Circuit Court for Howard County
Case No. C-13-CR-22-000339

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0060

September Term, 2023

AMIT CHENNAGIRI RAO

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: November 20, 2023

*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).

Appellant, Amit Chennagiri Rao, was convicted in the Circuit Court for Howard County of second-degree child abuse and second-degree assault. Appellant presents the following questions for our review:

> 1. "Was the evidence insufficient to prove beyond a reasonable doubt that [E.R.]'s[1] injuries were sustained as a result of cruel or inhumane treatment or as the result of a malicious act?
> 2. Does the trial court's clearly erroneous finding of fact render the evidence insufficient to support a conviction for second-degree assault conviction as well?"

We find no error, and shall affirm.

I.

Appellant was indicted by the Grand Jury for Howard County of second-degree child abuse, first-degree assault, and second-degree assault. After a bench trial, the court found appellant guilty of second-degree child abuse and second-degree assault and not guilty of first-degree assault. At sentencing, the court merged the two counts on which appellant had been convicted and sentenced appellant to a term of incarceration of fifteen years, all but 3 years suspended, followed by 5 years of probation.

On June 22, 2023, appellant called 911 to request an ambulance for his twelve-year-old daughter, E.R. He indicated that she had cuts to her face, and, when asked how she got them, replied "I threw a glass at her." At the Howard County Hospital, E.R. was treated for severe lacerations to her face and minor lacerations to her arms. Appellant informed

[1] We have replaced the names of both minors referenced in this opinion with random initials.

the emergency staff that "he threw a glass at [E.R.] because they were in an argument and it hit her in the face."

Prior to trial, E.R. offered to the police several accounts of the events. She gave an initial witness statement in which she asserted "[W]e were arguing again and at some point [he] threw water at me, [I] threw water back and then he threw the glass cup." In an interview with the police she stated "[M]y dad and I were arguing, and he threw a glass cup at my face." When asked follow-up questions, she stated as follows:

> [QUESTION]: Okay. All right. So what happens after you throw water at him?
>
> E.R.: Then he throws the glass at my face.
>
> [QUESTION]: Ok. And I can see it struck your face. All right. What happened after the Mason jar struck your face? Do you remember what happened to the Mason jar?
>
> E.R.: I think it just—it just laid broken on the ground.
>
> [QUESTION]: Okay. So the Mason jar hit you and then fell to the ground and broke?
>
> E.R.: Yes.

The police spoke to E.R.'s sister, Q.R., several times prior to trial. In Q.R,'s witness statement to the police, she stated, "[H]e threw water on her, then threw a glass cup at her. It shattered and hit multiple spots on her face leaving cuts and her bleeding." In her interview with detectives, she stated as follows:

> Q.R: I like turned away for a second and then to like get up, but then I turned back as I was leaving the room. And I saw like the cup go out of his hand and then I heard like a scream.

[QUESTION]: Okay.

Q.R: I didn't like see it hit her face at first, because she like didn't cry at all during the whole time. She looked fine. So at first I thought he just threw a cup at her and it like broke on the floor, but I didn't realize that it had like hurt her.

Both E.R. and Q.R also testified at trial. E.R. testified on direct examination that she had been in the kitchen with her father, having a fight over loading the dishwasher. She stated that she was about two feet away from him. Each of them was holding one of the Mason jars that the family used as drinking glasses. When asked on direct to recount exactly what had happened when her father threw the Mason jar she testified as follows:

[STATE]: When the glass hit your face, what happened to the glass?

E.R.: It fell to the floor.

[THE COURT]: I'm sorry ma'am I can't hear you.

E.R.: It fell on the floor.

[THE COURT]: It fell on the floor.

[STATE]: Okay.

[THE COURT]: After it hit your face?

E.R.: Yes.

[STATE]: Did it stay intact?

E.R.: No.

On cross-examination, defense counsel asked E.R. if the Mason jar had hit her face, fallen on the ground, and then broke. E.R. confirmed this version of events. Defense

counsel showed E.R. copies of her witness statement in an attempt to impeach her credibility and then introduced a copy of her interview. Once again, on redirect, the State asked E.R. what happened. She testified as follows:

> [STATE]: Okay. And defense attorney asked you a question saying the glass hit your face and then it fell to the ground. Is that an accurate description of how it happened? And then the glass broke on the floor, I'm sorry.
>
> E.R.: Yes.
>
> [STATE]: Okay so how did the glass cut your face?
>
> [DEFENSE]: Objection.
>
> [THE COURT]: No, I'll allow it.
>
> E.R.: Like it hit this part of my face and then it broke.
>
> [STATE]: Okay. Then when it broke what happened with the glass?
>
> E.R.: The glass pieces fell to the ground.
>
> [STATE]: Okay. And how did the glass—then what—how did your face get cut?
>
> E.R.: The shards hit—like sliced.

