercises he would do with A. Detective Moore responded that he'd "talked to some people [who said] that [Mr. Cook was] a little rough with [A]." Mr. Cook told him that the roughest he'd been with A "[was] to do the exercises" and then described a time when he'd picked the baby up with one hand by his leg. He explained also to the CPS social worker who accompanied Detective Moore that A started having stomach issues after K's sister babysat him the week before he died.

After the recording ended, Detective Moore testified that he found it suspicious at the time that unlike K, Mr. Cook didn't seem to have "very much of a reaction" when he told him about A's broken ribs and "didn't seem like he was very surprised" or ask many questions. In addition, he said that Mr. Cook told him at one point "that if the autopsy wasn't to his liking, that he may want to request a second one." And Detective Moore testified that when he returned to the home on January 21, 2021 to interview K, Mr. Cook answered the door and told him initially that K was sleeping. When Detective Moore asked him to wake her up and bring her downstairs, he said, Mr. Cook went inside, returned ten to fifteen minutes later with K, then told him that they were both ready to be interviewed. Detective Moore testified that when he told Mr. Cook that he wanted to speak to K alone, Mr. Cook became "argumentative" and "extremely irritated, and he started telling

[Detective Moore] that that wasn't going to happen." He stated that K appeared "extremely timid" and scared while Mr. Cook was speaking to him, and that she was avoiding eye contact. Detective Moore then told Mr. Cook that K "was an adult, and that she could speak for herself," after which he said Mr. Cook "got even more irritated." Mr. Cook said something to K in Spanish, and then K told Detective Moore she wanted to talk to him. On cross-examination, Detective Moore agreed that, generally, Mr. Cook had been cooperative with FCSO's investigation into A's death.

Lasty, Detective Moore testified about the execution of the search and seizure warrant on Mr. Cook's home and the evidence the FCSO obtained. He said that during the execution of the warrant, Mr. Cook handed over two cellphones that belonged to him. After FCSO officers extracted the data from the devices, Detective Moore reviewed the examination reports. Included in these reports, he stated, was the search history for one of Mr. Cook's phones, which the State admitted into evidence. Among the searches in Mr. Cook's browser history were a search from April 30, 2020 for "Do newborns get afraid?"; May 26 searches for "Do newborns feel pain?" and "How do babies feel pain?"; and a May 28 search for "Do newborns have fear?"

Detective Moore reviewed text messages retrieved from Mr. Cook's phone also. He testified *first* about a series of text messages between Mr. Cook and his roommate from April 21–23, 2020 while K was in the hospital giving birth to A. The State admitted these texts into evidence. On the afternoon of April 21, Mr. Cook's roommate asked him, "How's it going?" and Mr. Cook replied, "Good. Lots of moaning and whining. Pretty annoying."

The following morning, the roommate asked Mr. Cook if K was "still alive," and Mr. Cook responded in the affirmative. The roommate then asked, "And, the baby?" and Mr. Cook told him, "Its alive." When his roommate asked how he was feeling about being a father, Mr. Cook replied, "Its alright" and "Something to do." His roommate followed up with, "And, it's a son!... Isn't every man supposed to be psyched about that?" and Mr. Cook said, "Sure" and "There are benefits." The next morning, while K was recovering, Mr. Cook texted his roommate that K had been a "pain in the ass lately" but that it was ok because she'd "quickly learn," followed by a punch emoji, a woman's face emoji, and a laughing emoji. Mr. Cook then texted, "And the baby too if he thinks crying is acceptable," followed by a punch emoji and a baby's face emoji.

