Circuit Court for Talbot County
Case No. 20-K-07-008784

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 583

September Term, 2017

NADINE MARIE WILSON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 13, 2018

On August 8, 2007, appellant, Nadine Marie Wilson, was convicted by a jury sitting in Talbot County of first-degree assault, two counts of second-degree assault, and malicious destruction of property. The court sentenced her to a total of fifteen years of incarceration, and suspended all but eighteen months, to be followed by five years of supervised probation. On October 14, 2011, she was found in violation of her probation, which was revoked and she was ordered to serve the balance of her sentence. On May 5, 2017, she was granted post conviction relief, and was permitted to file a belated appeal. On appeal she argues that the evidence was insufficient to sustain the convictions. We disagree.

BACKGROUND

On January 1, 2007, at about 3:45 P.M., friends Kaila Gowe, Catherine Pratt, and Mary Marth were traveling in Gowe's vehicle near the area of Chester Park Road in Talbot County. That location is a residential road which ends in a cul-de-sac. The three were driving to meet Pratt's friend who lived in the area. Upon entry to the road, the three women observed appellant and two or three men walking in the middle of the road. As they neared the group, appellant began screaming at the car and appeared angry. The women, who were from the area, recognized appellant from school, which they all had attended together years prior. All three women in the car testified that while they knew appellant, they were merely acquaintances of hers. At trial, all three testified that they did not know why appellant was angry on the day of the incident.

As the car neared appellant, she mounted the hood of the car, and stood on it before sliding off. She then went do the driver's side window and pounded on it while screaming at the occupants. The three women then drove onward until coming to the cul-de-sac. They

then turned around and attempted to leave the area the same way in which they came in, as it was the only exit. A short while after turning the car around, they observed appellant in the roadway, walking towards the vehicle, and carrying a metal pole. Marth, fearful, called the police. The police department advised that they could not respond for twenty minutes. As appellant walked quickly towards the vehicle, the women decided to attempt to exit the area. All three women testified that as their vehicle got close to appellant they were fearful of what she would do with the pole. As a result, all three closed their eyes, and soon thereafter heard a loud crash. Upon opening their eyes they observed that the windshield had shattered, sending broken glass into the passenger compartment. The pole, which appellant had been carrying, had entered the windshield and lodged into the steering compartment, rendering the steering wheel partially inoperable. Marth, who was driving, testified that the pole came within six inches of her person. Marth, using some force, was able to turn the steering wheel and exited the area.

Immediately after leaving the area, the women drove to the Saint Michael's Police Station. Deputy Tanya Dawes of the Talbot County Sheriff's Office responded to the police station, as the incident occurred outside of the Saint Michael's city limits. She spoke with all three women who were in the car and described them as "visibly shaken, crying," and "hysterical in fear." She also observed scratch marks on the hood of Gowe's vehicle, and smudge marks on the driver's side. The windshield was shattered and there was a hole towards the bottom. Shattered glass littered the inside of the passenger compartment, and a hole was observed in the steering column. Deputy Dawes located the pole outside of the

vehicle in the grass near the police station, but left it there after discovering that it was too large to transport in her patrol vehicle.

Appellant testified that at the time of the incident, she was in Easton getting her hair braided by a friend. She was arrested at her grandmother's house in Saint Michaels approximately an hour and a half after the incident. Deputy Dawes testified that at the time of appellant's arrest only half of her hair was braided.

DISCUSSION

With regard to first-degree assault, appellant argues that "the evidence was insufficient to sustain a conviction" because:

> [N]o one testified that they actually saw [a]ppellant throw the metal pole into the windshield; all three occupants closed their eyes, before the pole hit the car; there was a gap between when the assailant was seen with the pole and when the occupants looked up to see the pole through the windshield; the metal pole itself was offered in evidence; the State offered no evidence of motive for such an attack; and [a]ppellant's alibi – that she was having her hair done, elsewhere – was substantially bolstered by the State's testimony of a deputy sheriff who noticed that [a]ppellant's hair was only half braided when she was arrested[.]

Appellant also contends that the evidence was insufficient as to second-degree assault because:

> [N]o one was actually injured in the slightest; the metal pole never struck anyone; and the occupants never even saw the pole pointed at the car, let alone thrown at the car.

Finally, appellant submits that the evidence was insufficient to sustain her conviction for malicious destruction of property because:

> The only act of "destruction" anyone actually saw [a]ppellant do was jumping on the hood of the car, leaving what the car's owner called "[j]ust a few scratches"; the "estimate" of damages to which the car's owner referred

> if it was ever reduced to writing, was never admitted into evidence; and the actual cost of repairs is unknown, because the car had still not been repaired, at the time of trial.

