Circuit Court for Anne Arundel County
Case No. C-02-CR-20-000864

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1207

September Term, 2021

JERRY WEEMS

v.

STATE OF MARYLAND

Beachley,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: August 17, 2021

Following a June 10, 2020 incident in Eastport, Maryland, the State's Attorney for Anne Arundel County filed a four-count indictment charging Appellant Jerry Weems with robbery, second-degree assault, reckless endangerment, and theft under $100. After a bench trial, the Circuit Court for Anne Arundel County found Mr. Weems guilty of all four charges. The court sentenced Mr. Weems to 15 years (suspending all but 13 and a half) for robbery, and a consecutive ten years (suspending all but five) for second-degree assault. The court merged the remaining convictions into the sentence for second-degree assault. In this appeal, Mr. Weems presents three questions for our review:

1. Did the court err in failing to merge Appellant's conviction and sentence for second-degree assault into his conviction and sentence for robbery?
2. Was the evidence insufficient to sustain Appellant's convictions?
3. Did the court abuse its discretion in denying Mr. Weems' motion for new trial?

For the reasons below, we shall answer the first question "yes" and the second two "no." Accordingly, we vacate in part and affirm in part the judgment of the circuit court, and remand with instructions to vacate Mr. Weems' second-degree assault conviction.

BACKGROUND

The Indictment

The State's indictment read as follows:

> THE GRAND JURY, for the State of Maryland, sitting in Anne Arundel County, upon their oaths and affirmations, charge, JERRY WEEMS with having committed the following offenses on or about June 10, 2020 in Anne Arundel County.
>
> **Count One: Robbery**-The Grand Jury charges that the aforesaid defendant, on or about the aforesaid date, did feloniously rob [Ms. S.] of a backpack.

> **Count Two: Assault-Second Degree**-The Grand Jury charges that the aforesaid defendant, on or about the aforesaid date, did assault [Ms. S.] in the second degree.
>
> **Count Three: Reckless Endangerment**-The Grand Jury charges that the aforesaid defendant, on or about the aforesaid date, did recklessly engage in conduct that created a substantial risk of death and serious physical injury to [Ms. S.].
>
> **Count Four: Theft Less Than $100.00**-The Grand Jury charges that the aforesaid defendant, on or about the aforesaid date, did steal a backpack property [sic] of [Ms. S.], having a value of less than $100.00.

Trial Testimony

At trial, the State called Ms. S. and Charlose Parker, who was in a romantic relationship with Ms. S. (both at the time of the alleged incident and at trial).[1] Mr. Parker testified that, on the evening of June 10, 2020, he drove to pick up Ms. S. and saw her with two men outside the community center in Eastport, Maryland. According to Mr. Parker, Ms. S. was "yelling and screaming," seemed scared, and appeared like she was trying to escape. Mr. Parker identified one of the men as Mr. Weems, whom he knew as "Onion." While Ms. S. was crying, Mr. Parker saw Mr. Weems holding onto her arms. Mr. Parker knew that Ms. S. had been romantically involved with Mr. Weems, and Mr. Parker testified that he wanted Mr. Weems out of the picture so that he could have Ms. S. to himself.

[1] The State also called two police officers who were dispatched to the scene: Officer Pfau and Officer Tolstoi. Officer Pfau testified that he observed a man wearing a white shirt walking towards the back of a house on President Street, and that he may have seen a figure cresting a fence, but he could not identify Mr. Weems as this person. He also found a cell phone on the ground that belonged to Ms. S. and Mr. Weems. Officer Tolstoi testified that Ms. S. seemed very distraught and upset after the incident.

Although Mr. Parker heard Ms. S.'s distress and saw Mr. Weems grab her, he did not call the police or exit his van. Ms. S. eventually broke free and got into the van, but Mr. Weems followed and jumped through the back passenger side window (which was halfway down at the time), trying to reach Ms. S. Mr. Parker attempted to start the engine, but Mr. Weems grabbed for the keys and a brief struggle ensued.