Q.R testified at trial that she saw her father "throw the cup at [E.R.]" but did not see the cup hit E.R.'s face. She did not testify as to when precisely the glass broke. Once again defense counsel drew her attention to portions of her witness statement and her police interview in an attempt to impeach her credibility.

The State introduced audio of the 911 call in which appellant admitted, "I threw a glass at her," and also introduced E.R.'s medical records and several images of E.R.'s

injuries. The medical records show severe lacerations to E.R.'s face. The largest laceration measured 4 cm by 3 cm and cut through the underlying tissue of her face, requiring multiple sutures. The medical records indicate, however, that there was no visible swelling or redness around the injury. Medical personnel were not concerned that there could be fractures to E.R.'s facial bones at the site where the Mason jar allegedly struck her.

Appellant testified in his own defense at trial. He testified that E.R. had thrown water from the Mason jar she was holding and that he splashed water back at her. He said that she threw her Mason jar at him and he held up his cup to block his face. He stated that E.R.'s jar shattered against his and that when E.R.'s jar broke, the shards flew back and hit E.R. in the face.

The court made factual findings. The court credited E.R.'s testimony that appellant had thrown a Mason jar and hit her in the face, that the jar had hit her in the left side of the face, that the jar broke against her face, and that the glass from the jar sliced her face. The court acknowledged that E.R. had answered "yes" to a leading question asserting that the Mason jar broke when it hit the ground but found that, while some of the glass had broken when it hit the ground, the glass had shattered when it hit the left side of E.R.'s head. The court further found that it was implausible that two Mason jars simply collided in mid-air only for one to be completely smashed and one to be completely undamaged. As a result, the court did not credit appellant's version of events.

The court found appellant guilty on two counts and sentenced appellant as described above. This appeal timely followed.

II.

Appellant argues that the circuit court's finding that the jar shattered on impact with E.R.'s face was clearly erroneous. Appellant asserts that a glass Mason jar that strikes a person's face with sufficient force to shatter on impact will leave evidence of blunt force trauma on the person's face including bruising, swelling, redness, broken teeth, a concussion, or fractures. E.R.'s medical records document no redness or swelling aside from the lacerations and do not indicate any of the other injuries appellant claims should have been present. Appellant notes that if there was medical evidence that an object as large and solid as a Mason jar had hit E.R.'s face, one might expect the medical personel to at least run scans for fractures around the impact site. Appellant urges us to conclude, based on E.R.'s lack of blunt force trauma symptoms, that it is impossible for a Mason jar to have hit and shattered against her face. Appellant argues that this alleged physical impossibility, in conjunction with E.R.'s inconsistent statements about when the Mason jar broke, must leave us with a firm conviction that the Mason jar did not, in fact, break against E.R.'s head.

Appellant further argues that the evidence was insufficient to prove that appellant had thrown a Mason jar at E.R.'s face at all. Appellant argues that if appellant threw the Mason jar at his daughter's face and glass shards caused her lacerations, then, either the jar must have broken upon impact with her face, or the jar must have hit her face and fallen to the floor with such force that glass shards flew back up and hit her face. Because appellant argues that the first version of events is impossible (as described above), appellant claims we must accept the second version of events in order to accept that appellant threw the

Mason jar at his daughter's face at all. But appellant claims that if that second version of events were true, the force required to make the jar hit E.R.'s face, fall to the ground, and then bounce back up to face level should have caused blunt force trauma injuries to E.R.'s face. Appellant claims that the second version of events is just as impossible as the first. As a result, with all possibilities exhausted, appellant argues that this Court must conclude he never threw the Mason jar at his daughter's face at all.[2] So, any factual finding for the State regarding the mechanism of E.R.'s injuries is clearly erroneous.

