

Circuit Court for Wicomico County
Case No: C-22-CR-18-000455

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 442

September Term, 2019

JONATHAN D. STILP

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 5, 2020

*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.

A jury sitting in the Circuit Court for Wicomico County found Jonathan D. Stilp, appellant, guilty of false imprisonment, second-degree assault, reckless endangerment, and use of a firearm in the commission of a crime of violence.¹ The court sentenced him to nine years' imprisonment, suspending all but five years to be served without the possibility of parole, for the firearm offense and to a concurrent term of five years' imprisonment for false imprisonment. The court merged the remaining convictions for sentencing purposes. Mr. Stilp's sole contention on appeal is that the evidence was insufficient to support the conviction for use of a firearm in the commission of a crime of violence. For the reasons to be discussed, we conclude that the evidence was sufficient and, therefore, shall affirm the judgments.

Standard of Review

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) (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

¹ The jury acquitted him of kidnapping, first-degree assault, robbery, and theft.

to observe and assess the credibility of witnesses.” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004))

The Trial

The charges in this case stemmed from an incident between Mr. Stilp and his live-in girlfriend, Cassandra Staymates. Ms. Staymates testified that, on May 30, 2018, she came home from work for lunch and she and Mr. Stilp argued. She then returned to work and that evening she and Mr. Stilp went out to dinner to “talk everything over.” They both had a few drinks with dinner, both became “upset,” and she left the restaurant and walked to a bar. Mr. Stilp followed her to the bar and they had drinks together there, before departing together for another bar. Mr. Stilp, however, became angry when he noticed a text message “from a guy” on Ms. Staymates’s phone, which created “a lot of tension.” They “continued to drink and everything and eventually it just got worse.” Ms. Staymates ultimately left the bar to call an Uber to take her home because she “didn’t want to drive with him” and “have any conflict.” By that time, approximately 1:00AM, they had “many exchange[s] of words” and she was trying to “distance” herself from him. Mr. Stilp, however, followed her out of the bar and “snatched [the] phone out of [her] hand.” He eventually threw the phone back at her and walked away to get his vehicle. While he was gone, Ms. Staymates “went in between the buildings to get out of sight.” But Mr. Stilp returned with his car and found her and physically picked her up and “shoved” her into the vehicle’s passenger’s seat with her “butt . . . on the floorboard of the car” and her “feet up by the dashboard.” While forcing her into the vehicle, Ms. Staymates testified that Mr. Stilp “was telling me to shut the F up and not to move or he would knock my teeth down

my throat and end me.” She related that, although she was crying and pleading with him to stop, he “was just really angry at me” and was “super loud and verbal and kept pushing my head down.”

Mr. Stilp drove to their home. When they arrived at the house, Mr. Stilp pulled her out of the vehicle and they “struggled in the front yard for a bit” because she did not want to go into the house. He eventually forced her inside and placed her on the bed in their bedroom. He was still “super angry” and she related that he “got over top of me and was just screaming in my face and calling me names . . . like fucking bitch, whore . . . and telling me to shut up . . . or he would cause me pain[.]” She was still crying and asking him to stop and then she remembered their dog and told him to take the dog outside “to try to get him away from me.” When he did so, she ran out of the house “to try to get away,” but he caught her and brought her back inside. He was then “more angry” and put her “back on the bed and was making threats again.” Ms. Staymates testified “that’s when the gun, I guess he got the gun,” which he kept in the nightstand by their bed. She related that, “he had [the gun] in his hand, and I knew he had it, and he just continued to yell at me and told me I needed to be quiet and to stay there, basically. And I was just, I was hysterical.”

When asked if Mr. Stilp made any “gesture with the gun” or if “he did anything of significance with that firearm in [her] direction,” Ms. Staymates responded: “I know it was present but I was so scared and terrified. I honestly . . . know he had it, but most of the time I was going like this (indicating) just to cover myself and was scared.” (Ellipses in the original.) When asked whether he had made “any remarks regarding the gun, or his

possession of the gun,” she replied: “I saw when he got it, and he had it in his hand. I could see it in his hand.”

When Mr. Stilp “eventually went to let the dog back in,” Ms. Staymates ran out of the house again and “sprinted down the street.” Mr. Stilp got into his vehicle to search for her, found her, jumped out of the vehicle, got her on the ground, grabbed her face, held her mouth, hit her in the eye, and choked her. Just as “everything started to go black,” headlights from an on-coming vehicle appeared and Mr. Stilp stopped and took off in his vehicle.

Ms. Staymates got up and ran into the woods and eventually made her way to a neighbor’s house. She tapped on the door and hid partly in the bushes until the neighbor answered the door. The neighbor, 70-year old Sharon Williams who did not know Ms. Staymates, testified that Ms. Staymates appeared “very frightened” and was “shaking” and told her that “she had had an argument coming home from Ocean City with her boyfriend, that he had hit her, and she was afraid of him, and that he had a gun, and she thought he was going to kill her.” The police were called and Officer Brian Barr responded to Ms. Williams’s house. He testified that Ms. Staymates was “visibly upset” and had “bruising on the left side of her jaw” and “some swelling to the right side of her face, around her eye.” He then responded to the Stilp/Staymates residence and found a .45 caliber Glock in the front yard, a few feet from the front door. Mr. Stilp was apprehended a short time later.