The State admitted a series of messages between Mr. Cook and a different friend as well. On June 3, 2020, the friend asked, "How's [A]?" Mr. Cook replied, "Great. Crapping and crying. That's where the bar is currently set and he is meeting [] expectations." The friend then told him, "Wait til he pees on you during diaper change," and Mr. Cook said, "He tried. Hit the wrist. I punched him. Hasn't again since." Lastly, the State admitted a series of texts between Mr. Cook and his roommate from June 17, 2020 while the roommate was waiting to take Mr. Cook and K home from the hospital after A passed. Mr. Cook told his roommate they were waiting "for the medical examiner to check back with [them]," and his roommate replied, "They doing an autopsy, already?" Mr. Cook told him, "Sending to Baltimore today for autopsy tomorrow morning. I prefer they don't but they insist." He said that doing an autopsy seemed "extreme and barbaric" but that he didn't "want to fight

it too much because they [would] probably get suspicious."

Finally, one of Mr. Cook's friends testified in his defense. He described an occasion when Mr. Cook brought K and A to his house for dinner and said that Mr. Cook "was great" with the baby and "was really happy to have another little life to raise up, and, you know, be a dad." Additionally, the friend testified about the text exchange from June 3, 2020 in which Mr. Cook told him that he had punched A. He explained that he didn't take the message seriously and assumed Mr. Cook was joking because, in his opinion, Mr. Cook wasn't the kind of person who would punch a baby.

On September 14, 2023, the jury found Mr. Cook guilty of child abuse in the first degree for causing the injury resulting in A's death and two counts of child abuse in the second degree for causing A's broken ribs and his older, non-fatal abdominal injury. A judge sentenced him on July 31, 2024 to life imprisonment for the first-degree child abuse conviction and two consecutive fifteen-year sentences for the second-degree child abuse convictions. He filed a timely notice of appeal.

DISCUSSION

Mr. Cook presents a single question for review, which we rephrase: Was the evidence legally sufficient to support his conviction for child abuse in the first degree?[4] He argues that it wasn't because the State presented no evidence to establish that he had

[4] Mr. Cook phrased his Question Presented as follows: "Was the evidence legally insufficient to support Appellant's conviction for child abuse in the first degree?"

The State phrased its Question Presented in the following manner: "Was the evidence sufficient to support Cook's conviction of first-degree child abuse?"

"exclusive possession" of baby A at any point during the "critical period" of time when Dr. Vincenti testified the fatal injury could have occurred. The State responds *first* that Mr. Cook failed to preserve his argument because he didn't raise it "with particularity" when he moved for judgment of acquittal. *Second,* the State contends that even if Mr. Cook did preserve his argument, it fails because proof of exclusive possession isn't required to sustain a conviction for first-degree child abuse and because it presented sufficient evidence to support a reasonable jury in finding Mr. Cook guilty of first-degree child abuse beyond a reasonable doubt. We hold that Mr. Cook's sufficiency argument is preserved in part and that the evidence was sufficient to convict him of child abuse in the first-degree.

A. Mr. Cook Preserved His Argument That The Evidence Was Insufficient To Prove He Caused A's Fatal Injury.

The State contends that Mr. Cook didn't preserve his argument that the evidence was insufficient to support his first-degree child abuse conviction because it didn't establish that he had exclusive possession of A at any time within the critical period. According to the State, Mr. Cook's argument when he moved for judgment of acquittal was that there was no evidence to show that he had *any* possession of A during the critical period. That argument is different, the State asserts, from Mr. Cook's argument on appeal that the evidence was insufficient because it didn't establish that he had *exclusive* possession of A during the critical period. Thus, the State maintains, Mr. Cook's "exclusive possession" argument isn't preserved because he didn't make it "with particularity" when he moved for judgment of acquittal. Mr. Cook counters that he argued in his motion for judgment of acquittal *both* that the State failed to put on evidence that he had any

possession of A during the period when the fatal injury likely occurred *and* that the State failed to establish that he was ever alone with A during that period, such that he preserved his exclusive possession argument for our review.