Appellant points to several secondary assumptions made by the trial judge which appellant believes were unsupported by the evidence. Appellant claims that the trial court rested its conclusion on the idea that appellant's other daughter Q.R was "panicked and trying to get out of harm's way," a conclusion not stated explicitly by Q.R Appellant argues that the court based its opinion on the idea that appellant "criticized" his daughter for being too attached to her phone and the court's "shock" at that criticism. Appellant argues that this was an unfair characterization of his description of punishing his daughter by taking away her phone. Finally, appellant argues that the court based its conclusion on the claim that appellant was composed when speaking to the 911 operator. Appellant claims that

[2] Appellant's argument with respect to the Mason jar is a moving target. On the 911 call, he states that he threw a glass at his daughter. At trial, appellant testified that he did not throw the glass at all. In his brief before this Court, appellant argues that he did not throw the Mason jar at his daughter's face. At oral argument appellant's counsel declined to take a position on what had happened, but simply argued that the State's version (i.e., that he threw a Mason at his daughter's face which shattered upon impact) was impossible. We need not resolve these conflicting accounts or determine which of them would constitute second-degree child abuse or second-degree assault because we conclude that there was no clear error in the court's factual finding that appellant threw a Mason jar at his daughter's face and that the jar hit and cut her face.

mistakes he made giving his address to the 911 operator demonstrate that he was not composed.

As a result, appellant argues that the evidence was insufficient to support his convictions for second-degree child abuse or second-degree assault. Appellant argues that, because the mechanism of E.R.'s injuries remains unclear, the State cannot meet its burden of showing that E.R.'s injuries were the result of a cruel and inhumane act, as is required for a showing of second-degree child abuse. Similarly, appellant argues that the State cannot prove that the offensive contact with E.R.'s face was the result of an intentional or reckless act of appellant, and therefore, the State cannot prove second-degree assault.

The State argues that the evidence presented to the trial court was sufficient to establish that appellant threw the glass Mason jar at his daughter, that the jar hit her in the face, that it shattered on impact, and that the shattered glass caused her lacerations. The State points to appellant's statements on the 911 call and at the hospital asserting that he threw the jar and Q.R's statement that she saw it leave his hand to support the State's argument that appellant threw the jar. The State relies on E.R.'s repeated and consistent claims that appellant threw the jar at her and that it hit her in the face for the claim that appellant intentionally caused the jar to make contact with E.R.'s face. The State further relies on E.R.'s redirect testimony for the claim that the jar shattered upon impact with E.R.'s face and argues that it was within the trial judge's discretion to resolve any conflicting testimony on this point.

As to appellant's sufficiency arguments, the State counters that the miscellaneous complaints appellant lodges regarding the trial judge's description of his second daughter's

decision to leave the room, E.R.'s phone use, and appellant's 911 demeanor are not preserved because appellant did not object to these factual findings when the trial judge made them. Even if preserved, the State contends that they are not relevant because these tangential concerns do not change the fundamental finding that appellant threw a Mason jar at his daughter at close range. That finding, the State argues is sufficient to support appellant's conviction on both counts.

III.

When an action is tried without a jury in the circuit court, we review the case on both the law and the evidence. Md. Rule 8-131(c). We do not set aside the factual determinations of the trial court unless they are "clearly erroneous." *Id.* No deference is afforded to the court's legal decisions. *Johnson v. State*, Md. App. 46, 56 (2020). A factual finding is clearly erroneous when, although there may be evidence to support it, "the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed." *Kusi v. State*, 438 Md. 362, 383 (2014) (quoting *Goodwin v. Lumbermens Mt. Cas. Co.*, 199 Md. 121, 130 (1952)) (cleaned up). Where, instead, there are competing inferences available based on the evidence presented, and multiple sets of inferences are rational, we do not second guess which inferences the fact finder chose to draw. *Smith v. State*, 415 Md. 174, 183 (2010). Nor do we second guess the trier of fact's evaluations of the credibility of witnesses. *State v. Morrison*, 470 Md. 86, 105 (2020).

The standard of review for 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. *Scriber v. State*, 236

Md. App. 332, 344 (2018). As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Id*. at 344. The question before us is not whether the evidence should have or probably would have persuaded the fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Id.* (emphasis in original).

In order to prove second-degree child abuse, the State must show that appellant, a member of E.R.'s family, caused physical injury to E.R., 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." Md. Code Ann., Crim. Law § 3-601(a)(2). The State need not show that the defendant intended to harm the child. *Fisher v. State*, 367 Md. 218, 270 (2001). Rather, the State must show that appellant intended conduct that led to the relevant type of injury. *Id.* at 272. In order to prove second-degree assault, the State must show that appellant caused offensive physical contact with E.R., that the contact was the result of appellant's intentional or reckless act, and that the contact was not consented to by E.R. or otherwise legally justified. *Nicolas v. State*, 426 Md. 385, 403 (2012).

