Circuit Court for Baltimore County
Case No. C-03-CR-20-000044

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2287

September Term, 2023

MARK ANTHONY BOOKER

v.

STATE OF MARYLAND

Graeff,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 18, 2025

*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 four-day jury trial in the Circuit Court for Baltimore County in which appellant, Mark Anthony Booker, was convicted of first-degree child abuse and second-degree assault.[1] Mr. Booker was sentenced to twenty-five years' imprisonment for first-degree child abuse and time served for the assault conviction. In this timely appeal, Mr. Booker presents three questions for our consideration:

1. Whether the [c]ircuit [c]ourt erred by admitting expert testimony that L.'s[2] injuries were inflicted child abuse without requiring the proponent to demonstrate: i) that the process or methodology of determining child abuse is reliable, and ii) reliability of its application?

2. Whether the [c]ircuit [c]ourt erred by deviating from the pattern jury instructions for first- and second-degree child abuse?

3. Whether the [c]ircuit [c]ourt erred by denying Mr. Booker's motions for acquittal?

We perceive no error and therefore affirm.

FACTS

In June 2019, L.'s biological mother ("M.") lived in Baltimore County with four minor children in her household: fourteen-year-old daughter, F.; ten-year-old daughter, L.; and two toddler sons. F. and L. have a common father, J. S., who lives in New York. Mr.

[1] By indictment, Mr. Booker was charged with first-degree child abuse, second-degree child abuse, first-degree assault, second-degree assault, false imprisonment, and neglect of a minor. The State entered nolle prosequi on the charges of first-degree assault, false imprisonment, and neglect of a minor. The jury did not render a verdict as to second-degree child abuse because it found Mr. Booker guilty of the greater offense.

[2] To protect her anonymity, we adopt the State's convention of referring to the victim in this manner, without referencing her actual name. We use the same convention to refer to other family members who testified at trial.

Booker is the father of the two toddlers. Mr. Booker and M., now divorced, were still married in 2019, but Mr. Booker was not a full-time resident of the household. However, Mr. Booker frequently visited his sons at M.'s home, and would, at times, help M. care for L., who is autistic, non-verbal, and has the cognitive abilities of a two-year-old child.

On September 4, 2019, Officer Timothy Kratz, a Baltimore County police officer and elementary school resource officer, responded to a call from a school guidance counselor at L.'s school. Upon his arrival at the school, Officer Kratz and the guidance counselor went to the school nurse's office, where they encountered L. Officer Kratz observed that, in addition to being nonverbal, L. walked with a limp and lacked fine motor control, stating that "her hands were kind of all over the place . . . she couldn't really, I don't know, manipulate, pick things up." The school nurse lifted L.'s shirt, and Officer Kratz recounted that he saw

> razed [sic], scarred burns on her chest that were also discolored. They went from just above her navel to the bottom of her neck, as well as up the sides of her neck in the front. On her back, she had discolored scarred burns that went from the top of her neck down to the bottom of her back just above her bottom.

Office Kratz contacted the Crimes Against Children Unit and the Baltimore County Crime Lab to report what he observed. He stated that the Department of Social Services arrived approximately one hour later, took custody of L., and transported her to the Johns Hopkins Burn Unit. Detective Tameka Womack of the Baltimore County Crimes Against Children Unit ultimately went to Johns Hopkins to begin her investigation of the circumstances related to L.'s injuries.

Subsequent police investigation revealed that sometime shortly after M.'s birthday on June 14, 2019, Mr. Booker spent the night at M.'s home. M. testified that she woke up to find that Mr. Booker had eaten all of the food in the house. M. stated that she bathed L. and put her into a clean diaper and dress in anticipation of taking L. with her to the food pantry at St. Mathias church. M. further testified that her oldest daughter, F., asked to go with M. to the food pantry and requested that L. be left at home with Mr. Booker so F. could spend some time alone with her mother. M. agreed, leaving L. and the two toddlers in the care of Mr. Booker as M. and F. walked to the St. Mathias food pantry to secure food for the household. Because M. and F. were unable to carry the food back to the house, they waited for one of the food pantry volunteers to give them a ride home.