Each side is partly correct. To the extent Mr. Cook argues on appeal that the State was required to establish exclusive possession to sustain his conviction, that argument is unpreserved because he didn't raise it in his motion for judgment of acquittal. But the essence of the "exclusive possession" argument is that the evidence wasn't sufficient to prove that Mr. Cook had the opportunity to cause A's fatal injury because the State failed to prove he was ever alone with A during the critical period when the injury likely occurred. Mr. Cook did make that argument when he moved for judgment of acquittal, so as a practical matter, he has preserved his argument.

Maryland Rule 4-324 provides that a criminal defendant "may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all evidence." Md. Rule 4-324(a). The Rule requires the defendant to "state *with particularity* all reasons why the motion should be granted." *Id.* (emphasis added). To preserve a sufficiency of evidence argument for appellate review, the defendant must argue in their motion for judgment of acquittal "precisely the ways in which the evidence is lacking." *Anthony v. State*, 117 Md. App. 119, 126–28 (1997) (argument that there was insufficient evidence of agreement between defendant and undercover officer to support conviction for conspiracy to distribute cocaine was unpreserved where motion for

judgment of acquittal relied only on argument that evidence was insufficient because the State hadn't produced the drugs defendant distributed to officer). "Thus, '[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal.'" *Hobby v. State*, 436 Md. 526, 540 (2014) (*quoting Tetso v. State*, 205 Md. App. 334, 384 (2012)).

In his motion for judgment of acquittal, Mr. Cook argued that the evidence was insufficient to prove that he caused the injury resulting in A's death because the State hadn't established that he was alone with A at any time from June 10 to June 17, when the injury most likely occurred:

> [DEFENSE COUNSEL]: Your Honor, I would like to voice in a [motion for] judgment of acquittal, at least on the [first-degree child abuse]. It was clear talking to the [medical examiner] that the injury has to have occurred the earliest is June 10th, and there was absolutely no evidence presented, whatsoever, that Mr. Cook had any possession or any time with the baby. All that's been presented is that [Mother] went home, but absolutely no evidence that -- no one said Mr. Cook had possession of baby [A] in the critical period for death; from the 10th through the 17th. No testimony, whatsoever, that baby [A] was in the possession, *or any alone time* with Mr. Cook.

(emphasis added). The circuit court denied the motion. At the close of all evidence, Mr. Cook renewed his motion without additional argument, and the court denied it again.

The State asserts correctly that Mr. Cook's argument when he moved for judgment of acquittal was different from the one he makes now on appeal, that the State was *required* to prove "that he had exclusive possession of [A] during the period of time that [A] could have suffered the fatal injury" and that "the record that [the State] built could not support

that requirement." Accordingly, we don't address Mr. Cook's argument that the State was required as a matter of law to prove exclusive possession to sustain his first-degree child abuse conviction because it wasn't preserved for our review. But as we indicate above, Mr. Cook doesn't attempt to raise a sufficiency argument on appeal that's completely different from the argument he raised in his motion. *See Anthony*, 117 Md. App. at 126–28; *Hobby*, 436 Md. at 540. For practical purposes, the "exclusive possession" argument frames the contention at the heart of Mr. Cook's argument in his motion for judgment of acquittal: that the State offered insufficient evidence to prove he had the opportunity to cause A's fatal injury because it didn't establish that he was alone with A during the critical period. Indeed, this interpretation of Mr. Cook's motion for judgment of acquittal appears to be the same as the State's interpretation at trial because the State responded by maintaining that the evidence showed Mother and A were home with Mr. Cook from June 13 to June 15, and that Mr. Cook could have been alone with A and inflicted the fatal injury while Mother was showering or taking a nap. Mr. Cook raised his core argument on appeal with sufficient "particularity" in his motion for judgment of acquittal to preserve it for our review, *see* Md. Rule 4-324(a), so we proceed to the merits of his claim.

B. The Evidence Presented By The State At Trial Was Sufficient For A Reasonable Jury To Find Mr. Cook Guilty Of First-Degree Child Abuse Beyond A Reasonable Doubt.