We agree with the trial judge that throwing a Mason jar at close range at the face of a twelve-year-old, causing severe lacerations, qualifies as both second-degree child abuse and second-degree assault. Neither party contests this proposition. This would be true regardless of whether another child in the room was panicked, regardless of the suitability of previous punishments, and regardless of how composed the perpetrator was when calling 911 afterward. The question before the court boils down to whether the circuit court's

finding that appellant threw a Mason jar at E.R., hitting her in the face, shattering the jar, and causing severe lacerations was clearly erroneous.

Appellant relies heavily in his claim that the court's findings were erroneous on conjecture about what the medical evidence *should* show if the State's version of events were true. He asks this Court to disregard his daughter's testimony in favor of the assumption—supported by no evidence on the record—that, if appellant had thrown the Mason jar with enough force to shatter it on E.R.'s face or enough force that the jar hit her face, fell to the floor, and sent glass shards back up to her face, E.R. would present certain injuries. This requires the assumptions that (a) impact with enough force to shatter glass always produces bruising, swelling, etc. (b) the bruising, swelling, etc. always presents itself in the time frame in which E.R. was examined at the hospital, and (c) the bruising, swelling, etc. would be apperant around the deep lacerations E.R. presented, visible in the images the State produced.

But the trial court is not required to make all of those assumptions or inferences in favor of appellant. Nor are we required to accept all of those assumptions or inferences and find the trial court's reasoning clearly erroneous. The evidence in the record supports the findings of the trial judge and we do not substitute our view of the facts for that of the trial judge, even if we agreed with appellant, which we do not. Appellant is wrong in his premise that the medical records make E.R.'s version of events impossible. We do not conclude that the trial court's decision that the medical records did not rule out E.R.'s version of events clearly erroneous.

The trial court is charged with resolving any apparent conflict between the absence of bruising, swelling, etc. and the testimony of E.R. Where there is an apparent conflict between the rational inferences suggested by the evidence, we defer to the fact finder's determination of which inferences to draw. *Fuentes v. State*, 454 Md. 296, 307-08 (2017). Here, at best for appellant, there were competing inferences. The testimony of E.R. pointed to the inference that appellant threw a Mason jar at his daughter with sufficient force to shatter the jar on her face. The medical records, at best, point to the inference that E.R. was not struck with a sufficient amount of force. It was up to the trial judge to resolve the conflicting evidence.

Appellant analogizes to *Att'y Grievance Comm'n v. Maignan*, 390 Md. 287, 295 (2005). In *Maignan*, the circuit court accepted the testimony of witnesses which was "so contrary to the unexplained, unimpeached, unambiguous documentary evidence as to be inherently incredible and unreliable," and as a result, the findings were reversed on appeal. *Id.* Appellant argues that we should treat the absence of medical evidence in this case as similarly persuasive, making it error to accept E.R.'s testimony. But in *Maignan*, the witness testimony directly conflicted with clear financial records produced by the witness's bank. *Id.* The truth of the matter was plain simply by looking at the bank records, and the circuit court chose to disregard it.

Here there is no such unambiguous evidence as to what the medical evidence would show if E.R.'s version was true. Nor is E.R.'s version of events rendered so implausible that common sense dictates her testimony must be false simply because she lacked swelling, bruising, or fractures around her severe lacerations. As a result, the trial court's

decision to rely upon E.R.'s repeated claims that appellant threw a Mason jar at her, Q.R's claims that appellant threw a Mason jar, and appellant's own claim to hospital personnel that he "threw a glass at [his daughter]" was not clearly erroneous.

Once the court had concluded that appellant threw a Mason jar at his daughter, the confusion in E.R.'s testimony regarding when the jar broke did not render the trial court's factual findings clearly erroneous. When there is conflicting testimony, the fact finder may resolve it. *Fuentes*, 454 Md. at 307-08. A rational factfinder could infer that E.R.'s testimony on redirect that the Mason jar hit her face, broke, and cut her was true. A rational fact finder could infer that E.R.'s testimony on cross-examination, in response to a leading question, that the jar hit her face, fell on the ground, and then broke was the product of a twelve-year-old child answering leading questions. A rational fact finder could infer that, in fact, the jar hit E.R. in the face, fell to the ground, and then lay broken on the ground or, perhaps, shattered further on the ground. The trial court did just that. Such inferences were not clearly erroneous.

The trial court's finding that appellant threw a Mason jar at his daughter at close range, shattering the glass on her face, and giving her severe lacerations was not clearly erroneous. There was sufficient evidence to support appellant's conviction for second-degree child abuse and second-degree assault.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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