Upon arriving home, M. found the front door locked, even though she recalled leaving the door unlocked when she and F. left for the food pantry. M. stated that after she knocked on the door, Mr. Booker unlocked the door, but did not open it. Upon entering the house, M. saw Mr. Booker running around the corner, toward the staircase leading to the basement. She saw Mr. Booker shortly thereafter holding an "almost lifeless" L. She described L. as being wrapped in a towel and her skin was "very pink." M. noted that L. was wearing a waterlogged diaper and observed feces when she removed the diaper. M. said she grabbed L. from Mr. Booker and took her to the second-floor bathroom, placing her in a bathtub filled with cool water. M. then noticed L.'s skin was peeling off. Mr. Booker told M. that he had left L. in the stand-up shower in the finished basement while he was cooking some food for the two boys. According to M., Mr. Booker stated that he

"just lost track of time, like he just forgot that she was there." She recounted that Mr. Booker was "very nervous" and stated "he's going to be doing time, thirty years."

Neither M. nor Mr. Booker called an ambulance or otherwise sought medical assistance for L. M. indicated that she wanted to call an ambulance, but she was afraid she would lose custody of her children, as well as her housing. She stated that Mr. Booker would not allow her to take L. to the hospital. Accordingly, she and Mr. Booker attempted to treat L.'s burns at home. M. testified that Mr. Booker cleaned L.'s burns with Dawn dish soap and wrapped her in dry gauze from a home first-aid kit. Both M. and Mr. Booker changed L.'s dressings over the next several days, using saline, iodine, warm water and more dry gauze. M. testified that L.'s skin would further peel off as the gauze was removed and that she would scream and have to be restrained during bandage changes.

F. largely corroborated M.'s version of events, testifying that she and M. had gone to the food pantry on the day that L. was burned. She also saw Mr. Booker run downstairs to the basement and then return with L., whose "skin was falling off." F. further confirmed that she and her mother[3] placed L. in a bathtub of cool water. F. stated that she stayed with L. while M. went back downstairs to argue with Mr. Booker. F. acknowledged that she did not attempt to call 911, but that she told her mother three separate times to take L. to the hospital. According to F., her mother loved Mr. Booker and did not want him to go to jail because of L.'s injuries. She confirmed that Mr. Booker assisted with changing L.'s

[3] F. repeatedly referred to M. as her "biological mother," noting that they no longer have a relationship.

dressings, which went on "for a couple months."

After Detective Womack interviewed M. and Mr. Booker at Johns Hopkins in September, she continued her investigation at M.'s home. Detective Womack and her partner, Detective Lane, proceeded to conduct a water temperature test of the basement shower. The test requires two people—one to continuously monitor the temperature readings and keep time and one to act as a scribe, recording the temperature readings at specific intervals on a pre-printed log sheet. Detective Womack stated that the test revealed that the water in the basement shower reached a high temperature of 134.8 degrees in approximately five minutes and fifty seconds.

Michelle Chudow, M.D., a licensed, board-certified pediatrician who specializes in child abuse medicine, was qualified as a prosecution expert. In addition to reviewing L.'s medical charts and the police reports, Dr. Chudow performed a physical examination of L. Dr. Chudow opined that L.'s burns were caused by hot water scalding. She opined that L. had suffered second- and third-degree burns over twenty percent of her body. Dr. Chudow further opined that the burn pattern on L.'s skin indicated that the water had flowed down her body, creating deeper, more severe burns on her upper back, chest, and shoulders than the burns found on L.'s lower torso. According to Dr. Chudow, the burn pattern showed patches of relatively unmarred skin along L.'s neck, which was "consistent with her pulling her shoulders up and protecting that area, which would indicate that the burn had to have been going on long enough for her to do that." Dr. Chudow stated that "the degree of depth of burn" on L.'s torso "implied that water had been flowing onto that area at a high

temperature . . . for a while." According to her, the burn pattern suggested that a handheld showerhead had been held close to L.'s skin, causing spray and splash burns along L.'s jawline and face. Relying on "very well-defined tables put out by [the] Consumer Product Safety Commission and things like that," Dr. Chudow concluded that a water temperature of 134.8 degrees (as found by Detective Womack) would cause a third-degree burn to skin within approximately fifteen to thirty seconds of contact.

