

Circuit Court for Prince George's County
Case No.: CT201240X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1734

September Term, 2021

JABARI JAH I TATE

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Kenny, James A, III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 2, 2022

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

Following a jury trial in the Circuit Court for Prince George’s County, Jabari Jahi Tate, appellant, was convicted of reckless endangerment and unlawfully wearing, carrying, or transporting a handgun on his person and in a vehicle based on evidence that he fired a handgun close to three individuals during an altercation. On appeal, he contends that the evidence was insufficient to support his conviction for reckless endangerment because the State did not produce evidence that the gun was operable, that Tate fired the gun, or that he did so in a manner that posed a substantial risk of death or serious physical injury to others. For the reasons that follow, we shall affirm.

BACKGROUND

While driving with his then-girlfriend, Maria Ramos, Tate stopped at a red light behind another car driven by Jessma Avilez-Valdez with Nailea Torres-Bautista in the passenger seat and Jonathan Carrmona and Torres-Bautista’s infant in the backseat. When the light turned green, Avilez-Valdez didn’t move, so Tate honked his horn. In response, Avilez-Valdez started forward. But then Tate pulled his car up next to Avilez-Valdez’s, and the two began arguing.

Shortly thereafter, Tate and Avilez-Valdez pulled into the entrance of a parking lot to fight. Tate then reached into his bookbag, pulled out a gun, and aimed it at Avilez-Valdez’s car. At trial, Torres-Bautista testified that no one in Avilez-Valdez’s car had any weapons, so they decided not to fight and attempted to drive away. But Tate blocked their escape by pulling his car in front of Avilez-Valdez’s. Tate then got out of his car, approached Avilez-Valdez with his hand on the gun he had placed back inside his bookbag, and punched Avilez-Valdez in the face.

Seeing this, Ramos and Torres-Bautista got out of their cars and started their own fight. Both Ramos and Torres-Bautista testified that they heard multiple gun shots. Neither one saw the source of the shots, but Torres-Bautista testified that they left her ears ringing. Ramos testified she did not have a gun at the scene. No one was hit, but the gunfire quickly disbursed the combatants.

DISCUSSION

To convict Tate of reckless endangerment, the State had to prove that: (1) he engaged in conduct that created a substantial risk of death or serious physical injury to another; (2) a reasonable person would not have engaged in that conduct; and (3) he acted recklessly. *Jones v. State*, 357 Md. 408, 427 (2000). Because this case involved a firearm, the State also had to prove it was operable. *Thompson v. State*, 229 Md. App. 385, 415 (2016).

In reviewing whether the evidence was sufficient to convict Tate, we must “determine ‘whether . . . any rational trier of fact could have found the essential elements of [reckless endangerment] beyond a reasonable doubt.’” *Williams v. State*, 251 Md. App. 523, 569 (2021) (emphasis in original) (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)). Put differently, “the limited question before us is not ‘whether the evidence should have or probably would have persuaded [most] fact finders but only whether it possibly could have persuaded any rational fact finder.’” *Smith v. State*, 232 Md. App. 583, 594 (2017) (emphasis omitted) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004)). We conduct our review “keeping in mind our role of reviewing not only the evidence in a light most

favorable to the State, but also all reasonable inferences deducible from the evidence” in the same light. *Smith v. State*, 415 Md. 174, 185–86 (2010).

When assessing sufficiency, we do not discriminate between direct and circumstantial evidence. *Williams*, 251 Md. App. at 569. That said, circumstantial evidence must do more than just arouse suspicion and leave room for conjecture; it cannot require the jury to resort to “blind or haphazard speculation.” *Cerrato-Molina v. State*, 223 Md. App. 329, 333 (2015). *See also Smith*, 415 Md. at 185. The distinction between when circumstantial evidence leads to reasonable inferences versus improper speculation is the heart of this case.

We first address whether the jury could have reasonably inferred that Tate fired the shots from his gun. Tate argues that since there was no “testimony as to what was happening at the time [] the witnesses heard the gun fire, the jury may have speculated that” the shots came from Tate’s gun. Put another way, Tate’s argument is that because there was no direct evidence he fired the gun, a jury could have concluded the shots came from someone else’s gun—*i.e.*, another inference was possible—therefore no rational jury could have inferred they came from his. But choosing between these inferences is precisely—and exclusively—the role of the jury. *Ross v. State*, 232 Md. App. 72, 98 (2017). We do not second guess their determination so long as the inference is supported by the evidence. *Smith*, 415 Md. at 183. We conclude that it was.

Here, Tate had previously aimed his gun at the victims, approached them with his hand on the gun, and had started fighting shortly before the shots were fired. Moreover, both Ramos and Torres-Bautista testified that Tate was the only person at the scene with a

gun. Even though neither one saw Tate fire any shots, a jury could reasonably infer that the only shots heard came from the only gun known to be at the scene. We need not consider whether it also may have been reasonable to infer that the shots were fired by some unknown third party. *See Smith*, 415 Md. at 200. The jury determined otherwise. Even if Tate were not a “necessary or inescapable choice,” he was at least a “reasonable and possible” one. *Neal v. State*, 191 Md. App. 297, 318 (2010). We therefore defer to the jury’s finding that Tate fired the shots from his gun.

Accepting this finding, Tate’s remaining contentions sort themselves out. To fire, a gun must be operable. Therefore, because the jury reasonably inferred that Tate fired his gun, they implicitly found it was operable. *See Thompson*, 229 Md. App. at 415 (permitting circumstantial evidence of operability). Finally, the jury also could have reasonably found that Tate fired the gun close enough to the victims to endanger them: the shots occurred after Tate and Avilez-Valdez had started fighting, and the gun was fired close enough to Torres-Bautista to leave her ears ringing. The absence of testimony on where the gun was aimed when fired is irrelevant. *See Perry v. State*, 229 Md. App. 687, 706 (2016) (“We cannot conclude . . . that not knowing the exact direction [the] gun fired . . . precluded a jury from finding reckless endangerment.”). Therefore, the evidence was sufficient to support Tate’s conviction for reckless endangerment.

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