Mr. Cook argues that the evidence presented at trial was insufficient to support his conviction for child abuse in the first degree under Md. Code (2002, 2021 Repl. Vol.), § 3-601 of the Criminal Law Article ("CR"). "The standard for appellate review of

evidentiary sufficiency 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." *State v. Smith*, 374 Md. 527, 533 (2003). We defer to, and don't "second-guess," a jury decision to credit one rational inference over another. *Smith v. State*, 415 Md. 174, 183 (2010). This Court defers likewise to the jury's "finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *McDonald v. State*, 347 Md. 452, 474 (1997). It isn't our role to "re-weigh" the evidence; our task on appeal is to decide whether the evidence presented at trial was sufficient for a rational juror to find guilt beyond a reasonable doubt. *Smith*, 374 Md. at 534. We apply this standard to "all criminal cases, including those resting . . . in whole or in part on circumstantial evidence." *Id.* Although a conviction that rests upon "mere speculation or conjecture" will not stand, *Smith*, 415 Md. at 185, circumstantial evidence alone is sufficient to support a criminal conviction if it "'afford[s] the basis for an inference of guilt beyond a reasonable doubt.'" *Id.* (*quoting Taylor v. State*, 346 Md. 452, 458 (1997)).

In relevant part, CR § 3-601 prohibits a parent or other caretaker of a minor from causing abuse to the minor that inflicts severe physical injury or results in the minor's death. CR § 3-601(b)(1). The statute defines "abuse" 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). A person who violates the statute and causes the

death of a victim under age thirteen can be subject to life imprisonment. CR § 3-601(b)(2)(iii).

Mr. Cook doesn't dispute that he was A's father or that A suffered an injury resulting in death. His sole contention is that the State put forth insufficient evidence to prove he was the person who caused the fatal injury. Mr. Cook argues that the State failed to prove he had the opportunity to cause A's fatal injury because it presented no evidence that he was alone with A at any specific time in the hours to days before A died—the critical period when Dr. Vincenti estimated the fatal injury likely occurred. Mr. Cook points out also that K testified more than once about the efforts she made to *not* leave A alone with him during that critical period. And, he asserts, there *was* evidence that K, K's sister, and K's friend each *did* have time alone with A. Mr. Cook argues that the State's case, which relied on his "mere presence" in the home with A the weekend before A died to establish opportunity, was based entirely "on speculation and conjecture." Thus, he concludes, no rational jury could have found him guilty of first-degree child abuse beyond a reasonable doubt, and his conviction cannot stand.

The State rejects Mr. Cook's contention that it relied solely on his "mere presence" in the home with A during the critical period to prove that he caused A's fatal injury. It asserts that the evidence it presented at trial of Mr. Cook's actions before A was born; his behavior towards A while A was alive; and his actions following A's death, in combination with the fact that he had access to A during the critical period, was sufficient to warrant a reasonable jury in finding beyond a reasonable doubt that he caused the injury resulting in

A's death. We agree with the State that the evidence was sufficient to sustain Mr. Cook's conviction for first-degree child abuse.

The State introduced sufficient evidence from which a jury could conclude that Mr. Cook had the opportunity to cause the injury resulting in A's death. Dr. Vincenti testified that the fatal bowel perforation was most likely inflicted within hours to days of A's death and that it couldn't have been inflicted any earlier than June 10, a week before A died. The testimonies of K, K's sister, and K's friend established a timeline of A's whereabouts from June 10–17, 2020. K testified that on Wednesday, June 10, she left Mr. Cook's home with A and brought the baby to her sister's house, where they spent the night. K and her sister both testified that the sister babysat A on Thursday, June 11 while K was at work. Both women stated that A seemed "fine" that day, and K's sister testified that the baby wasn't injured while in her care. According to K, she and A stayed at her sister's house again Thursday night, and she brought A to her friend's house the next morning on Friday, June 12 because her sister had to work. All three women testified that K's sister picked up A from the friend's house that afternoon, and K testified that she picked A up from her sister's house after work. The friend said that A was "beautiful" and "smiling" that day and that no accidents or injuries occurred. K's sister stated that A was crying that afternoon but was otherwise "fine," and K said that he was "fine" when she picked him up aside from some ongoing constipation issues.