Mr. Parker further testified that, as he was regaining control of the keys, Mr. Weems turned to Ms. S. and grabbed the strap of a small backpack that Ms. S. was wearing. Ms. S. screamed in pain as Mr. Weems held onto the strap, which tightened against her neck and choked her. Mr. Weems pulled with such force that the strap eventually broke.

Ms. S.'s testimony matched Mr. Parker's, though at times it was not wholly consistent. Ms. S. said that she and Mr. Weems had been in an on-and-off relationship for about two years. Ms. S. testified that as of June 10, 2020, she and Mr. Weems were "broken up," and that she was living with Mr. Parker, but she also said that she trying to work things out with Mr. Weems. Ms. S. further testified that, before the incident with Mr. Weems, she separately visited her aunt and brother.[2] Ms. S. testified that she left her aunt's house in the afternoon on June 10, and then walked around the neighborhood for six to seven hours visiting other houses and seeing other people. She testified that at some point, she and Mr. Weems ran into each other on the street, and Mr. Weems then started

[2] Neither individual is a blood relation of Ms. S. She later referred to these individuals, respectively, as her "street aunt" and her "down the street friend."

following her. She eventually got into an argument with Mr. Weems and called Mr. Parker for a ride. During this argument, Mr. Weems grabbed hold of Ms. S.'s arms and tried to pull her to him. When Mr. Parker arrived, Ms. S. testified that she ran to the van and Mr. Weems attempted to open the passenger side door. She then locked the doors, which prompted Mr. Weems to jump through one of the van's windows. She also said that, when Mr. Weems grabbed and pulled the strap of her backpack, it pressed around her neck so that she could not speak.

Ms. S. was unclear as to the exact time of the incident. At one point, she stated that it occurred shortly after she left her aunt's house. At another point, however, she said that she first walked around the neighborhood during the afternoon. She did not recall which arm Mr. Weems grabbed, but she testified that the strap of her backpack was on her left arm. **S**he also stated that the physical contact with Mr. Weems lasted for about a minute. Ms. S. testified that she could not breathe or talk during the choking, and that she felt a burning sensation. Mr. Parker corroborated Ms. S.'s testimony, stating that Mr. Weems choked Ms. S.[3]

Ms. S. stated that she "came back to realization" after the strap of her backpack finally broke, and that Mr. Weems ran once the police arrived. She identified the cell phone found by police officers at the scene as the one that both she and Mr. Weems shared. She could not, however, remember who had the phone or where it was located on

[3] Both Ms. S.'s and Mr. Parker's testimony was also corroborated by Officer Tolstoi, who interviewed them after the incident. In those interviews, Mr. Parker and Ms. S. consistently described Mr. Weems' actions inside the van.

the night of June 10th. When shown photographs of her body, which the State introduced at trial, Ms. S. identified a scratch as a result of her encounter with Mr. Weems. Ms. S. also testified that she sought medical treatment after the incident to make sure that her head was okay, but later stated that she was seeking medical attention for a different injury that occurred at a different time.

Ms. S. described herself as an ex-addict who had been addicted to crack cocaine for years. She admitted that she was using cocaine at the time of the incident, and claimed that prior to this incident, the last time she had used crack cocaine was three months before.

The Verdict and Sentencing

The circuit court found Mr. Weems guilty on all counts. As to the second-degree assault count, the circuit court found that Mr. Weems caused offensive physical contact and harm to Ms. S., and that "the contact was the result of an intentional or reckless act[.]" The court also opined that there was "at least one unwanted touching":

> "As to count 2, [second-degree] Assault, obviously there was at least one unwanted touching. I find beyond a reasonable doubt that the Defendant did cause offensive physical contact and physical harm to [Ms. S.]. That the contact was the result of an intentional or reckless act of the Defendant, was not an accident, and it was not legally excused or consented to by [Ms. S.]."