On appeal "we review the evidence in the light most favorable to the prosecution and determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). The reviewing court will affirm the conviction, "[i]f the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Bible v. State*, 411 Md. 138, 156 (1998) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). "It is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finder's "task to resolve any conflicts in the evidence and assess the credibility of witnesses." *Id.*

Md. Rule 4-324(a) requires that a criminal defendant "state with particularity all reasons why" a motion for judgment of acquittal should be granted. "[A] motion which merely asserts that evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with the rule [4-324] and thus does not preserve the issue for sufficiency of appellate review." *Garrison v. State*, 88 Md. App. 475, 478 (1991), *cert. denied*, 325 Md. 249 (1992) (citation omitted).

First-Degree Assault

Appellant argues that:

> [T]he evidence was insufficient to sustain a conviction of first degree assault, because: no one testified that they actually saw [a]ppellant throw the metal pole into the windshield;[1] all three occupants closed their eyes, before the pole hit the car; there was a gap between when the assailant was seen with the pole and when the occupants looked up to see the pole through the windshield; the metal pole itself was never offered in evidence; the State offered no evidence of motive for such an attack; and [a]ppellant's alibi – that she was having her hair done, elsewhere – was substantially bolstered by the State's testimony of a deputy sheriff who noticed that [a]ppellant's hair was only half-braided when she was arrested, within an hour and a half later.

Her claims are without merit.

All three victims testified that they saw appellant, angry and screaming, with a large pole in her hand, walking towards their vehicle. No other person was near appellant at this time. As the car got closer to appellant, each occupant closed their eyes out of fear. Marth and Gowe testified that it took "seconds" for the pole to come through the windshield after they had closed their eyes. Pratt testified that she "saw [appellant] with the pole, you know, running towards our car and then all of a sudden the pole's in the windshield." Although none of the witnesses observed appellant actually throw the pole through the windshield, as the State argues, it is difficult to imagine another inference that could reasonably be drawn.

Appellant's claims that the pole itself was never offered in evidence, that the State offered no evidence of motive, and that her alibi was strong, are also without merit. "It is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Smith*, *supra* 138 Md. App. at 718. It is the fact finder's "task to resolve

[1] Appellant reiterates this argument for each subsequent count.

any conflicts in the evidence and assess the credibility of witnesses." *Id.* While not admitting the pole itself, the State admitted a photo of the pole into evidence, as well as testimony from numerous witnesses describing the pole. The jury is entitled to consider the lack of a motive, but the State is not required to provide evidence of motive. *Emory v. State*, 101 Md. App. 585, 605 (1994).

Second-Degree Assault

Counsel for appellant moved for judgment of acquittal as to all counts at the close of the State's case and again at the close of her case. In neither instance did counsel argue that the State failed to meet its burden of proof as to second-degree assault due to lack of evidence of injury. As a result, appellant's claim is unpreserved.

Nevertheless, even had it been preserved, appellant's claim is without merit. As we discussed in *Lamb v. State*, assault may refer to any one of the following concepts:

1. A consummated battery or the combination of a consummated battery and its antecedent assault;

2. An attempted battery; and

3. A placing of a victim in reasonable apprehension of an imminent battery.

93 Md. App. 422, 428 (1992). "The attempted battery variety of assault requires that the accused had a specific intent to cause physical injury to the victim, and to take a substantial step towards that injury." *Snyder v. State*, 210 Md. App 370, 382 (2013). As we explained in *Snyder*,

> The intent to frighten variety requires that the defendant commit an act with the intent to place another in fear of immediate physical harm, and the defendant had the apparent ability, at that time, to bring about the physical

> harm. The victim must be aware of the impending battery, and there must be an apparent present ability to commit the battery.

Id. (citations omitted).

None of the three versions of second-degree assault require an injury. Given the overwhelming evidence in this case, we are satisfied that a rational trier of fact could have found that appellant committed an attempted battery and/or intended to frighten the occupants of the car.

Malicious Destruction

Finally, appellant contends that the evidence was insufficient to support a conviction for malicious destruction of property because the witnesses only saw appellant jump on the hood of the car, leaving scratches, and because the estimate of damages was not admitted into evidence and is unknown because the repairs had not yet been completed at the time of trial. Appellant did not raise these arguments during her motion for judgment of acquittal, and therefore they are not preserved. Nevertheless, even had they been preserved, they are without merit.

Md. Code. Ann. Crim Law § 6-301 provides that a "person may not willfully and maliciously destroy, injure, or deface the real or personal property of another." Appellant was charged with malicious destruction of property having a value of under $500. As a result, the State was not required to prove the cost of the damage. Gowe testified that the car was left undrivable after having been damaged by appellant. She further testified that, while the repairs had not been completed at the time of trial, they were estimated to be $250. Photos of the damaged car were admitted into evidence, and Deputy Dawes testified

that she observed the damage to the car. We are satisfied that a rational trier of fact could have found beyond a reasonable doubt that appellant maliciously destroyed, injured, or defaced Gowe's car.

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