

Circuit Court for Washington County
Case No. 21-K-16-52230

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1264

September Term, 2016

MATTHEW ANTHONY FOTTA

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 3, 2017

*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 bench trial in the Circuit Court for Washington County, Matthew Anthony Fotta, appellant, was convicted of home invasion, first-degree assault of Jordan Timberlake (hereinafter “Jordan”), four counts of second-degree assault, and related offenses. Fotta raises a single question: Is the evidence sufficient to sustain the conviction for first-degree assault? For the reasons that follow, we affirm.

At trial, the State called Belinda Timberlake (hereinafter “Belinda”), who testified that, at approximately 1:00-2:00 a.m. on December 29, 2015, she was “in [her] kitchen doing dishes,” and her son Jordan was in the living room with his friends, Nicholas Rowe and Cody Turner. Hearing a knock at her door, Belinda opened the door and saw “someone . . . running from [the] door.” A second man, who was “standing against the side of the door,” punched Belinda in her face, held a gun to her head, and told her “not to say a word.” When Belinda “screamed for” Jordan, four or five men wearing bandanas over their faces and “holding big machetes” and knives entered the home.

The men ordered Belinda, Jordan, and Jordan’s friends to sit on the floor of the dining room, empty their pockets, and “put everything on the table.” As some of the men “threaten[ed] everybody with the gun and machetes,” two others went into the “front room” and placed some of Jordan’s property, including a “PlayStation” and “movies,” into a bag. When Jordan “started arguing with” the men, the man “that was holding the gun” struck Jordan with the gun, which broke “into pieces.” Jordan “started fighting with the guys,” and Belinda ran outside and “scream[ed] for someone to call 911.” When the assailants exited the home, Belinda “saw one of the guys with their face mask completely off” and recognized him as Fotta, who was “one of [Jordan’s] friends” and “several days [earlier]

had stayed at” the home. During redirect examination, Belinda testified that the men “actually did use those machetes,” and she was “afraid that they would use those machetes on” her.

The State next called Jordan, who testified that when the assailants entered the home, they asked “where the drugs were.” Two of the men had machetes and “were waiving them around.” During his struggle with the assailants, Jordan “tried to catch a machete,” which “cut up [his] hand real bad.”

The State next called Rowe, who testified: “Jordan started to fight the one guy off and he got pistol whipped, the pistol broke and the other dude went to swing the machete at him and he caught it. They fought for a little bit then they ran out, the[y] left the machete there.” During redirect examination, Rowe testified: “Jordan was in the altercation with the one guy and that guy had [the machete] like raised up like he was ready to swing it if he had to.” When asked whether he “would have actually seen somebody swing a machete at” Jordan, Rowe replied: “Right, and he caught it.”

The State also called Hagerstown City Police Detective Jason Dietz, who testified that, on the day after the offenses, he interviewed Fotta. During the interview, Fotta stated that a man named Jacob Cunningham called Fotta and asked “if [he] knew who [they] could rob.” Fotta replied: “I know a few people.” Cunningham picked Fotta up, and the pair, accompanied by four other men, “drove around for a little bit and pointed at a few houses.” Fotta pointed out the Timberlakes’ home because Rowe, who was Jordan’s roommate, was an “asshole” and “a cocky, arrogant piece of shit that always wants to down [Fotta] in front

of [him] and behind [his] back.” Fotta told the men: “[I] know he has a little bit of tree. He might have some cash.”

When the group arrived at the home, Fotta “was the one who knocked on the door.” Four members of the group then “went inside and [Fotta] stood outside.” Cunningham, who had a machete, was “one of the ones that went inside.” A second man also had a machete “with a serrated edge.” When Belinda exited the home and recognized Fotta, he “took off and ran back to [his] place.” Although Fotta was “supposed to get” at least twenty-five dollars from the proceeds of the robbery, he received only a “couple dollars.”