The circuit court then moved to sentencing. Although the court's verdict on the assault count was originally phrased in the singular—referring to "the contact" and "an intentional or reckless act"—at sentencing, the circuit court employed the plural and stated that it heard evidence of two second-degree assaults. As a result, the court held that

the charged second-degree assault (Court II) would not merge into the charged robbery (Count I):[4]

> I do believe that I heard evidence of two [second-degree] Assaults in this case. First there is one outside the [van]. Then there is one that happens where [Ms. S.] is inside the [van]. And so I believe that is a separate incident that would not merge, be mergeable, into Count I.

The court sentenced Mr. Weems to 15 years' incarceration (suspending all but 13 and a half) for robbery, and to a consecutive ten years' incarceration (suspending all but five) for second-degree assault.

As to reckless endangerment and theft, the circuit court merged both into the sentence for second-degree assault. The State then interjected, asking whether the court meant to merge those into the sentence for robbery instead. The circuit court, however, confirmed that it intended to merge the reckless endangerment and theft sentences into the sentence for assault.

Appeal and Post-Trial Motions

Mr. Weems moved for a new trial under Maryland Rule 4-331(b).[5] Among other things, he argued that Ms. S.'s testimony was "impeached" because it was inconsistent as to Ms. S.'s whereabouts on the day of the incident, her drug use, and Mr. Parker's failure

[4] To so hold, the circuit court made a further determination at sentencing that Count 2 concerned the second-degree assault outside the van, rather than inside the van (where the robbery took place).

[5] Maryland Rule 4-331(b) provides that "the court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial" on motion filed within 90 days after the imposition of a sentence. Mr. Weems timely filed his motion for new trial.

to call 911 or assist Ms. S. during the incident. He also argued that Mr. Parker's testimony was inconsistent concerning his relationship with Ms. S. and circumstances surrounding the robbery and assault of Ms. S. (though Mr. Weems did not list any specific inconsistencies in his motion). Mr. Weems contended that these inconsistencies rendered the testimony "wholly unreliable" and "wholly insufficient" to establish guilt beyond a reasonable doubt. The circuit court denied this motion.

DISCUSSION

I. MERGER OF MR. WEEMS' SENTENCES FOR ROBBERY AND SECOND-DEGREE ASSAULT

A. The Parties' Contentions

Mr. Weems contends that the circuit court erred in failing to merge his sentence for second-degree assault into his sentence for robbery, which failure rendered his sentence illegal. Mr. Weems argues that because second-degree assault is a lesser included offense of robbery, the sentences should have merged. Pointing out that the charging document controls in determining whether sentences should merge, Mr. Weems argues that State failed to charge the assault in Mr. Parker's van and the assault outside of the van separately and distinctly. As such, Mr. Weems says the charged assault is not separate from the robbery.

In contrast, the State argues that it proved two separate and distinct assaults at trial: one outside the van and one inside the van. As such, the State argues that Mr. Weems was appropriately sentenced because his sentence for assault concerned the assault outside the van—an assault that was separate from the robbery. The State further

asserts that because there was no ambiguity in the circuit court's verdict and its rationale at sentencing, there was no need to err on the side of Mr. Weems and merge the sentences.[6]

B. Merger

Whether a sentence must merge is a question of law that we review *de novo*. *Koushall v. State*, --- Md. ---, 2022 WL 324824, No. 13 (Md. Feb. 3, 2022), at 18. The failure to merge a conviction for sentencing is reversible error, and it will render a sentence illegal as a matter of law. *Clark v. State*, 246 Md. App. 123, 130 (2020). An illegal sentence may be corrected at any time, including on appeal. Md. Rule 4-345(a).

To assess whether the convictions for robbery and second-degree assault should have merged at sentencing, we start with the general principle of double jeopardy. The Fifth Amendment, made applicable to the states through the Fourteenth Amendment, protects defendants from facing multiple trials and punishments for the same offense—that is, from being placed in jeopardy twice. *See* U.S. Const. Amends. V, XIV. Maryland common law likewise provides double jeopardy protections. *Ware v. State*, 360 Md. 650, 708 (2000). As such, an offense that is the same as (or a lesser included offense of) another must merge.