After picking A up from her sister's house on Friday, June 12, K returned with the baby to Mr. Cook's house, where they stayed until the morning of Tuesday, June 16. K

testified that Mr. Cook was upset that she'd taken A to stay at her sister's house the two previous nights. She explained also that although A was eating and sleeping that weekend, he was acting "different." When K returned to work on Tuesday, June 16, K took A to her friend's house again so that the friend could babysit. K said that A was still "crying, sad" and acting "different" when she dropped him off that morning and that he "didn't smile" and was "only crying" when she picked him up that afternoon to take him back to Mr. Cook's residence, where they remained until A's death the following afternoon on June 17. K's friend testified that A was "different" when she watched him on June 16, and K and the friend both testified that the friend texted K that day to tell her the baby was acting "fussy." In her testimony, Dr. Vincenti opined that peritonitis, the fatal abdominal infection caused by A's perforated bowel, could cause an infant to act "fussy."

A reasonable jury could have concluded, based on this timeline, that Mr. Cook had the opportunity to cause the injury resulting in A's death. *See Smith*, 374 Md. at 533. Based on K's testimony, she and A were home with Mr. Cook from the evening of June 12 until the morning of June 16, the day before A died. These dates fall squarely within the critical period during which Dr. Vincenti estimated that A's fatal injury most likely was inflicted. It's true that K didn't testify at trial that she left A alone with Mr. Cook at any specific time that weekend. It's also true that K did testify about the efforts she made to avoid leaving A alone with Mr. Cook and about the baby monitor she installed in A's room so she could check on him using her phone. But a reasonable jury could draw from all of this the commonsense inference that K wouldn't have been able to keep a constant eye on A and

Mr. Cook for upwards of seventy-two hours and that Mr. Cook could have inflicted A's fatal injury while K was, for example, showering or cooking a meal. K's and her friend's observations that A was acting "different" and "fussy" after spending the weekend at Mr. Cook's, coupled with Dr. Vincenti's testimony that peritonitis could make a baby act fussy, supported this inference. Additionally, although K, her sister, and her friend may each have spent time alone with A during the critical period, we don't second-guess the jury's decision to credit each woman's assertion that A suffered no injuries while in her care. *See Smith*, 415 Md. at 183. And we defer likewise to the jury's decision to credit the sister's and the friend's testimonies that their respective children, who were present in their homes when the women babysat A, were never alone with A and didn't cause the infant any harm. *See McDonald*, 347 Md. at 474.

In addition to demonstrating that Mr. Cook had the opportunity to cause the injury resulting in A's death, the State put forward evidence sufficient to support a conclusion by a reasonable jury that Mr. Cook *did* cause the fatal injury beyond a reasonable doubt. *See Smith*, 374 Md. at 533. *First*, K's testimony and the texts Mr. Cook sent his roommate at the time of A's birth demonstrated an attitude toward A that was, at best, indifferent. K testified that when she texted Mr. Cook that she was pregnant with A, he didn't respond for three days. She testified also that Mr. Cook didn't accompany her to any of her prenatal appointments and didn't make an appearance at the baby shower her sister and friends threw for her despite being invited. K's sister confirmed that Mr. Cook didn't attend the baby shower. K did testify also that Mr. Cook seemed happy and excited about becoming

a father and that he stayed with her at the hospital when A was born, and K's sister testified that he seemed "good" and "emotional" when she visited his home for the first time after A's birth. The jury was free to give this testimony as much, or as little, weight as it felt appropriate in light of all the evidence presented.