Although L.'s burns had healed by the time of her physical examination, Dr. Chudow noted that L. had "significant scarring, disfiguration, [and] permanent injury to her body." In her opinion, L.'s burns were not treated properly. She testified that L. should have been treated immediately at a burn center, which would have included an evaluation for skin grafting, plus administration of IV fluids, IV antibiotics and possibly IV antifungal medication. Dr. Chudow further testified that the multiple dressing changes performed by M. and Mr. Booker in the home would have been "exquisitely painful." If L. had been treated at a hospital, Dr. Chudow opined that L. would have been given sedation and pain medication to manage the discomfort from the dressing changes. Because of L.'s developmental disabilities and the "prolonged exposure" to hot water, Dr. Chudow opined, to a reasonable degree of medical certainty, that L.'s burns were the result of "inflicted burn trauma."

At the close of the State's evidence, the State nol prossed the charges of first-degree assault, false imprisonment, and neglect of a minor. Mr. Booker moved for a judgment of acquittal on the remaining counts, which the court denied. At the end of the third day of

trial, after the jury was dismissed for the day, the court gave the prosecutor and defense counsel its proposed jury instructions for overnight review. When the court reconvened the following morning, defense counsel advised the court that Mr. Booker would exercise his right not to testify and would rest his case as soon as the jury was seated. At that time, defense counsel renewed his motion for judgment of acquittal, which the court again denied. The prosecution and the defense were then given the opportunity to discuss or object to the proposed jury instructions. Defense counsel objected to both the instruction and the accompanying verdict sheet provision that advised the jury that it "may not consider the charge of first-degree child abuse unless and until [it has] found the Defendant guilty of second-degree child abuse." No other objections were made at that time to the court's proposed jury instructions.

After the jury returned to the courtroom, Mr. Booker formally rested. The alternate juror was dismissed and the court instructed the jury, using the proposed instructions previously reviewed by and discussed with counsel. Only after the court delivered the jury instructions did Mr. Booker object to supplemental language to the pattern child abuse instruction, stating that it "went beyond the actual standard instruction and added some other information." The State clarified that the language had been part of its requested instruction and was derived from Maryland caselaw. The court overruled Mr. Booker's objection, concluding that the instruction was a correct recitation of the law and that a deviation from the standard instructions was warranted. The jury found Mr. Booker guilty of first-degree child abuse and second-degree assault. As noted, Mr. Booker received a

time-served sentence for the assault conviction, but was sentenced to twenty-five years' imprisonment for the first-degree child abuse conviction.

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

I.

A. Standard of Review

A trial court's admission of expert witness testimony is reviewed for abuse of discretion. "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute ground for reversal." *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020) (quoting *Roy v. Dackman*, 445 Md. 23, 38-39 (2015)). This Court will not reverse a trial court's decision concerning the admission of expert testimony "simply because the . . . court would not have made the same ruling." *State v. Matthews*, 479 Md. 278, 305 (2022) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)). Rather, "[a]n abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Id.* (quoting *Williams v. State*, 457 Md. 551 (2018)).

B. Admissibility of Expert Testimony

During voir dire, the State asked Dr. Chudow about her employment, licenses, medical education, experience with child abuse cases, and offered her curriculum vitae. Defense counsel proceeded with his voir dire of Dr. Chudow, asking her multiple questions about her qualifications as a child abuse expert and whether she had any specific training to differentiate between an intentionally inflicted burn and an accidental burn. Dr. Chudow

responded that "[t]here are certain patterns that are more consistent with inflicted trauma versus patterns that are more consistent with accidental trauma," noting the existence of "many peer reviewed literature articles" on the subject. At the end of his voir dire, defense counsel interposed the following nondescript objection: "I object to this witness." The court did not request a basis for the objection, nor did defense counsel offer one. The objection was promptly overruled and the court accepted Dr. Chudow as an expert in the area of "child abuse, pediatric emergency medicine." The court's expert designation was consistent with Dr. Chudow's testimony that her expertise was "pediatrics, child abuse."