[6] In its brief, the State further argued that, if we were to hold that the two sentences should merge, we should remand for a new sentencing hearing under *Twigg v. State*, 447 Md. 1, 28 (2016), rather than vacate the sentence for second-degree assault. At oral argument, however, the State indicated that it was no longer pursuing that argument, so we will not consider it further here.

To uphold these constitutional and common-law protections, we apply the two-part *Blockburger* test to determine whether merger should occur. *Blockburger v. U.S.*, 284 U.S. 299, 304 (1932). Specifically, we look to the relevant charging document to assess (1) whether one charged offense is a lesser included offense of another under the "required evidence test," and (2) whether the offenses arose out of the same criminal transaction. *See Nicolas v. State*, 426 Md. 385, 408 (2012) ("Merger occurs as a matter of course when two offenses are deemed to be the same under the required evidence test and when the offenses are based on the same act or acts.") (cleaned up); *see also Blockburger*, 284 U.S. at 304.[7] If both parts of the *Blockburger* test are satisfied, merger is required. And when it is unclear whether an offense should merge under the *Blockburger* test, courts should typically resolve any ambiguities in favor of the defendant.[8] *See Nicolas*, 426 Md. at 412.

[7] *Blockburger* did not use the phrase "required evidence test," but it did explain that test as it still exists today. *See Blockburger*, 284 U.S. at 304 ("[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test . . . is whether each provision requires proof of a fact which the other does not.").

[8] Merger may also be warranted even if the two-part *Blockburger* test is not satisfied. *See Holbrook v. State*, 133 Md. App. 245, 256-57 (2000) ("When two offenses do not merge under the required evidence test, . . . [the rule of lenity] provides that doubt or ambiguity as to whether the legislature intended that there be multiple punishments for the same act or transaction will be resolved against turning a single transaction into multiple offenses."); *see also Pair v. State*, 202 Md. App. 617, 622 (2011) (noting that other theories for merger include "the rule of lenity as an aid to statutory construction" and principles of "fundamental fairness").

1. The Required Evidence Test

As discussed, the first step in the *Blockburger* merger analysis is to apply the required evidence test to determine whether any charges merge in the abstract.[9] To do so, we look to the elements of each offense; if all the elements of one offense are contained in another, the offense with the fewer number of elements is a lesser included offense in the abstract. *See Abeokuto v. State*, 391 Md. 289, 353 (2006). Here, robbery is defined as a "taking and carrying away of the personal property of another," in that person's presence, "*by either an assault* (putting in fear) or a battery (violence)." *See Snowden v. State*, 321 Md. 612, 617-18 (1991) (emphasis added); *see also* Md. Code Ann. (2012 Repl. Vol., 2019 Supp.), Crim. Law §§ 3-401(e), 3-402. Thus, because robbery includes assault, second-degree assault is a lesser included offense of robbery in the abstract. [10] *See, e.g.*, *Snowden*, 321 Md. at 617-19.

[9] "Merger in the abstract," refers to application of the "required evidence test" alone, *see Middleton v. State*, 238 Md. App. 295, 311-13 (2018). "Merger in the abstract" occurs when offenses that theoretically can merge under the "required evidence test" nonetheless do not because they are based on separate acts that are separately charged, *i.e.*, they are not part of the "same criminal transaction." In *Middleton*, the defendant was convicted of first-degree assault, and acquitted of second-degree murder, a charge that indisputably included the lesser offense of first-degree assault. Nonetheless, we directed that defendant's first-degree assault conviction be vacated after concluding that it " . . . was based, as the [trial] court found, upon a separate act than the murder[,]" *id*. at 313, *i.e.* the assault conviction did not arise from the "same criminal transaction."

[10] The elements of second-degree assault are subsumed into robbery, and so traditionally, it is a lesser included offense. *See Snowden*, 321 Md. at 617; *see also* Crim. Law § 3-203. The State does not contend otherwise.

