Circuit Court for Prince George's County
Case No. CJ220140

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1027

September Term, 2023

NKEMDILIM OLUWATOYIN OGUNYE

v.

STATE OF MARYLAND

Graeff,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 13, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a bench trial in the Circuit Court for Prince George's County, Nkemdilim Oluwatoyin Ogunye, appellant, was convicted of two counts of second-degree assault. The first count was for assaulting Cha'lita Tillman with a bottle. The second count was for assaulting Officer Dominiquea Trotter when she attempted to arrest appellant for the first assault. On appeal, appellant contends that there was insufficient evidence to sustain her convictions. For the reasons that follow, we shall affirm.

In reviewing the sufficiency of the evidence, we ask "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." *Ross v. State*, 232 Md. App. 72, 81 (2017) (quotation marks and citation omitted). Furthermore, we "view[ ] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, "[w]e give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

Appellant first contends that there was insufficient evidence to sustain her assault conviction against Tillman because she was acting in self-defense. At trial, Tillman testified that she was getting out of the car at her mother's apartment complex when she "heard somebody belligerent and sounded in distress as they need help." She walked over to the person, later identified as appellant, because she wanted "wanted to aid her[.]" Appellant then "started calling [her] a bitch and yelling and cussing at [her]," which

caused Tillman to stop. Appellant then walked toward Tillman and hit her in the head with a bottle.

We are persuaded that testimony, if believed by the trial court, was more than sufficient to sustain appellant's conviction. *See Reeves v. State*, 192 Md. App. 277, 306 (2010) ("It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction."). Appellant nevertheless asserts that she was acting in self-defense because Tillman was the initial aggressor. To support this claim, she relies largely on her own testimony that she did not hit Tillman with a bottle and that Tillman ran up to her first and begin hitting her with closed fists. But even if we assume that the evidence at trial was sufficient to generate a claim of self-defense, appellant does not contend that the court refused to consider that defense. Instead, appellant essentially asserts that the evidence was insufficient because the State failed to disprove that defense as a matter of law. This contention is meritless. Although appellant was allowed to argue self-defense at trial, the court was "free to believe some, all, or none of the evidence presented" that supported those defenses. *Sifrit v. State*, 383 Md. 116, 135 (2004). And here, the court, as the trier of fact, could reasonably find that appellant did not have reasonable grounds to believe that she was in danger of death or serious bodily harm; that she used excessive force; or that her testimony was simply not credible. Because the evidence did not establish that appellant acted in self-defense as a matter of law, the court did not err in denying appellant's motion for judgment of acquittal with respect to the assault count involving Tillman.

Appellant also claims that there was insufficient evidence to sustain her assault conviction against Officer Trotter because she was defending herself from an unlawful arrest. Specifically, she asserts that her "resistance of the officers' efforts to detain her and close her into the back of the police car did not constitute an assault" because "the arrest was unlawful, having been predicated on actions taken by [her] in the course of defending herself." Again, we disagree.

To be sure, "when confronted with an unlawful, warrantless arrest, one may lawfully resist by resorting to reasonable force." *Weigmann v. State*, 118 Md. App. 317, 330 (1997). However, the "Fourth Amendment permits a government agent to effect a warrantless arrest of a person in a public place for a felony if the arrest is supported by probable cause." *Stone v. State,* 178 Md. App. 428, 439 (2008).

At trial, Officer Trotter testified that she responded to a call for an assault and that when she arrived on the scene Tillman informed her that appellant had approached her aggressively and "hit her over the head with what's assumed to be a glass bottle." Officer Trotter further observed that Tillman had a "severe laceration to her forehead" and that her shirt had blood on it. When Officer Trotter attempted to arrest her, appellant kicked Officer Trotter and spit in her face, which also was depicted on the video footage obtained from her body worn camera. Based on that testimony, the court could reasonably find that Officer Trotter had probable cause to believe that appellant had committed the crime of second-degree assault. *See, e.g., Walters v. State*, 242 Md. 235 (1966) (finding that the police had probable cause to arrest the defendant where the victim reported that her purse was stolen and identified him as the robber).

Consequently, appellant's actions in kicking and spitting on Officer Trotter during her arrest were not legally justified, and there was sufficient evidence to sustain her second assault conviction.

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