Mr. Booker now mounts a challenge to the admissibility of Dr. Chudow's testimony under Maryland Rule 5-702 and *Rochkind v. Stevenson*, 471 Md. 1 (2020), asserting that "the circuit court should not have permitted Dr. Chudow's testimony, because the State did not demonstrate [whether]: i) the process or methodology for determining child abuse is reliable, and ii) the reliability of its application in this case."

We reprint verbatim Mr. Booker's appellate argument on this issue as set forth in his opening brief:

> The [c]ircuit [c]ourt did not find Chudow's testimony would assist the jury [to] understand the evidence or determine a fact in issue. *See* Md. R. 5-702. Nor did the [c]ircuit [c]ourt determine: (1) whether Chudow was qualified as an expert by knowledge, skill, experience, or education, (2) the appropriateness of Chudow's testimony about child abuse, and (3) whether a sufficient factual basis existed to support Chudow's testimony.
>
> The [c]ircuit [c]ourt did not find i) the process or methodology for determining child abuse is reliable, and ii) the reliability of its application by Chudow in this case. *See Rochkind*, 471 Md. 1. Indeed, the [c]ircuit [c]ourt could not do so, because the State did not demonstrate those things.

> Instead, the [c]ircuit [c]ourt overruled Booker's objection and accepted Chudow as an expert in "child abuse, pediatric emergency medicine."

The State asserts that Mr. Booker's claim is unpreserved, contending that "[m]erely objecting for the record to the court's acceptance of the expert witness did not suffice to preserve an objection on grounds other than the expert's qualifications and it did not preserve an objection to her testimony on particular topics." Mr. Booker asserts that a general objection preserves all available grounds, and that because he made a general objection below, his appellate claim that Dr. Chudow's testimony was inadmissible on the basis of a 5-702 challenge is preserved. We agree with the State that Mr. Booker's appellate argument is not preserved.

Under Md. Rule 5-702,

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and
>
> (3) whether a sufficient factual basis exists to support the expert testimony.

Md. R. 5-702.

"To qualify as an expert, one need only possess such skill, knowledge, or experience in that field or calling as to make it appear that [the] opinion or inference will probably aid the trier [of fact] in his search for the truth." *Morton v. State*, 200 Md. App. 529, 545

(2011) (quoting *Thanos v. State*, 330 Md. 77, 95 (1993)). Prior to offering Dr. Chudow as an expert, the State questioned her extensively about her educational background and her specialized experience in child abuse pediatric medicine. Defense counsel took the opportunity to voir dire Dr. Chudow, focusing his questions on any training she possessed that allowed her to make a determination regarding the cause of a child's injuries, whether inflicted or accidental. Defense counsel's voir dire concluded with questions about Dr. Chudow's fees related to her expert testimony. After completing his voir dire, defense counsel stated, "No further questions. I object to this witness." As noted, the court overruled the objection and accepted Dr. Chudow "as an expert in the area of child abuse, pediatric emergency medicine." To the extent Mr. Booker argues on appeal that Dr. Chudow lacked the qualifications to provide expert testimony as required by Rule 5-702(1), we see no error or abuse of discretion in the court's acceptance of her as an expert in pediatric emergency medicine generally, and the field of child abuse within that discipline.[4]

Mr. Booker's principal (if not only) argument, raised for the first time on appeal, is based on *Rochkind v. Stevenson*, 471 Md. 1 (2020). Citing *Rochkind*, Mr. Booker asserts that the circuit court erred because it "did not find [whether] i) the process or methodology for determining child abuse is reliable, and ii) the reliability of its application by [Dr.] Chudow in this case."[5] In *Rochkind*, the Supreme Court of Maryland formally adopted

[4] At oral argument, appellant's counsel stated that Mr. Booker was not challenging Dr. Chudow's qualifications as an expert.