2. The Same Criminal Transaction

We now turn to the second part of the *Blockburger* test: whether the offenses arise from the same act or criminal transaction.[11] This step of the inquiry assesses whether the defendant's conduct was "one single and continuous course of conduct," without a "break in conduct" or "time between the acts." *See Morris v. State*, 192 Md. App. 1, 39 (2010) (*quoting Purnell v. State*, 375 Md. 678, 698 (2003)). The relevant charging document controls this analysis, and we assess only whether the charged offenses are part of the same criminal act or transaction. *See Thompson v. State*, 119 Md. App. 606, 609 (1998) ("The pertinent question is not whether more than one assault was conceivably proved. It is whether more than one assault was *actually charged* and, if not, then which of several possible assaults was the only assault charged.") (emphasis added); *see also Williams v. State*, 187 Md. App. 470, 477 (2009) (analyzing merger by assessing whether the charges in the charging document were based on separate conduct).

In assessing the charging document, we must resolve any lack of specificity in the defendant's favor. *See Morris*, 192 Md. App. at 42. As such, if the charging document is

[11] Of course, even if offenses that merge in the abstract are part of the same criminal transaction, merger is not *always* inevitable. There is an exception in which the State may elect to separately charge separate acts that cause separate injuries to a victim. *See State v. Boozer*, 304 Md. 98, 105 (1985) ("[S]eparate acts resulting in separate insults to the person of the victim may be separately charged and punished even though they occur in very close proximity to each other and even though they are part of a single criminal episode or transaction."). Here, the State did not separately charge two assaults, so the exception is inapplicable. *See Boozer*, 304 Md. at 113 ("If separate charges are brought there may be separate convictions and punishment, but if . . . a particular offense is not specified there may be but one conviction and punishment for those offenses.").

unclear as to whether a lesser included offense (in the abstract) charges the same criminal act or transaction as the greater, we must hold that it does. *See id.* at 42-44; *Gerald v. State*, 137 Md. App. 295, 311 (2001). We have described this as a "presumption" that lesser included offenses in the charging document relate to the same conduct, which presumption can only be overcome if "the charging document clearly indicates that such is not the case and that other unrelated criminal conduct is intended to be the subject of the count." *Thompson*, 119 Md. App. at 621-22.[12]

Of course, at times, we have also considered the verdict in assessing whether charges concern the same criminal act or transaction. *See Cortez v. State*, 104 Md. App. 358, 368-69 (1995). We need not decide here whether that approach remains valid, in whole or in part, after our decision in *Thompson*.[13] Even if we were to assume (without deciding) that this alternate approach survives *Thompson*, the basis for the circuit court's verdict here was not "readily apparent[,]" so we would need to give Mr. Weems the benefit of the doubt regardless. *See Snowden*, 321 Md. at 619; *cf. Gerald*, 137 Md. App. at 312 (merging sentences where "[t]he court instructed the jury on the elements of each charge, but it did not explain . . . what the jury needed to find to convict under both charges").

[12] This is particularly so if the lesser included offenses are "laddered," meaning the indictment lists the charges in a descending order from the greater inclusive offense to the lesser included offense. *See Thompson*, 119 Md. App. at 612.

[13] At oral argument, Mr. Weems argued that both approaches led to the same result: merger is required.

Applying those principles here, because the indictment contained multiple counts, and was laddered with a lesser included offense in the second position, we presume that the assault charge stems from the robbery. *Thompson*, 119 Md. App. at 612-18. And we note that nothing in the indictment overcomes this presumption. The State opted not to specify the circumstances surrounding the charged assault or to distinguish it from the robbery charge. Thus, neither charge detailed the time, precise location, or method of when, where, or how it was alleged to have occurred.[14] The State also opted not to include a second assault count at the end of the indictment. A second count would have alerted Mr. Weems that he was charged with conduct unrelated to the robbery and allowed for separate verdicts on each count. Ultimately, the State's charging choices make it hard to conclude that the charged assault clearly concerned the assault outside Mr. Parker's van.