Moreover, the State admitted into evidence a series of text messages in which Mr. Cook, while at the hospital with K as she was giving birth, referred to the newborn A as "it" and told his roommate that he felt "alright" about being a father and that it was "[s]omething to do." When his roommate then asked if he was excited to have a son, Mr. Cook replied simply with "Sure" and "There are benefits." And most strikingly, Mr. Cook texted his roommate the day after A's birth that the infant would "quickly learn" if he "[thought] crying [was] acceptable," followed by a punch emoji and a baby's face emoji. In her testimony, Dr. Vincenti opined that A's fatal injury was "consistent with a punch to the abdomen by an adult."

Second, the State presented evidence of concerning behavior by Mr. Cook after A's birth. For example, K testified about several interactions between Mr. Cook and A during the baby's short lifetime that she personally found concerning. She described for the jury an incident where A became sunburned after Mr. Cook laid him outside in direct sunlight. She testified that Mr. Cook put A in his bathtub with the water up to his cheekbones and would run down the stairs while holding A, and she described "exercises" Mr. Cook did with A that caused the baby to cry. The State played for the jury a recording of an interview in which Mr. Cook told Detective Moore about these exercises and about a time when he'd

lifted A up by his leg with one hand. Further, K explained how Mr. Cook would go upstairs to A's room after returning home from work and how she wouldn't notice until she heard the baby scream. She said that when she would go upstairs to see what had happened, A would be crying and Mr. Cook would be leaving the room. K described also a time when she thought she heard Mr. Cook hit A when she turned around briefly while they were changing A's diaper. A series of texts admitted by the State, in which Mr. Cook told his friend that he punched A after the baby urinated on him during a diaper change, seemed to corroborate K's testimony. Mr. Cook's friend did testify that he assumed Mr. Cook was joking when he sent that message because Mr. Cook was a great father and wasn't the kind of person who would punch a baby, but the jury wasn't required to credit that testimony. Lastly, the State admitted Mr. Cook's browser history from the weeks after A's birth, which included searches like "Do newborns feel pain?" and "Do newborns have fear?"

Third, several witnesses who interacted with Mr. Cook on the day of A's death and in the days following testified that he didn't seem to be overly upset or to have much of a reaction at all. Many of these witnesses did agree on cross-examination that different people experience grief differently, but, again, the jury could give that testimony the weight it saw fit in light of the totality of the evidence before it. Additionally, Detective Moore testified that Mr. Cook didn't really react, seem surprised, or ask many questions when he told him about A's broken ribs, which Detective Moore found to be suspicious.

Finally, the State presented evidence of Mr. Cook's behavior after A died from which a rational jury could infer guilt beyond a reasonable doubt. It introduced messages

from the day of A's death in which Mr. Cook told his roommate that he would prefer that an autopsy not be performed, but that he didn't "want to fight it too much because [the police would] probably get suspicious." Detective Moore testified that at some point during his investigation into A's death, Mr. Cook told him "that if the autopsy wasn't to his liking, that he may want to request a second one." Although Detective Moore stated that Mr. Cook cooperated generally with the FCSO's investigation, including by handing over his cell phones to the officers executing the search and seizure warrant on his home, the detective also described an occasion when Mr. Cook became argumentative after Detective Moore insisted on interviewing K alone. And K testified that Mr. Cook told her not to talk to Detective Moore because the police "were [their] enemies" and "wanted to separate" them.

In summary, and contrary to Mr. Cook's assertions, his first-degree child abuse conviction didn't rest upon "mere speculation or conjecture." *Smith*, 415 Md. at 185. Although no one piece of evidence alone would have been sufficient to support his conviction, the totality of the circumstantial evidence introduced by the State at trial "'afford[ed] the basis for an inference of guilt beyond a reasonable doubt.'" *Smith*, 415 Md. at 185 (*quoting Taylor*, 346 Md. at 458). And because the evidence was sufficient for a rational jury to find the "essential elements" of child abuse in the first degree under CR § 3-601(b)(1)—including the element of causation—beyond a reasonable doubt, *see Smith*, 374 Md. at 533, we affirm Mr. Cook's conviction.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY COSTS.