[5] In his reply brief, Mr. Booker notes that he objected to the admission of Dr. Chudow's written reports and stated "She's testifying." Mr. Booker clarifies that the basis

Daubert[6] as the evidentiary standard for the admission of expert testimony and listed ten factors a trial court may consider in determining whether expert testimony is relevant and admissible. 471 Md. at 26.

We note that no *Rochkind* hearing was requested or held in the circuit court. In concluding that Mr. Booker failed to preserve any claim pursuant to Rule 5-702 or *Rochkind*, we find *Addison v. State*, 188 Md. App. 165 (2009), instructive. In *Addison*, the appellant had been tried and convicted of first-degree assault and wearing and carrying a dangerous weapon. *Id.* at 167. On appeal, Addison asserted that "the trial court erred in permitting expert testimony that was not reliable" and was otherwise in contravention of *Frye*/*Reed*.[7] *Id.* at 167-68 n.1. At trial, Addison "objected generally" to the testimony of the expert witness concerning the effects of domestic violence on victims. *Id.* at 175. This Court considered whether Addison's general objection, which the Court noted was "not the model of clarity," was sufficient to allow the Court to independently apply the *Frye*/*Reed* test. *Id*. at 176, 180. We held that it was not. "[I]f no request for a *Frye*/*Reed* analysis is made [before or at trial], the issue is waived and is not subject to appellate review." *Id.* at 181. The Court explained its rationale:

> Addison contends that we should review the testimony offered by Sassoon and subject it to the *Frye/Reed* analysis. If Addison believed that

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of his objection was "because [Dr.] Chudow should not have been testifying" under *Rochkind*. He does not argue in his appellate briefs that Dr. Chudow's reports were inadmissible on any other ground.

[6] *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

[7] *Frye v. U.S.*, 54 App. D.C. 46 (1923); *Reed v. State*, 283 Md. 374 (1978).

> Sassoon was offering an expert opinion requiring such a hearing, he should have requested that hearing prior to trial. *See Clemons* [*v. State*, 392 Md. 339, 346-47 n.6 (2006)] (noting that the best practice regarding challenges to evidence based on *Frye/Reed* is to hold the hearing outside the presence of the jury and prior to trial).
>
> The only pre-trial motion or hearing on this issue was held to keep out the evidence of Addison's prior violent history and prior acts of domestic violence. Only when the testimony of Sassoon was offered was an objection to that type of testimony raised. Even then, the grounds for the objection were vague. No *Frye/Reed* analysis was requested, or even hinted to, at trial. While neither Addison's objection to, nor the State's explanation of, the testimony of Sassoon were "models of clarity," they clearly were not *Frye/Reed* tests or arguments.

Id. at 180-81 (footnote omitted).

Here, Mr. Booker never raised any challenge in the circuit court to the reliability of the "process or methodology for determining child abuse," nor the "reliability of its application by Chudow." In our view, the trial court could not have reasonably understood defense counsel's objection at the end of voir dire to "this witness" as a *Rochkind* challenge. Although *Addison* involved a *Frye-Reed* analysis, the same preservation principles apply to a *Rochkind-Daubert* analysis. In the parlance of *Addison*, "the issue of a [*Rochkind*] test or analysis was not raised at all until appeal; accordingly, we decline to consider the issue, as failure to request a [*Rochkind*] hearing waives the right to appellate review." *Addison* at 184.[8] Here, too, we conclude that any *Rochkind-Daubert* challenge is unpreserved.

[8] Mr. Booker's failure to raise his concerns about Dr. Chudow's methodology and reliability in the circuit court is particularly glaring in that Dr. Chudow's thorough written report was provided to him in discovery and that Mr. Booker retained his own expert on the subject.

II.