Nevertheless, in an effort to reach that conclusion, the State points to the circuit court's verdict, contending that it was "unequivocal."[15] But the verdict on the assault

[14] We recognize that the instant indictment appears to rely on the statutory "short forms" for all charged counts. *See* Crim. Law §§ 3-404(a)(Robbery); 3-206(a)(Assault); 3-206(d)(2)(Reckless Endangerment); 7-108(a)(Theft). While these statutes prescribe what a short-form indictment must minimally contain, we do not read them to prevent the addition of other detail.

[15] The State also relies upon the circuit court's remarks at sentencing to support that its verdict was "unequivocal." The court's comments at sentencing, however, are not part of its verdict and are not relevant to the analysis here. *Cf. Pugh v. State*, 271 Md. 701, 703 (1974) (holding that trial judge cannot change a verdict once rendered, even if that attempted change occurs only moments later). Moreover, the circuit court's sentencing remarks also seem to support Mr. Weems' position. The circuit court merged the theft conviction into the assault conviction for sentencing purposes. Yet because there

charge does not establish that it happened outside Mr. Parker's van, *i.e.* that it was separate from the robbery. The verdict was phrased in the singular, not the plural. It mentions that Mr. Weems caused "physical contact" and harm to Ms. S., and that "the contact" was the result of an intentional or reckless "act"—not multiple contacts, or multiple acts. The court's mention of "at least one unwanted touching" is not a finding of two. "At least one" means just that: a single instance, *maybe* more.

In short, the rationale for the circuit court's verdict is not "readily apparent[,]" *see Snowden*, 321 Md. at 619, and the circuit court did not state "the separate acts justifying both convictions[,]" *see Cortez* 104 Md. App. at 369. Because it remains unclear whether Mr. Weems was charged and convicted of a lesser-included assault or an entirely separate assault, we resolve this lack of clarity in his favor and conclude that he was convicted of second-degree assault as part of the robbery.[16] Accordingly, we hold that Mr. Weems'

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was only one item stolen (the backpack), the theft was necessarily also part of the robbery. The circuit's basis for merger is not contained in the record, but we have difficulty discerning how the assault could have been separate from the robbery, if the theft was part of the assault.

[16] The State asks us to go further by reviewing the evidence introduced at trial to see whether it could support convictions for separate assaults concerning separate acts or criminal transactions. We have already rejected this approach, and we will not address it further here. *See, e.g.*, *Williams*,187 Md. App. at 477 (merging convictions notwithstanding the State's argument that the trial evidence supported an inference of separate assaults); *Gerald*, 137 Md. App. at 313 (same); *cf. Wallace v. State*, 219 Md. App. 234, 253-54 (2014) (rejecting the State's argument that trial evidence supported separate instances of assault, because the charging document was ambiguous and included only a single assault charge).

The State's reliance on *Pair* and *Hunt* is similarly misplaced. In *Pair*, we dealt with merger in a different context: whether offenses that did *not* meet the required

sentence for his conviction on Count II should have been merged into the sentence for his conviction on Count I.

II. MR. WEEMS' OTHER ARGUMENTS

Mr. Weems next argues that his convictions were not supported by sufficient evidence, and (for the same reason) that the circuit court abused its discretion in denying his motion for a new trial. He grounds these arguments primarily in witness credibility, asserting that Mr. Parker was an interested witness and that Ms. S.'s contradictory statements undermined her testimony. Among other things, Mr. Weems points to Ms. S.'s conflicting statements about her whereabouts before the incident with Mr. Weems, her motivations for seeking medical treatment, the position of the backpack on her shoulder, and her drug use. As a result, Mr. Weems contends that the evidence was not sufficient to support his convictions, or at least that he should have been granted a new trial.

