

Circuit Court for Howard County
Case No. 13-K-17-058192

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 505

September Term, 2018

JOSEPH SILBERSTEIN

v.

STATE OF MARYLAND

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 2019

*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 Howard County, Joseph Silberstein, appellant, was convicted of second-degree assault. Mr. Silberstein raises two issues on appeal: (1) whether the evidence was sufficient to support his conviction, and (2) whether the trial court erred in relying on impermissible considerations at sentencing. Because the State presented sufficient evidence to sustain Mr. Silberstein’s conviction and his sentencing claim is not preserved for appellate review, we shall affirm.

Mr. Silberstein first contends that the evidence was insufficient to sustain his conviction for second-degree assault because the victim recanted her allegations against him at trial and his “calm demeanor . . . and the lack of any injuries to his hands . . . belied [her] original statements to the police that she had been punched.” We disagree. 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 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)).

Mr. Silberstein’s claims are essentially an invitation for this Court to reweigh the evidence, which we will not do. It is “not a proper sufficiency argument to maintain that

the [fact-finder] should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses.” *Correll v. State*, 215 Md. App. 483, 502 (2013). That is because “it is the [trier of fact’s] task, not the court’s, to measure the weight of the evidence and to judge the credibility of the witnesses.” *State v. Manion*, 442 Md. 419, 431 (2015) (citation omitted).

At trial, the State presented evidence that the police officers who responded to the victim’s home observed her standing in the street, “covered in blood,” and yelling that Mr. Silberstein had “punched her in the face and broke her nose.” The next day, the victim sought medical attention and informed the doctor that Mr. Silberstein had “punched her in the nose after being aggressive with her.” The doctor ultimately diagnosed her with a fractured nose. That evidence, if believed, was legally sufficient to support a finding of each element of the second-degree assault charge beyond a reasonable doubt. *See Archer v. State*, 383 Md. 329, 372 (2004) (“It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction.”). And the fact that the victim later recanted her testimony does not affect the sufficiency of the evidence because, in weighing the evidence, the fact-finder “can accept all, some, or none of the testimony of a particular witness.” *Correll v. State*, 215 Md. App. 483, 502 (2013).

Mr. Silberstein also asserts that, in fashioning his sentence, the court impermissibly relied on charges that had been nol prossed with “no proffer of any reliable facts underlying the charges.” However, this claim is not preserved for appellate review because Mr. Silberstein did not object to the court considering those charges at his

sentencing hearing. *See* Maryland Rule 8-131(a). And we decline to exercise our discretion to engage in plain error review of this issue.¹

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

¹ Contrary to Mr. Silberstein’s contention on appeal, the court’s reliance on impermissible considerations at sentencing would not render his sentence inherently illegal. *See Abdul-Maleek v. State*, 426 Md. 59, 69 (2012).