A. Standard of Review

"On review of a trial court's ruling granting or denying a proposed jury instruction, 'we consider whether the instruction was generated by the evidence, whether it was a correct statement of law, and whether it otherwise was fairly covered by the instructions actually given. We review the trial court's decision . . . under an abuse of discretion standard." *Johnson v. State*, 223 Md. App. 128, 138 (2015) (quoting *Gimble v. State*, 198 Md. App. 610, 627 (2011)).

B. The Court's Modified Jury Instruction as to Child Abuse

The trial court, upon request by the State, modified the pattern jury instruction for first- and second-degree child abuse to include the following language derived from *State v. Fabritz*, 276 Md. 416, 425 (1975): "A parent or person acting legally in the place of a parent is legally obligated to provide necessary medical care to the child." Mr. Booker contends that the court erred in adding this language to the Maryland Pattern Jury Instruction, over his objection, because he is not L.'s biological father and "[t]here is no evidence that Booker had adopted L., or of a court order appointing Booker her legal guardian." Therefore, according to Mr. Booker, he had no "legal authority to act in the place of L.'s parents."

Relevant here, the court instructed the jury that the State must prove "that[,] at the time of the conduct, the Defendant was either a parent, a family member, a member of the household of the child or a person with permanent or temporary custody or responsibility

for the supervision of the child, [L.]" The court further instructed: "[F]amily member means a relative of the child by blood, adoption or marriage" and that "Household member means a person who, at the time of the alleged abuse, lived with or was regularly present in the home of [L.]" Mr. Booker does not challenge these instructions, which are substantially derived from the statute itself. *See* CR § 3-601(a)(3), (b)(1), and (d)(1). As noted, Mr. Booker challenges only the sentence in the instruction that charged that "a parent or person acting legally as a parent is legally obligated to provide necessary medical care to the child." We conclude that the instruction as a whole was a correct statement of Maryland law and, as we shall explain, the court did not err or abuse its discretion in giving the modified instruction in this case.

M. testified that she and Mr. Booker were still legally married at the time L.'s injuries occurred. That undisputed fact made Mr. Booker a family member by marriage, regardless of whether he adopted L. or was her court-appointed guardian. Further, even if he were not a family member by way of marriage, it is undisputed that M. left L. in the care and custody of Mr. Booker when she left the house to go to the food bank. Under Maryland law, a babysitter temporarily has responsibility for the supervision of a child. As our Supreme Court established in *Pope v. State*,

> [T]he parents grant the responsibility for the period that they are not at home, and the sitter accepts it. . . . The consent of the third party in such circumstances is not required; he may not prevent return of responsibility to the parent. But, of course, the third person in whom responsibility has been placed is not free to relinquish that responsibility without the knowledge of the parent. For example, a sitter may not simply walk away in the absence of the parents and leave the children to their own devices.

284 Md. 309, 324 (1979).

In *State v. Fabritz*, the Court held that a parent's failure to obtain medical assistance for her abused child constituted child abuse. 276 Md. 416, 425-26 (1975). The Supreme Court of Maryland discussed *Fabritz* at some length in its opinion in *Degren v. State*, 352 Md. 400 (1999), a case involving the sexual abuse of a minor who was under the care of a babysitter. There, the Court noted that "*Fabritz* clearly applied not only to parents but to those individuals who had responsibility for the child and failed to act in the child's protection." *Id.* at 416.

The *Degren* Court contrasted *Fabritz* with *Pope*, noting that although the defendant in *Pope*, a friend of the mother, was aware that the child's mother was physically abusing him, the evidence did not show that the defendant assumed responsibility for supervision of the child. *Id.* at 416. In *Pope*, the Supreme Court concluded that "Pope's lack of any attempt to prevent the numerous acts of abuse committed by the mother over a relatively protracted period" could amount to cruel and inhumane treatment as defined in the child abuse statute. *Pope*, 284 Md. at 328. Thus, the Court noted that "Pope would be guilty of child abuse if her status brought her within the class of persons specified by the statute." *Id.* Nevertheless, the Court held the evidence insufficient because Pope did not fall within any status identified by the child abuse statute in effect at that time—specifically, Pope was not the child's parent or adoptive parent, nor did she have "permanent or temporary care or custody" of the child. *Id.* at 329. Here, however, Mr. Booker clearly fell within at least one status articulated in the statute pursuant to which he was charged. Because he was