At the end of the State’s case, the defense moved for judgment of acquittal and, as to the use of a firearm in the commission of a crime of violence, argued that “the most the State has been able to prove is that at one point Mr. Stilp had removed his handgun from

the nightstand.” “Specifically, there was absolutely no testimony whatsoever that he did anything with it. He didn’t point it at her. She did not testify to him making any kind of statement that related to the firearm.” Relying on *Wynn v. State*, 313 Md. 533 (1988), defense counsel argued that “use” of a firearm means “something more than mere illegal possession of a handgun,” that the legislature “contemplated use of a handgun in an active as opposed to a passive manner.” He further pointed out that use of a handgun in the commission of a crime of violence is a distinct crime from wearing or carrying a handgun. The defense maintained that, although the evidence established that Mr. Stilp removed the handgun from the nightstand, there was no evidence “of brandishing it, pointing it at her, making some sort of verbal threat that also involved the gun[.]” The court denied the motion.

Not surprisingly, Mr. Stilp’s version of the events varied from that of Ms. Staymates’s. Relevant here, with respect to the gun, he testified that Ms. Staymates’s phone went missing. Once home, he logged into the “Find my iPhone” app and learned that it had moved from the last bar they had visited to the Northside apartments. He explained that he retrieved his gun from the nightstand because he was going to an unknown area in the middle of the night with \$500 cash to redeem the phone and he “didn’t know what [he] was getting [himself] into.” He denied pointing the gun at Ms. Staymates and denied threatening her with it. He claimed that, while in her presence he had held the gun “bladed down the backside of [his] right leg away from her” and claimed he “yelled at her to just go to sleep, just stay here” before walking out of the room.

Ms. Staymates’s rebuttal testimony included the following:

[STATE]: And when you ran out of the house the first time, how were you brought back into the house?

STAYMATES: By force. He, I was down on the ground trying to not go back in there, I did not feel safe in there.

[STATE]: And at what point did you observe the handgun?

STAYMATES: The second time that he got me back into the house.

[STATE]: And can you describe how he was handling the handgun?

STAYMATES: He got it out of the drawer, and he had it in his hand. And he, I was still laying in the bed, kind of just, you know, in a defensive-like position. And he was just screaming at me with it in his hand.

[STATE]: Was he telling you that he was going to go the PNC ATM and get \$500 to get your phone back?

STAYMATES: No.

. . .

[STATE]: And how did you feel when you saw the Defendant, when he had possession of the handgun in the bedroom?

STAYMATES: That's when I knew I had to get out of the house.

At the close of its case, defense counsel renewed the motion for judgment of acquittal on the firearm count, incorporating his prior arguments. The court denied the motion. As noted, the jury found Mr. Stilp guilty of false imprisonment, second-degree assault, reckless endangerment, and use of a firearm in the commission of a crime of violence. Second-degree assault is considered a “crime of violence.” MD. CODE, Public Safety, § 5-101(c)(3).

Discussion

Mr. Stilp asserts that the evidence was insufficient to establish that he “used” the firearm in the commission of a crime of violence, that is, the second-degree assault. As he did in the trial court, he relies on *Wynn, supra*, where the Court of Appeals stated that “‘use’ connotes something more than bare possession of a handgun in the commission of a crime of violence.” 313 Md. at 542.² Rather, “use” means “to carry out a purpose or action by means of; to make instrumental to an end process; and to apply to advantage.” *Id.* at 543 (quotation omitted). Thus, based on *Wynn*, Mr. Stilp maintains that “in order to be convicted of a violation of section 4-204(b) of the Criminal Law Article, a person must have actively used a firearm in furtherance of the underlying crime.” Here, he asserts that “the evidence shows that [he] merely held the gun to his side, pointing it down and away from Staymates, while briefly standing in the same room as her.” He relates that the evidence showed that he needed to retrieve the gun in order to take it with him to redeem Ms. Staymates phone, and he “did not brandish it, display it, point it at her, or employ it for any purpose while in the bedroom.” He claims that Ms. Staymates “never testified that he did anything with the gun to put her in fear of bodily harm.” In short, he maintains that his “mere possession” of the firearm did not constitute “use” of the weapon in the commission of any crime.

² In *Wynn*, the crime of violence was housebreaking, but no one was home when *Wynn* committed the crime. The fact that *Wynn* possessed a gun during the incident was discovered only after he was stopped by the police. 313 Md. at 535; 535.

As the State points out, Mr. Stilp is relying on his own testimony and is ignoring Ms. Staymates’s testimony that, when forcing her into the car, he had threatened to “end” her; that prior to her first escape from the bedroom he was “super angry” and yelling at her; that he took the gun out of the nightstand after he forced her back into the house after her first escape; that the second time he put her on the bed he was even “more angry” and “making threats again”; that he was yelling at her with the gun in his hand; and when she saw him with the gun she knew she had to get out of there. He also ignores Ms. Williams’s testimony that Ms. Staymates appeared distraught at her home and that she (Ms. Staymates) informed her (Ms. Williams) that her boyfriend had hit her, she was afraid of him, that he had a gun, and she thought he was going to kill her.

The jury was free to reject Mr. Stilp’s testimony that he had retrieved the gun for his own self-protection on his alleged mission to redeem Ms. Staymates’s phone. And as noted, on appeal we review the evidence for sufficiency purposes in the light most favorable to the State. We hold that, based on the evidence adduced from Ms. Staymates, and corroborated by Ms. Williams, the jury could reasonably infer that Mr. Stilp retrieved and displayed the weapon with the intent to frighten the victim, which constitutes second-degree assault of the intent to frighten variety – a crime of violence. *See* Md. Code, Public Safety, § 5-101(c)(3).

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