Following the close of the State’s case, Fotta moved for judgment of acquittal of first-degree assault on the ground that defense counsel could not “tell from [Jordan’s] testimony whether [the machete] was swung at him or . . . he grabbed it.” Denying the motion, the court stated:

The machete was actually swung. I don’t think it negates the intent to cause serious physical injury that Jordan put his hand out to, whether he was trying to catch it or whether he was trying to prevent it from meeting other parts of his body. A machete is certainly a weapon that could do serious, if not permanent, physical injury and certainly is a weapon that could cause death if it hits the wrong part of the body. And that could have happened if it hit his arm, if it hit his, certainly if it hit his neck but, but any place on the body that a machete could cause a very deep wound and the statutory language is a person cannot intentionally cause or attempt to cause serious physical injury and I think there was certainly that attempt.

Following argument, the court convicted Fotta of first-degree assault, stating:

[W]hile you’re not a princip[al] in the first degree I think is a princip[al] in the second degree. . . . There was a machete used to, to assault Jordan . . . and the fact that he caught it and the fact that there wasn’t a life threatening injury I don’t think means that there was not an intent to commit a life threatening injury. A machete is certainly a weapon which easily could have permanently physically injured Jordan . . . or killed him. So, I do find you

guilty of . . . First Degree Assault on Jordan . . . as a princip[al] in the second degree.

Fotta contends that the evidence is insufficient to sustain the conviction for two reasons. He first claims that “[t]he evidence is not sufficient to support a finding beyond a reasonable doubt that the first-degree principal had the specific intent to cause serious physical injury to” Jordan. (Boldface omitted.) We disagree. We have stated that, “[a]lthough the State must prove that an individual had a specific intent to cause a serious physical injury, a jury may infer the necessary intent from an individual’s conduct and the surrounding circumstances, whether or not the victim suffers such an injury.” *Chilcoat v. State*, 155 Md. App. 394, 403 (2004) (citations omitted). Here, a machete, as the court observed, “is certainly a weapon that could do serious, if not permanent, physical injury.” Belinda testified that some of the assailants “threaten[ed] everybody with . . . machetes,” and “actually did use those machetes.” Jordan testified that the assailants “were waving [the machetes] around,” and during his struggle with the assailants, Jordan “tried to catch” one of the machetes. Rowe testified that one of the assailants “went to swing the machete at [Jordan] and he caught it.” Finally, Rowe testified that the assailant who injured Jordan “had [the machete] like raised up like he was ready to swing it if he had to.” We conclude that this evidence is sufficient to sustain the court’s inferences that the “machete was actually swung” and that the first-degree principal specifically intended to cause a serious physical injury.

Fotta next claims that “the evidence is not sufficient to support a finding beyond a reasonable doubt that [he] specifically intended to cause serious physical injury to [Jordan]

or knew that the first-degree principal had such intent.” (Boldface omitted.) But, the State was not required to prove that Fotta personally intended to cause serious physical injury to Jordan or knew that the first-degree principal had such intent. The Court of Appeals has stated that “when two or more persons participate in a criminal offense, each is responsible for the commission of the offense and for any other criminal acts done in furtherance of the commission of the offense or the escape therefrom.” *Sheppard v. State*, 312 Md. 118, 121-22 (1988) (citations omitted), *overruled in part on other grounds*, *State v. Hawkins*, 326 Md. 270 (1992). *Accord Diggs & Allen v. State*, 213 Md. App. 28, 90 (2013), *aff’d*, 440 Md. 643 (2014). Here, Fotta explained to Detective Dietz how and why he and the other assailants planned to rob Jordan and Rowe, how they executed the invasion of the Timberlakes’ home, and how the proceeds of the robbery were supposed to be distributed. We conclude that this evidence is sufficient to sustain the conclusion that the first-degree assault of Jordan was done in furtherance of the commission of the home invasion or the escape therefrom, and hence, Fotta is responsible for the commission of the first-degree assault.

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