married to M. at the time of the offense, he was a "family member" as defined in CR § 3-601(a)(3) ("a relative of a minor by blood, adoption, or marriage"). The evidence was also sufficient to establish that Mr. Booker qualified as a "household member" as defined in the statute. In short, the relationship to the child that was missing in *Pope* exists in the case at bar. Therefore, the supplement to the jury instruction derived from *Fabritz* directed at individuals having responsibility for a child, though a correct statement of the law, was superfluous and, if anything, advantageous to Mr. Booker.[9] We discern no error or abuse of discretion in the court's jury instructions on this issue.[10]

III.

A. Standard of Review

The standard of review for sufficiency of the evidence challenges is "whether, after reviewing 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." *Neal v. State*, 191 Md. App. 297, 314 (2010). The question before the Court is not "whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt[,]" but rather "whether the verdict was supported by sufficient evidence, direct or circumstantial,

[9] We reiterate that there was also evidence that Mr. Booker accepted responsibility for L. in M.'s absence.

[10] We note that Maryland Pattern Jury Instruction Cr 4:07 for second-degree child abuse includes a Comment referencing *Fabritz*, which reads, "[p]hysical injury includes not only inflicting physical injury directly, but also includes physical injury that results from the failure to prevent the aggravation of physical injury caused by another." MPJI-Cr. 4:07.

which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *State v. McGagh*, 472 Md. 168, 194 (2021) (first quoting *Dawson v. State*, 329 Md. 275, 281 (1993), then quoting *Taylor v. State*, 346 Md. 452, 457 (1997)). This Court defers to the fact-finder's determinations regarding the credibility of witnesses and the resolution of any conflicting evidence. *Pinkney v. State*, 151 Md. App. 311, 326 (2003).

B. The Evidence was Sufficient to Sustain Mr. Booker's Convictions

Mr. Booker argues that the trial court should have granted his motion for judgment of acquittal on first-degree child abuse for three reasons. First, Mr. Booker points to witness testimony that any injury to L. was "accidental" and argues that the State failed to produce any evidence that his act was either "malicious" or "cruel or inhumane" for the purposes of first- and second-degree child abuse. He next argues that, had Dr. Chudow's testimony been excluded, the evidence would have been insufficient. Finally, he argues that the State's evidence was insufficient because "[t]here is no evidence that Booker had adopted L., or of a court order appointing [Mr.] Booker her legal guardian." We find these arguments unpersuasive.[11]

The child abuse 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

[11] Mr. Booker does not challenge the sufficiency of evidence to support his conviction for second-degree assault.

act." Md. Code Ann. (2002, 2021 Repl. Vol.), § 3-601 of the Criminal Law Article. Mr. Booker's argument in his opening brief that the evidence failed to show that he committed a "malicious act" consists of the following five sentences:[12]

> According to Suarez, Booker said it was an accident. According to [M.], Booker kept saying it was an accident. According to F., it was not on purpose, more like neglectful. Even Chudow, whose testimony should have been excluded, conceded she did not know how L. got burned in the shower. Nor did Chudow know who caused the injuries. (internal citations omitted)

Although we acknowledge that there was some testimony to support Mr. Booker's position that the incident was accidental, we reiterate that "[i]n a jury trial, judging the credibility of witnesses is entrusted solely to the jury, the trier of fact; only the jury determines whether to believe any witnesses, and which witnesses to believe." *Riggins v. State*, 223 Md. App. 40, 59 (2015) (quoting *Fields v. State*, 432 Md. 650, 677 (2013)). It is within the province of the jury to "accept all, some or none of the testimony of a particular witness." *Westley v. State*, 251 Md. App. 365, 419 (2021) (quoting *Correll v. State*, 215 Md. App. 483, 502 (2013)). "[W]e do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Titus v. State*, 423 Md. 548, 557 (2011) (quoting *State v. Mayers*, 417 Md. 449, 466 (2010).