The State, in contrast, asserts that the evidence was sufficient, that Mr. Parker and Ms. S. were credible witnesses, and that Mr. Parker and Ms. S. corroborated each other's

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evidence test should nonetheless merge (to the defendant's benefit) under principles of fundamental fairness. *See Pair*, 202 Md. App. at 645 ("Merger pursuant to the 'required evidence' test . . . can [] be decided as a matter of law, virtually on the basis of examination confined within the 'four corners' of the charges. Merger by virtue of the fundamental fairness test, by dramatic contrast, is heavily and intensely fact-driven."). Moreover, we did not decide the merger issue in *Pair* because it was not properly before us. *Id.* at 649. *Hunt* likewise involved a different context. There, after a jury trial, we found no ambiguity that an assault was separate from a kidnapping, and there was nothing to resolve in the defendant's favor in understanding the jury's verdict. *Hunt v. State*, 12 Md. App. 286, 310-11 (1971). Additionally, the charging document in *Hunt* did not contain a ladder of descending charges, but rather was organized to suggest that the assault charge was separate from kidnapping charges. *Hunt* 12 Md. App. at 290-91 & n.2.

testimony (and that police officers corroborated portions of that testimony as well). Additionally, the State points out that all the witnesses were vigorously cross examined, and that the exhibits introduced into evidence supported the trial testimony.

In reviewing Mr. Weems' challenge to the sufficiency of the evidence, we first view the evidence in the light most favorable to the prosecution, and we next assess whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 430 (2015); *State v. Suddith*, 379 Md. 425, 429 (2004). We will not set aside a judgment on the evidence unless it is "clearly erroneous," and we will give "due regard" to the trial court's assessments of witness credibility because it is in the best position to make those assessments. *See* Md. Rule 8-131(c); *Koushall*, --- Md. ---, 2022 WL 324824, No. 13 (Md. Feb. 3, 2022) at 17; *State v. McGagh*, 472 Md. 168, 194 (2021). Even if witnesses damage their credibility, the trier of fact is still entitled to credit that testimony and need not automatically disregard it. *See Rothe v. State*, 242 Md. App. 272, 285 (2019); *see also State v. Smith*, 415 Md. 174, 184-85 (2010) (noting that the circuit court, in a bench trial, is best able to resolve competing evidence and testimony).

Bearing these standards in mind, we turn to the evidence of the crimes charged. Testimony from Mr. Parker and Ms. S. established that Mr. Weems grabbed at Ms. S., choked her by pulling the strap of her backpack against her neck, and then stole that same backpack. Ms. S. also testified that she could not breathe or talk during the choking, and that she felt a burning sensation. This testimony was further corroborated by testimony from Officer Tolstoi. Viewing the evidence in the light most favorable to the State, it was

reasonable for the court to find that Mr. Weems robbed, assaulted, and recklessly endangered[17] Ms. S., and that Mr. Weems stole Ms. S.'s backpack.

Because we hold that the evidence was sufficient to support Mr. Weems' convictions, we also hold that the circuit court did not abuse its discretion in denying Mr. Weems' motion for a new trial, which was based on the same sufficiency arguments. The circuit court's denial of Mr. Weems' motion was not "clearly untenable," nor did it violate "fact and logic" or deprive Mr. Weems of a just result. *Cf. Alexis v. State*, 437 Md. 457, 478 (2014).

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED IN PART AND AFFIRMED IN PART. CASE REMANDED WITH INSTRUCTIONS TO VACATE THE SENTENCE FOR SECOND-DEGREE ASSAULT. APPELLANT AND APPELLEE TO SHARE COSTS EQUALLY.

[17] The elements of reckless endangerment are (1) the defendant engaged in conduct that created a substantial risk of death or serious injury to another; (2) a reasonable person would not have done so; and (3) the defendant acted recklessly. *Jones v. State*, 357 Md. 408, 426 (2000); *see also* Crim. Law Art. § 3-204(a)(1). The defendant need not have intended to cause harm; the defendant need only have recklessly risked that such harm would occur. *Williams v. State*, 100 Md. App. 468, 481 (1994).