The State produced ample evidence to sustain Mr. Booker's child abuse conviction. First, irrespective of how L. was burned, the evidence demonstrated that Mr. Booker's involvement in the *treatment* of her injuries was not accidental and constituted first-degree

[12] Mr. Booker never addresses whether the evidence was sufficient for a rational jury to conclude that his conduct constituted "cruel or inhumane treatment."

child abuse. Dr. Chudow testified that the seriousness of L.'s burns, which put her at risk of death, required treatment in a hospital. According to Dr. Chudow, had L. been treated at a burn center, she would have received pain management during her bandage changes, which she described as being "exquisitely painful." Instead, Mr. Booker and M. treated L. at home for "months," during which L. would have experienced multiple painful dressings of her wounds. M. testified that Mr. Booker was "aggressive" when he changed L.'s bandages, causing L.'s wounds to bleed and resulting in L. crying and screaming during dressing changes. L.'s older sister confirmed this testimony. In addition, Mr. Booker himself stated in the police interview that L. would "scream" when her bandages were changed. Had Mr. Booker and M. obtained appropriate medical care for L. rather than treat her at home, Dr. Chudow concluded that L.'s injuries would have been "significantly less" severe. Viewing the evidence in a light most favorable to the prosecution, a reasonable factfinder could have found this evidence alone sufficient to convict Mr. Booker of first-degree child abuse.

Although Mr. Booker's involvement in L.'s multiple dressing changes and his failure to obtain prompt appropriate medical care were sufficient to sustain his child abuse conviction, we note that the record also supported the State's theory that Mr. Booker directly caused L.'s injuries. There was evidence that Mr. Booker told M. that L. "had a bowel movement in her diaper, and that he put her in the downstairs shower for two minutes to clean her off." Dr. Chudow specifically described L.'s burn patterns, and opined that L. was trying to protect herself from the hot water by shrugging her shoulders. Dr. Chudow

further opined that it was unlikely that L.'s injuries were self-inflicted because the injuries were caused by prolonged exposure to hot water, *i.e.*, L. would have reflexively moved away from a brief accidental splash of hot water. The photographs of L.'s extreme burns corroborate Dr. Chudow's view that L. would not have voluntarily subjected herself to a sustained flow of hot water. Moreover, it is uncontroverted that L. is a non-verbal autistic child who required assistance to take a shower. Finally, shortly after M. arrived home and observed Mr. Booker holding L. in a towel, Mr. Booker told M. that "he's going to be doing time, thirty years," as a result of the incident. The jury could consider that statement—in conjunction with evidence that Mr. Booker refused to allow M. to take L. to the hospital—to conclude that Mr. Booker himself recognized that he was responsible for L.'s injuries.

Mr. Booker next argues that "the [c]ircuit [c]ourt should have recognized that without Chudow's erroneously admitted testimony and report, there is no evidence of injury." We can summarily dispense with this argument because we have held in Section I. above that Mr. Booker did not preserve any objection to the reliability or methodology of Dr. Chudow's opinions. Our review of the sufficiency of the evidence allows us to consider the evidence that was before the jury in its consideration of the child abuse and related charges, even if such evidence was improperly admitted. *Emory v. State*, 101 Md. App. 585, 629-30 (1994) (citing *Lockhart v. Nelson*, 488 U.S. 33 (1988)).

Finally, Mr. Booker argues that because he is neither L.'s biological father nor her court-appointed guardian, there is "no evidence" to show that he had legal authority to seek

medical care for L. "in place of [her] parents." We can likewise summarily dispose of this argument because this is merely a rehash of the argument that we rejected in Section II. of this opinion.

For these reasons, we reject Mr. Booker's insufficiency of evidence arguments and affirm.

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